

# October 18, 2017 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	✓
Kyoko Kimura (Travel)	HA	Maui	Parking Pass	✓
Harris Nakamoto, Vice Chair	NA	Oahu	NA	✓
Director's ex officio Mark Ritchie	NA	Oahu	NA	✓
Robert Cundiff	NA	Oahu	Parking Pass	✓
Nancy Atmospera-Walch	NA	Oahu	NA	NG
Travel - TBD Garth Yamanaka	HA	B.I.	Parking Pass	✓
Reg Baker	NA	Oahu	Parking Pass	✓

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance - in process	✓
Draft Agenda to Chair for approval 10-6-17	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF <i>Kyoko ✓ Garth</i>	✓
Copies of Rule Package for Lte. Gov's Office (2) and Scan for Posting on State Calendar ✓ <i>Need to Post at Gov's Office</i>	✓
Send Chair Minutes for Approval <i>Sent 2x Approved</i>	✓
Post approved agenda on SBRRB website, State Calendar, 3) Lte. Governor's Office <i>partially</i>	✓ <i>Wesley Post Agenda (Garth)</i>
Send Agendas to those people who requested it - IMPORTANT <i>(See attached email/Name)</i>	✓ <i>Done</i>
Upload Meeting Documents onto Board's Website in Calendar <i>Done</i>	✓ ✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees <i>working on</i>	✓
Mail parking permits to those Board members noted (Sent in Nov. 2016 six (6) permits) <i>Reg (6) ✓</i>	✓

STAFF				
Jennifer Waihee-Polk				✓ Via I-pad
Dori Palcovich				✓

Post Meeting Checklist	

Small Business Regulatory Review Board Meeting

Wednesday, October 18, 2017

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Email: [dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov)  
Website: [dbedt.hawaii.gov/sbrrb](http://dbedt.hawaii.gov/sbrrb)

Tel 808 586-2594

### AGENDA

Wednesday, October 18, 2017 ★ 10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI - Conference Room 436

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Robert Cundiff  
Vice Chairperson  
Oahu

Garth Yamanaka  
2<sup>nd</sup> Vice Chairperson  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Kyoko Kimura  
Maui

Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of September 20, 2017 Meeting Minutes

#### III. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 3, **Rules of the Liquor Commission, City and County of Honolulu, State of Hawaii**, promulgated by the City and County of Honolulu Liquor Commission, as follows: **Discussion Leader**

**Kyoko Kimura**

1. Chapter 81, **Liquor Commissions**, Section 17.51, **License Fees**
2. Chapter 81, Section 17.58, **Trade Name; Change; Fee**
3. Chapter 82, **Licenses and Permits, General Provisions**, Section 33.11, **Applications for Individual Permits to Receive Shipments of Liquor**
4. Chapter 82, Section 33.6, **Direct Shipment of Wine by Wineries**
5. Chapter 83, **Procedure for Obtaining License**, Section 54.1, **Filing Fees**

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13, Subtitle 11, **Ocean Recreation and Coastal Areas**, promulgated by Department of Land and Natural Resources, as follows:

**Discussion Leader – Mark Ritchie**

#### a. Part I - Small Boat Harbors and Other Boating Facilities

1. Chapter 230, General Provisions
2. Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
3. Chapter 232, Sanitation and Fire Safety
4. Chapter 233, Motor Vehicle and Parking Rules
5. Chapter 235, Offshore Mooring Rules and Areas

#### b. Part II – Boating

1. Chapter 240, General Provisions
2. Chapter 242, Accidents, Reports, Fines, Enforcement and Records
3. Chapter 243, Vessel Equipment Requirements
4. Chapter 244, Rules of the Road; Local and Special Rules
5. Chapter 245, Waterway Marking Systems

#### c. Part III - Ocean Waters, Navigable Streams & Beaches

1. Chapter 250, General Provisions
2. Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches

3. Chapter 253, Registration and Permit Fees
  4. Chapter 254, Local Ocean Waters
  5. Chapter 255, Waikiki Beach
  6. Chapter 256, Ocean Recreation Management Rules
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15, Chapter 218, **Kakaako Reserved & Workforce Housing Rules**, promulgated by Hawaii Community Development Authority / Department of Business, Economic Development and Tourism – **Discussion Leader – Mark Ritchie**

#### IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, **Administration of Taxes**, Section 25.5-02(f), **Cost Recovery Fees for Collection Actions**, promulgated by Department of Taxation (DoTax) – **Discussion Leader – Garth Yamanaka**
- B. Discussion and Action on Proposed New HAR Title 18, Chapter 237, **General Excise Tax Law**, Section 34-13, **Persons with a Material Interest In A Tax Return**, promulgated by DoTax – **Garth Yamanaka**
- C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 237D, **Transient Accommodations Tax**, Section 4-01, **Certificate of Registration**, and Section 4-02, **Display of the Registration Certificate**, Repeal of Sections 4-03 through 4-07, and Proposed New Sections 4-08 to 4-35, promulgated by DoTax – **Garth Yamanaka**
- D. Discussion and Action on Proposed New HAR Title 12, Chapter 44.1, **Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems**, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations – **Discussion Leader - Kyoko Kimura**

#### V. Administrative Matters

- A. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Redesigning the Board's Website, including Content, Features and Short- and Long-Term Goals, in accordance with Section 92-2.5 (b), Hawaii Revised Statutes (HRS)
- B. Update on the Proposed Small Business Office by the Department of Accounting and General Services under Act 42, Sessions Law Hawaii 2017, **Relating to Procurement** – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds.
- C. Update on the Board's Upcoming Advocacy Activities and Program in accordance with the Board's Powers under Section 201M-5, HRS

**Small Business Regulatory Review Board**

**October 18, 2017**

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**VI. Next Meeting:** Scheduled for Wednesday, November 15, 2017, at 10:00 a.m., Capitol District Building, Conference Room 436, 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.

## II. Approval of September 20, 2017 Meeting Minutes

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - Draft

September 20, 2017

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:05 p.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- Nancy Atmospera-Walch
- Carl Nagasako

**ABSENT MEMBERS:**

- Robert Cundiff, Vice Chair

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Jennifer Waihee-Polk

II. **APPROVAL OF AUGUST 16, 2017 MINUTES**

Mr. Nakamoto made a motion to accept the August 16, 2017 minutes, as presented. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to Title 8, Subtitle 1, Liquor Commission, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, promulgated by the Department of Liquor Control, County of Maui, as follows

Discussion leader Ms. Kimura explained that these rule amendments have been reviewed during the past year. However, after the rules were approved and adopted, a lawsuit was instituted and the rules were repealed; a new public hearing was scheduled and held on September 13<sup>th</sup>.

1. Section 22(j) – Licenses, Classes; Class 10, Special License

Amendments apply to non-profits, public candidates and political parties. Executive Director Mr. Glenn Mukai confirmed that, at the recent public hearing, the option that was chosen

excludes non-profits from requiring personal history statements and criminal history background checks.

## 2. Section 69(a) – Practice to Promote Excessive Consumption of Liquor; Prohibited

Executive Director Mukai also confirmed that at the public hearing the option to sell “all the liquor you can drink” at a fixed price was chosen. This only applies at restaurants where tickets are sold for events such as fundraisers that are not open to the public.

Ms. Kimura made a motion to move the proposed amendments to the Mayor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

## **IV. ADMINISTRATIVE MATTERS**

### A. Discussion and Action on Recommended Changes to Governor’s Administrative Directive (AD) No. 09-01, dated October 29, 2009, regarding Chapter 201M, HRS

Chair Borge explained that the first proposed change to the Governor’s 2009 AD will align the AD with the new definition of “small business” that was recently changed in the Board’s statute during the past legislative session.

The second proposed change refers to the Board’s discussion at the last board meeting regarding the possibility of changing Chapter 91, HRS, in order to engage small businesses in the rule-review process prior to the public hearing; as opposed to the current process where businesses receive notice of rule changes at the tail-end of the process. The verbiage for this change is taken from the Board’s statute, section 201M-2(b)(6), HRS.

Although not the best solution, Chair Borge believes amending the AD in this manner makes sense, and is more doable and quicker than changing the statute. Deputy Attorney General Waihee-Polk indicated that she will follow-up with the deputy attorney general handling the Governor’s activities to make sure this proposal does not get lost.

Ms. Kyoko made a motion to move forward with the Board’s recommendation to propose changes to the Governor’s Administrative Directive No. 09-01. Ms. Atmospera seconded the motion, and the Board members unanimously agreed.

### B. Update and Discussion on Upgrading the Board’s Website

Chair Borge reminded the members that HIC (Hawaii Information Consortium) is interested in assisting this Board with the design of a new website and has posed several questions before beginning the process.

In regards to the goals this Board is hoping to accomplish, responses included having a meaningful website that is user-friendly in terms of navigational purposes. Also, it is important to explain what the Board’s mission is, what it stands for, and to make it as easy as possible for small businesses to approach this Board with issues on rules and regulations. In addition, having links to other chambers of commerce and to a “regulatory alert” button where small businesses can download a small business impact statement were suggested.



In regards to the budget, Mr. Nagasako explained that in order to develop a reasonably priced site, concepts and ideas should be converted into specific applications. He added that the specifics must be locked down first, the vendor should then be approached, and finally the price should follow. If the process is done differently, the cost may be too high. The Board also needs to keep in mind how sophisticated it wants the site to be and how much regular/monthly maintenance would be required.

During the discussion, Mr. Nakamoto suggested that a task group be created to review HIC's questions. Deputy Attorney General Waihee-Polk added that this could be accomplished by placing an item on next month's agenda to create an informal taskforce.

Mr. Nakamoto made a motion to place on next month's agenda the approval of an informal investigative task force for the purpose of developing goals for the redesign of the Board's website. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

C. Update on Amendments to Chapter 201M, HRS for the 2018 Hawaii Legislative Session

It was noted that the Board's proposed changes to its statute for the upcoming legislative session were approved by DBEDT and sent onward for appropriate review and approval.

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

Mr. Reg Baker is expected to be appointed by the Governor as an "interim" board member until the 2018 legislative session. The Board, however, is still in need of a member from Kauai. The names of Ms. Mary Albitz and Mr. Larry Anderson were submitted to the Governor for the Governor's review. Chair Borge was informed that the Governor wants to receive a "list" of nominees rather than receiving only one or two nominees.

Chair Borge recently sent a letter to the Farm Bureau requesting potential names of members who may be interested in becoming a member of this Board; he has a follow-up call into the Farm Bureau's executive director and is awaiting a return call back.

Ms. Atmospera-Walch explained that she was approached by representatives of adult residential care homes who believe they may be discriminated against due to a change in the payment standards. These standards pertain to a three-tiered payment schedule for 3-, 4-, and 5-bedroom homes. An owner of a 3-bedroom care home now has the highest amount to pay; payments get lower with the higher number of bedrooms. DBEDT staff will review this with Ms. Atmospera-Walch and follow-up with the Board, if appropriate.

V. **NEXT MEETING** – The next meeting is scheduled for Wednesday, October 18, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VI. **ADJOURNMENT** – Mr. Nakamoto made a motion to adjourn the meeting and Ms. Kimura seconded the motion; the meeting adjourned at 11:07 a.m.

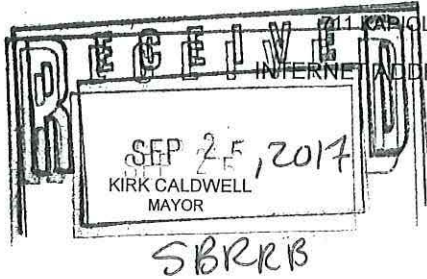
### **III. Old Business**

#### **A. Discussion and Action on the Small Business Statement**

After Public Hearing and Proposed Amendments to Title 3, Rules of the Liquor Commission, City and County of Honolulu, State of Hawaii, promulgated by the City and County of Honolulu Liquor Commission, as follows:

- 1. Chapter 81, Liquor Commissions, Section 17.51, License Fees**
- 2. Chapter 81, Section 17.58, Trade Name; Change; Fee**
- 3. Chapter 82, Licenses and Permits, General Provisions, Section 33.11, Applications for Individual Permits to Receive Shipments of Liquor**
- 4. Chapter 82, Section 33.6, Direct Shipment of Wine by Wineries**
- 5. Chapter 83, Procedure for Obtaining License, Section 54.1, Filing Fees**

LIQUOR COMMISSION  
CITY AND COUNTY OF HONOLULU



711 KAPOLANI BOULEVARD, SUITE 600, HONOLULU, HAWAII 96813-5249  
PHONE (808) 768-7300 or (808) 768-7333 • FAX (808) 768-7311  
INTERNET ADDRESS: [www.honolulu.gov/liq](http://www.honolulu.gov/liq) • E-MAIL: [liquor@honolulu.gov](mailto:liquor@honolulu.gov)



JOSEPH V. O'DONNELL  
CHAIRMAN

NARSI A. GANABAN  
CO-VICE CHAIR

MALAMA MINN  
CO-VICE CHAIR

DARREN Y.T. LEE  
COMMISSIONER

DUANE R. MIYASHIRO  
COMMISSIONER

FRANKLIN DON PACARRO, JR.  
ADMINISTRATOR

ANNA C. HIRAI  
ASSISTANT ADMINISTRATOR

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

Department or Agency: *Liquor Commission, City and County of Honolulu ("HLC")*

**Administrative Rule(s) Title(s) and Chapter(s):**

*Rule §3-81-17.51 License Fees*

*Rule §3-81-17.58 Trade Name; Change; Fee*

*Rule §3-82-33.11 Applications for Individual Permits to Receive Shipments of Liquor*

*Rule §3-82-33.6 Direct Shipment of Wine by Wineries*

*Rule §3-83-54.1 Filing Fees*

**Chapter Name(s):**

*Chapter 81 Liquor Commissions*

*Chapter 82 Licenses and Permits, General Provisions*

*Chapter 83 Procedure for Obtaining License*

**Contact Person/Title:** *Franklin Don Pacarro, Jr., Administrator*

**Phone Number:** *768-7303*

**E-mail Address:** [fpacarro@honolulu.gov](mailto:fpacarro@honolulu.gov)

**Date Submitted:** *September 22, 2017*

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

*Suggested meeting notice description: Discussion and Action on the Small Business Statement After Public Hearing and Decision Making on Proposed Amendments to Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Subtitle 6, Chapters 81, 82, and 83, promulgated by the Liquor Commission, City and County of Honolulu, and pertaining to license, change, permit, and filing fees.*

**B. Are the draft rules available on the Lieutenant Governor's Website pursuant to HRS §92-7?**  **Yes** *The proposed amended rules are posted on the HLC website at <http://www.honolulu.gov/liq/newsannouncements.html> and will be available for viewing in person at the HLC offices Monday through Friday, between 7:45 a.m. and 4:30 p.m.*

**(If "Yes" please provide webpage address and when and where rules may be viewed in person.)**

**(Please keep the proposed rules on this webpage until after the SBRRB meeting.)**

**I. Rule(s) Description:**  **Amendment**

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

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

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

**III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) (HRS §201M-2(d))**  **No**

**IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))**  **No**

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

*HLC conducted two (2) stakeholder meetings in May 2017 in order to provide license class representatives with the following information:*

- *The significance of HLC's special fund agency status;*
- *HLC's fiscal picture from 2005 to date (from the last license fee increase);*
- *Explanation of the "design" of the license fee increase (across-the-board increase to*

*basic license fees, with no impact to maximum fees or fee "caps"), and the proposed change to HLC's revenue profile;*

- *Description of the LCIS database system project, how the system will benefit licensees, and proposed construction schedule.*
- *The cost advantage of a custom-built system compared to modifications made to an off-the-shelf system.*

*In addition to explaining the agency's need for the proposed fee increase, HLC was able to obtain valuable input from various license classes as to the types of functions and capabilities that would be most beneficial to the licensee users. Virtually all of these requested functions will be included in the external user construction phase of LCIS.*

*Most of each stakeholder meeting was devoted to discussion about the features of the new LCIS system, although the cost of the custom built system was also a major topic of discussion.*

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

*Initially, HLC administration proposed effectiveness of the license fee increase retroactive to July 1, with licensees being billed for the entire 70% increase. Licensees were understandably concerned about the size of the proposed increase while trying to operate profitably in a challenging business environment.*

*Shortly before the August 31 public hearing, the vendor who was selected following bid to build the LCIS system delivered a project budget and schedule update. In order to properly evaluate how the update would impact both the estimated project timeline and cost – which would then impact the proposed license fee increase amounts – Administration requested that the public hearing be continued to September 14 in order to conduct the required evaluation.*

*Because of increased labor costs from the 2013-2014 date when the system design was created and the platform software ultimately selected by the construction vendor as being the best choice for the project, HLC was advised that the new system will cost over twice the amount originally thought, \$900K versus \$450K. HLC fully acknowledged that licensees cannot be expected to fund the entire project cost in a single fiscal year. However, HLC believed that the functionality of the new system will be so valuable to licensees that continuing the project to completion is justified. After review of HLC's existing and projected future budgets, HLC proposed that this goal still can be achieved by restricting the proposed fee increase to 50% above existing levels in FY19, coupled with extending the project completion date to FY19. No fee increase will be asked for FY18, as the existing FY18 budget can accommodate the first year of LCIS construction, although a fee increase in FY19 is required for project completion.*

*Any reduction of the proposed fee increase amount would require HLC to reduce functionality of LCIS and/or further extend the proposed completion date. HLC believes that it has made the appropriate accommodation to licensees with respect to fiscal impact*

*of the proposed fee increase without sacrificing the quality or timeliness of the finished product.*

*At the September 21 scheduled decision making, the Commission accepted HLC Administration's recommendation that the proposed amendments to Rules 3-81-17.58; 3-82-33.11; 3-82-33.6; and 3-83-54.1 be adopted as proposed, and that the adoption of proposed amendments to Rule 3-81-17.51 not include the increases stated for FY18, but to include all other proposed amendments to said Rule.*

*A summary table listing the current, proposed FY18 (not adopted so marked by strike through), and proposed FY19 license fee amounts for all classes, kinds, and categories of liquor licenses appears in the Appendix to this Statement.*

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

**1. A description of how opinions or comments from affected small businesses were solicited.** *In addition to the above-described stakeholder meetings, a notice on the HLC website "News and Announcements" section provided the following information to encourage questions and comments:*

### **2017 Proposed Rule Amendments**

The Honolulu Liquor Commission proposes to amend five (5) rules to increase license, change, permit, and filing fees. Copies of the rule amendment package are available without charge at the front counter. The notice of public hearing has been published in the Honolulu Star-Advertiser, posted on this website (see below for link) and the Liquor Commission's lobby bulletin board, and mailed to our licensees. Any questions regarding the rule amendment package can be emailed to [liquor@honolulu.gov](mailto:liquor@honolulu.gov) or contact Assistant Administrator Anna Hirai at the Liquor Commission office.

**CLICK HERE**  
**2017 Proposed Rule**  
**Amendments**

**CLICK HERE**  
**Notice of Public Hearing**  
August 31, 2017  
4:00 p.m.

*In addition, copies of the Notice of Public Hearing were mailed to HLC's entire 1,400-member licensee base.*

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

*Licensees were almost unanimous in their support for the new LCIS system, but similarly almost unanimous in their reluctance to have license fees increased in order to pay for the system.*

*The majority of those in support of the license fee increase (public health/safety advocates) felt that the increased fees would discourage over-consumption and purchase by minors by ultimately increasing the cost of alcohol to consumers.*

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

*At the continued public hearing on September 14, 2017, HLC Administration announced its intention to not seek any increase of license fees in FY18.*

**4. The number of persons who:**

**(i) Attended the public hearing:** *Approximately 15 individuals.*

**(ii) Testified at the hearing:** *Four (4) individuals testified; one (1) in favor of the increase and three (3) opposed to the increase.*

**(iii) Submitted written comments:** *Ten pieces of written testimony were submitted; seven (7) in favor of the increase and three (3) opposed to the increase.*

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

**(i) If Yes was the change adopted?** *At the September 21 scheduled decision making, the Commission accepted HLC Administration's recommendation that the proposed amendments to Rules 3-81-17.58; 3-82-33.11; 3-82-33.6; and 3-83-54.1 be adopted as proposed, and that the adoption of proposed amendments to Rule 3-81-17.51 not include the increases stated for FY18, but to include all other proposed amendments to said Rule.*

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

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APPENDIX

Class – Kind - Category	Current \$	FY18 \$	FY19 \$
Manufacturer – Beer	1,320	2,220	1,980
Manufacturer – Wine	600	1,020	900
Manufacturer – Local Wine	120	204	180
Manufacturer – Alcohol	360	600	540
Manufacturer – Other Liquors	1,320	2,220	1,980
Restaurant – General – Cat. 1	1,200	2,040	1,800
Restaurant – General – Cat. 2	1,320	2,220	1,980
Restaurant – Beer & Wine – Cat. 1	900	1,560	1,380
Restaurant – Beer & Wine – Cat. 2	960	1,620	1,440
Restaurant – Beer – Cat. 1	360	600	540
Restaurant – Beer – Cat. 2	420	720	660
Wholesale – General	2,640	4,500	3,960
Wholesale – Beer & Wine	840	1,440	1,260
Wholesale – Alcohol	120	204	180
Retail – General	1,200	2,040	1,800
Retail – Beer & Wine	900	1,560	1,380
Retail – Alcohol	60	108	96
Dispenser – General – Cat. 1	1,200	2,040	1,800
Dispenser – General – Cat. 2	1,440	2,460	2,160
Dispenser – General – Cat. 3	1,320	2,220	1,980
Dispenser – General – Cat. 4	1,440	2,460	2,160
Dispenser – General – Cat. 3 & 4	1,500	2,580	2,280
Dispenser – General – Cat. 2 & 3	1,620	2,760	2,460
Dispenser – General – 2 & 4	1,620	2,760	2,460
Dispenser – General – 2, 3 & 4	1,740	2,940	2,640
Dispenser – Beer & Wine – Cat. 1	900	1,560	1,380
Dispenser – Beer & Wine – Cat. 3	960	1,620	1,440
Dispenser – Beer & Wine – Combination	1,020	1,740	1,560
Dispenser – Beer – Cat. 1	360	600	540
Dispenser – Beer – Cat. 2	420	720	660
Dispenser – Beer – Combination	540	900	840
Club – Cat. 1	660	1,140	1,020
Club – Cat. 2	---	1,200	1,080
Transient Vessel – Day	60	100	90
Transient Vessel – Year	1,320	2,220	1,980
Tour/Cruise Vessel – Cat. 1	900	1,560	1,380
Tour/Cruise Vessel – Cat. 2	---	1,620	1,440
Special – General	60	100	90
Special – Beer & Wine	40	70	60
Special – Beer	30	50	45
Cabaret – General – Cat. 1	1,980	3,360	3,000
Cabaret – General – Cat. 2	2,400	4,080	3,600
Hotel – General	3,960	6,720	5,940
Caterer – General – Restaurant/Hotel/Condo Hotel	30	50	45
Caterer – General – Food Service – Cat. 1	600 + 30	1,200 + 50	900 + 45
Caterer – General – Food Service – Cat. 2	720 + 30	1,200 + 50	1,080 + 45
Brewpub – General – Cat. 1	1,680	2,880	2,520
Brewpub – General – Cat. 2	1,800	3,060	2,700
Condominium Hotel - General	3,000	5,100	4,500
Winery	1,200	2,040	1,800
BYOB – Cat. 1	360	600	540



<b>Class – Kind - Category</b>	<b>Current \$</b>	<b>FY18 \$</b>	<b>FY19 \$</b>
BYOB – Cat. 2	420	720	660
Small Craft Producer Pub – Cat. 1	1,680	2,880	2,520
Small Craft Producer Pub – Cat. 2	1,800	3,060	2,700
Temporary – Initial & Renewal	275	470	420

Public Hearing Date – August 31, 2017

**Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2017)**

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

**SUMMARY:** Amends rule to restore ending fund balance amount to statutorily permitted level; to establish increased basic license fee amounts for FY18 and FY19 for all classes; to establish basic and additional license fee amounts for certain class categories; and to establish increased fee amounts for solicitors' and representatives' permits.

**§3-81-17.51 License Fees.**

- (a) The fees for licenses shall be per annum except where specified. In addition to the basic license fee, an additional license fee will be assessed. This additional license fee will be assessed if the gross liquor sales achieves a certain threshold (hereinafter referred to as 'deductible'). The additional license fee assessment will be calculated on the net of the gross liquor sales less a deductible. The deductible will be prorated for licenses issued during the course of the fiscal year. For licenses that are cancelled or revoked during the course of a fiscal year but prior to the calculation of the deductible for that fiscal year, the prior year's deductible (prorated) will be used.

\*The deductible will be calculated through the following formula:

- 1) Calculation of Additional Fees required for the next fiscal year

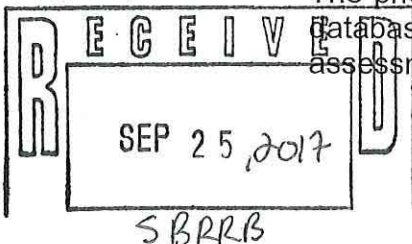
BFB = Estimated Beginning Fund Balance  
LRF = Estimated License Renewals Fees  
ALF = CALCULATED Additional License Fee  
MR = Estimated Miscellaneous Revenue  
BUD = Budget as submitted to Council for the next fiscal year  
EFB = Ending Fund Balance (~~[Ten]~~ Twenty percent of BUD)

Basic Formula:  $BFB + LRF + ALF + MR - BUD = EFB$

ALF =  $EFB + BUD - BFB - LRF - MR$

- 2) Calculation of the DEDUCTIBLE

The prior year's gross liquor sales of each licensee will be entered into a database. The gross liquor sales will be analyzed and based on the assessment rate of the respective class and additional license fees



required (ALF), the deductible for the fiscal year will be calculated. The calculated deductible will be rounded to the nearest thousands of dollars.

A maximum additional assessment fee has been established for each class. The fees for licenses based on different classes, kinds, and categories shall be as follows:

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
1	Manufacturer			
	(a) Beer		<del>[\$1,320]</del> <b>\$2,220</b> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<b>\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</b>
	(b) Wine		<del>[\$600]</del> <b>\$1,020</b> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<b>\$900, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</b>
	Wine manufactured from fruits grown in the state		<del>[\$420]</del> <b>\$204</b>	<b>\$180</b>
	(c) Alcohol		<del>[\$360]</del> <b>\$600</b>	<b>\$540</b>
	(d) Other Liquors		<del>[\$1,320]</del> <b>\$2,220</b> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<b>\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</b>
2	Restaurant			
	(a) General (includes all liquor, except alcohol)			
		(1) Category 1 - Standard	<del>[\$1,200]</del> <b>\$2,040</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(2) Category 2 - Music/Dancing	<del>[\$1,320]</del> <b>\$2,220</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
	(b) Beer & Wine			
		(1) Category 1 - Standard	<del>[\$900]</del> <b>\$1,560</b> , and one-half of one percent (0.005) of the total gross liquor sales less a	<b>\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed</b>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			*deductible, not to exceed \$25,000.	<u>\$25,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$960]</del> <u>1,620</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
	(c) Beer			
		(1) Category 1 – Standard	<del>[\$360]</del> <u>\$600</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$420]</del> <u>\$720</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
3	Wholesale			
	(a) General (includes all liquor except alcohol)		<del>[\$2,640]</del> <u>\$4,500</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.	<u>\$3,960, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.</u>
	(b) Beer & Wine		<del>[\$840]</del> <u>\$1,440</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.	<u>\$1,260, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.</u>
	(c) Alcohol		<del>[\$120]</del> <u>\$204</u>	<u>\$180</u>
4	Retail			
	(a) General (includes all liquor except alcohol)		<del>[\$1,200]</del> <u>\$2,040</u> , and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<u>\$1,800, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
	Beer & Wine		<del>[\$900]</del> <u>\$1,560</u> , and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<u>\$1,380, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
	Alcohol		<del>[\$60]</del> <u>\$108</u>	<u>\$96</u>
5	Dispenser			
	(a) General (includes all liquor except alcohol)			
		(1) Category 1 – Standard	<del>[\$1,200]</del> <u>\$2,040</u> , and one-half of one percent	<u>\$1,800, and one-half of one percent (0.005) of the total</u>

<u>CLASS</u>	<u>KIND</u>		<u>FY18 FEES</u>	<u>FY19 AND THEREAFTER</u>
			(0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 2 – Nudity	<del>[\$1,440]</del> <b>\$2,460</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(3) Category 3 – Music/Dancing	<del>[\$1,320]</del> <b>\$2,220</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(4) Category 4 – Hostess	<del>[\$1,440]</del> <b>\$2,460</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(5) Categories 3 & 4	<del>[\$1,500]</del> <b>\$2,580</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,280, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(6) Categories 2 & 3	<del>[\$1,620]</del> <b>\$2,760</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(7) Categories 2 & 4	<del>[\$1,620]</del> <b>\$2,760</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(8) Categories 2, 3 & 4	<del>[\$1,740]</del> <b>\$2,940</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$2,640, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
	(b) Beer & Wine			
		(1) Category 1 - Standard	<b>[\$900] \$1,560</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(2) Category 3 –	<b>[\$960] \$1,620</b> , and one-	<b>\$1,440, and one-half of one</b>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
		Music/Dancing	half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(3) All other combinations	<del>[\$1,020]</del> <b>\$1,740</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$1,560, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
	(c) Beer			
		(1) Category 1 - Standard	<del>[\$360]</del> <b>\$600</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(2) Category 3 - Music/Dancing	<del>[\$420]</del> <b>\$720</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
		(3) All other combinations	<del>[\$540]</del> <b>\$900</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<b>\$840, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</b>
6	Club	(1) Category 1 - Standard	<del>[\$660]</del> <b>\$1,140</b> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<b>\$1,020, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</b>
		(2) Category 2 - Music/Dancing	<b>\$1,200, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</b>	<b>\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</b>
8	Transient Vessel			
	(a) Per day		<del>[\$60]</del> <b>\$100</b>	<b>\$90</b>
	(b) Per year		<del>[\$1,320]</del> <b>\$2,220</b>	<b>\$1,980</b>
9	Tour/Cruise Vessel	(1) Category 1 - Standard	<del>[\$900]</del> <b>\$1,560</b> , and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.	<b>\$1,380, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.</b>
		(2) Category 2 - Music/Dancing	<b>\$1,620, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a</b>	<b>\$1,440, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed</b>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			<u>*deductible, not to exceed \$10,000.</u>	<u>\$10,000.</u>
10	Special, per day			
	(a) General (includes all liquor, except alcohol)		<u>[\$60] \$100</u>	<u>\$90</u>
	(b) Beer & Wine		<u>[\$40] \$70</u>	<u>\$60</u>
	(c) Beer		<u>[\$30] \$50</u>	<u>\$45</u>
11	Cabaret, General			
		(1) Category 1 - Standard	<u>[\$1,980] \$3,360, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>	<u>\$3,000, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>
		(2) Category 2 - Nudity	<u>[\$2,400] \$4,080, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>	<u>\$3,600, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>
12	Hotel, General		<u>[\$3,960] \$6,720, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.</u>	<u>\$5,940, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.</u>
13	(a) Caterer, General (Class 2, Class 12, Class 15 only)		<u>[\$30 per day] \$50 per day</u>	<u>\$45 per day</u>
	(b) Caterer, General (Food Service Business Type)			
		(1) Category 1 – Standard	<u>[\$600] \$1,020, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus [\$30] \$50 per day.</u>	<u>\$900, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.</u>
		(2) Category 2 – Music/Dancing	<u>[\$720] \$1,200, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus [\$30] \$50 per day.</u>	<u>\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.</u>
14	Brewpub			
		(1) Category 1 –	<u>[\$1,680] \$2,880, and</u>	<u>\$2,520, and three-fourths of</u>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
		Standard	three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$1,800]</del> <u>\$3,060</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
15	Condominium Hotel, General		<del>[\$3,000]</del> <u>\$5,100</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.	<u>\$4,500, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.</u>
16	Winery		<del>[\$1,200]</del> <u>\$2,040</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
17	BYOB			
		(1) Category 1 – Music only	<del>[\$360]</del> <u>\$600</u>	<u>\$540</u>
		(2) Category 2 – Music/Dancing	<del>[\$420]</del> <u>\$720</u>	<u>\$660</u>
18	Small Craft Producer Pub			
		(1) Category 1 – Standard	<del>[\$1,680]</del> <u>\$2,880</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$1,800]</del> <u>\$3,060</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
n/a	Temporary		<del>[\$275]</del> <u>\$470</u> for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.  The fee for renewal of	<u>\$420 for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</u>  <u>The fee for renewal of such license shall be \$420 for</u>



CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			such license shall be <del>[\$275]</del> \$470 for the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.	<u>the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</u>

(b) Solicitors' and Representatives' Permits. The fees for solicitors' and representatives' permits shall be for each license year (commencing on July 1 and ending on the succeeding June 30) and shall be in the following amounts: General, ~~[\$140]~~ \$210; Beer and Wine, ~~[\$85]~~ \$130; Alcohol, ~~[\$6]~~ \$9.

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**SUMMARY:** Amends rule to establish increased processing fee for change of trade name.

**§3-81-17.58. Trade Name; Change; Fee.**

A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of ~~[\$30.00]~~ \$45.00 shall be assessed by the Commission for any change of existing trade name to include a license transfer.

\*\*\*\*\*

**SUMMARY:** Amends rule to establish increased permit fee for shipments of liquor.

**§3-82-33.11. Applications for Individual Permits to Receive Shipments of Liquor.**

- (a) Any person twenty-one (21) years of age or older may apply to the Commission, on the form prescribed by the Commission and upon payment of a permit fee of ~~[\$12.00]~~ \$18.00, for a permit to receive a shipment of liquor from outside the State, within the limits allowed by Chapter 281, Hawaii Revised Statutes.
- (b) The application form shall include the following information:
  - (1) A description of the liquor as to type, brand or trade name, domestic or imported and quantity.
  - (2) Whether the liquor is an unsolicited gift unavailable in the State, or part of the applicant's household goods.

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**SUMMARY:** Amends rule to establish increased annual permit fee for direct wine shipments.

**§3-82-33.6. Direct Shipment of Wine by Wineries.**

- (a) Any manufacturer of wine who desires to ship wines to residents of the County of Honolulu shall obtain a Direct Wine Shipper Permit from the Liquor Commission, City and County of Honolulu. The permit may be granted by the Administrator to any person holding:
1. A general excise tax license from the State of Hawaii Department of Taxation; and
  2. Either:
    - A. A Class 1 license to manufacturer wine under Section 281-31, HRS; or
    - B. A license to manufacture wine issued by another state.
- (b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:
1. An application form;
  2. Copy of the State of Hawaii Department of Taxation general excise tax license;
  3. Copy of the Class 1 license to manufacture wine under Section 281-31, HRS, or the license to manufacture wine issued by another state; and
  4. Payment of an annual permit fee of ~~[\$120.00]~~ **\$180.00**; provided, that the annual permit fee for a manufacturer of wine licensed under Section 281-31, HRS, shall be inclusive and part of its annual license fee. For purposes of this rule, permit fees shall be prorated.
- No permit shall be issued unless the applicant has met the foregoing requirements.
- (c) The holder of a Direct Wine Shipper Permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:
1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to:  
 "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
  2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;
  3. Report no later than January 31 of each year to the Liquor Commission the total amount of wine shipped to persons in this county during the preceding calendar year;

- 4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a Direct Wine Shipper Permit shall be deemed to be wine sold in the state; and
- 5. Be subject to audit by the Liquor Commission.
- (d) The holder of a license to manufacture wine issued by another state shall annually renew a Direct Wine Shipper Permit by providing the Liquor Commission with a renewal application, a copy of the current license to manufacture wine, and payment of the annual fee.
- (e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid Direct Wine Shipper Permit is prohibited. Knowingly violating this law is a misdemeanor.

\* \* \* \* \*

**SUMMARY:** Amends rule to establish increased filing fee for new and transfer license applications.

**§3-83-54.1. Filing Fees.**

A filing fee of [~~\$250~~] \$375.00 shall be paid with an application for a new license or the transfer of an existing license, as required by Section 281-54, Hawaii Revised Statutes. The filing fee shall be applied to the payment of the license fee required by §3-81-17.52 where the license is granted and shall become a realization of the City where the license is denied or the application is withdrawn.

\* \* \* \* \*

## I. OLD BUSINESS

### A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 3, Rules of Liquor Commission, City and County of Honolulu, State of Hawaii, promulgated by the City and County of Honolulu Liquor Commission, as follows:

1. Chapter 81, Liquor Commissions, Section 17.51, License Fees
2. Chapter 81, Section 17.58, Trade Name; Change; Fee
3. Chapter 82, Licenses and Permits, General Provisions, Section 33.11, Applications for Individual Permits to Receive Shipments of Liquor
4. Chapter 82, Section 33.6, Direct Shipment of Wine by Wineries
5. Chapter 83, Procedure for Obtaining License, Section 54.1, Filing Fees

Mr. Don Pacarro, Commissioner at the City and County of Honolulu Liquor Commission, explained that it was determined that the cost of the proposed new custom-built computer system, which was one of the main reasons for the proposed increase in fees, will cost \$950,000 rather than the expected cost of \$450,000. However, the Commission decided that it would not raise the license fees for 2018 and instead will raise license fees in 2019 by 50%; thus, additional increases will be spread over through 2020, with only approximately \$200,000 or less that would be due for the expense of the computer system.

Overall, Mr. Pacarro believes that the proposed changes are positive for the small businesses despite some opposition during the public hearing. Many understood the purpose for the increase; ultimately, the licensees will be provided with better service and more efficiency with the new computer system. If over time, it is determined that more money is being collected from fees than necessary, then the fees will be reduced in order to be fair and equitable. During the public hearings, the restaurant association objected to the proposed fee increases but the bar associations supported the rules as presented.

It was noted that \$175,000 in fines were collected over the last few years. Due to the Commission reaching out and being proactive with its "regulation for education" advocacy program by educating the license owners, more owners are aware of the rules, and as a result, less penalties are collected; this past year, less than \$70,000 was collected. It was also noted that collecting and using fines as a basis to raise money is against the law; further, 20% of the fines collected must be used for education.

Chair Borge stated that the Liquor Commission has been, over the past several years, very proactive and progressive in engaging the stakeholders despite receiving some dissention from small business. Mr. Pacarro thanked Mr. Baker for his assistance with the Hawaii liquor commissions on the recent tax clearance issue that was brought forth in front of the Federal Small Business Fairness Board.

Ms. Kimura made a motion to recommend to send the proposed amended rules to the City Council and the Mayor for adoption; it was also recommended that the Honolulu Liquor Commission review the projected cost of the new computer system in order to minimize and lower the projected license fees as soon as it may be deemed necessary. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

### **III. Old Business**

- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 13, Subtitle 11, **Ocean Recreation and Coastal Areas**, promulgated by DLNR, as follows:

**A. Part I - Small Boat Harbors and Other Boating Facilities**

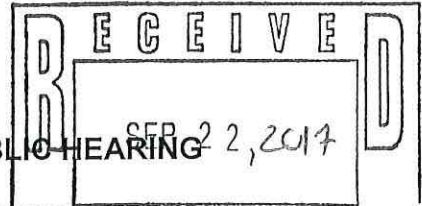
1. Chapter 230, General Provisions
2. Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
3. Chapter 232, Sanitation and Fire Safety
4. Chapter 233, Motor Vehicle and Parking Rules
5. Chapter 235, Offshore Mooring Rules and Areas

**B. Part II – Boating**

1. Chapter 240, General Provisions
2. Chapter 242, Accidents, Reports, Fines, Enforcement and Records
3. Chapter 243, Vessel Equipment Requirements
4. Chapter 244, Rules of the Road; Local and Special Rules
5. Chapter 245, Waterway Marking Systems

**C. Part III - Ocean Waters, Navigable Streams & Beaches**

1. Chapter 250, General Provisions
2. Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches
3. Chapter 253, Registration and Permit Fees
4. Chapter 254, Local Ocean Waters
5. Chapter 255, Waikiki Beach
6. Chapter 256, Ocean Recreation Management Rules



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

**Department or Agency:** Department of Land and Natural Resources, Division of Boating and Ocean Recreation

**Administrative Rule Title and Chapter:** See attached notice of public hearing (Attachment 1).

**Chapter Name:** See attached notice of public hearing (Attachment 1).

**Contact Person/Title:** Todd Tashima, Legal Research Specialist

**Phone Number:** 808-587-0142

**E-mail Address:** todd.h.tashima@hawaii.gov

**Date:** September 18, 2017

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

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes  No

(If "Yes" please provide webpage address and when and where rules may be viewed in person.) <http://dlnr.hawaii.gov/dobor/draft-rules>; 4 Sand Island Access Road Hon., HI 96819 M-F during business hours

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New  Repeal  Amendment  Compilation

II. Will the proposed rule(s) affect small business? Yes  No  (If "No" no need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes  No  (If "Yes" no need to submit this form.) (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes  No  (If "Yes" no need to submit this form.)

\* \* \*

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

See attached summary of notices made and testimony received (Attachment 2).

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

Yes, DOBOR reverted proposed amendments to HAR 13-245-9(a), concerning diver's flag rules, to current language in response to testimony received from testifiers. DOBOR will be revisiting diver's flag rules in a separate future rule amendment.

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

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

See attached summary of notices made and testimony received (Attachment 2).

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

See attached summary of notices made and testimony received (Attachment 2).

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

DOBOR considered testimony and comments received and responded where warranted.

**4. The number of persons who:**

(i) Attended the public hearing: See attached summary of notices made and testimony received (Attachment 2).

(ii) Testified at the hearing: See attached summary of notices made and testimony received (Attachment 2).

(iii) Submitted written comments: See attached summary of notices made and testimony received (Attachment 2).

**5. Was a request made at the hearing to change the proposed rule in a way that affected small business? Yes  No**

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

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

N/A

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: [DBEDT.sbrb.info@hawaii.gov](mailto:DBEDT.sbrb.info@hawaii.gov)

This statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrb-impact-statements-pre-and-post-public-hearing>



## DOBOR Definitions HAR Package Summary of Notices Made and Testimony Received

Legal ads were placed in newspapers in accordance with HRS § 91-3 to notify the public of the public hearings on the proposed amendments, a press release was issued notifying the public of the upcoming public hearings, notices were placed in DOBOR small boat harbors notifying the public of the upcoming public hearings, and the proposed rule amendment package file was uploaded on the DOBOR website for public viewing. Print copies of the proposed amendments were made available for viewing at DOBOR small boat harbor offices.

DOBOR received numerous comments from the public with the majority of comments coming from members of the public concerned with the proposed amendments relating to feral and abandoned animals. DOBOR also received comments on HAR § 13-235-9, regarding restrictions on anchoring or mooring outside a designated offshore mooring area, HAR § 13-245-9, regarding dive flag rules, and on kiteboarding in Kailua Bay ocean waters (kiteboarding rules are not part of this rule package and will be addressed in a separate rule amendment). The comments received are broken down as follows:

### KAUAI 7/24/2017 PUBLIC HEARING ASSESSMENT:

#### ATTENDANCE

Roughly 40 to 50 individuals attended the Kauai District public hearing on 7/24/2017. 37 individuals signed in on the DOBOR sign-in sheet. Among the attendees were Senator Kouchi, Representative Tokioka, and BLNR Member Oi.

#### ORAL TESTIMONY

Fifteen individuals provided oral testimony. Two individuals testified twice to provide follow-up testimony.

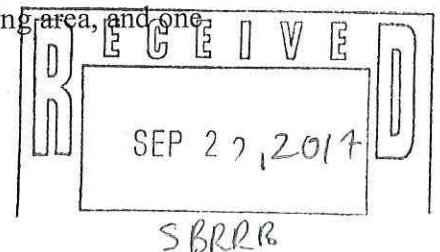
#### WRITTEN TESTIMONY

No written testimony received from attendees.

#### SUMMARY

All testifiers addressed either HAR § 13-235-9, relating to restrictions on anchoring or mooring outside a designated offshore mooring area, or HAR §§ 13-232-57.1 & 13-232-57.2, relating to feral and abandoned animals. Two testifiers strongly supported HAR §§ 13-232-57.1 & 13-232-57.2, and 11 testifiers opposed the proposal as it pertained to disposing of feral or abandoned animals on DOBOR property.

One individual strongly supports the proposed amendments to HAR § 13-235-9, relating to restrictions on anchoring or mooring outside a designated offshore mooring area, and one individual opposed the proposal.



**OAHU 7/29/2017 PUBLIC HEARING ASSESSMENT:**

**ATTENDANCE**

Roughly 60 to 70 individuals attended the Oahu District public hearing on 7/29/17. Fifty-seven individuals signed in on the DOBOR sign-in sheet.

**ORAL TESTIMONY**

Twenty-nine individuals provided oral testimony. Three individuals testified twice to provide follow-up testimony.

**WRITTEN TESTIMONY**

Two individuals submitted written versions of their oral testimony.

**SUMMARY**

One testifier provided comments on proposals for regulation of kiteboarding in Kailua Bay, which is not part of this amendment package and will be addressed in a rule amendment separate from this package.

Twenty-eight individuals provided testimony on HAR §§ 13-232-57.1 & 13-232-57.2, relating to feral and abandoned animals: Two testifiers supported HAR §§ 13-232-57.1 & 13-232-57.2, and 26 testifiers opposed the proposal.

One testifier opposed the amendment package on the basis that DOBOR violated HRS § 91-3, concerning administrative rulemaking procedures.

**MAUI 7/26/2017 PUBLIC HEARING ASSESSMENT:**

**ATTENDANCE**

Roughly 45-50 individuals attended the Maui District public hearing on 7/26/17. Forty-five individuals signed in on the DOBOR sign-in sheet.

**ORAL TESTIMONY**

Twenty-three individuals provided oral testimony.

**WRITTEN TESTIMONY**

No written testimony received from attendees.

**SUMMARY**

Sixteen individuals provided testimony on HAR §§ 13-232-57.1 & 13-232-57.2, relating to feral and abandoned animals: five testifiers supported HAR §§ 13-232-57.1 & 13-232-57.2, 10 testifiers opposed the proposal, and one testifier provided comments on the proposal.

Five testifiers provided comments on changes to HAR § 13-245-9, regarding the distance from dive flags being displayed from a vessel or from the surface of the water.

One testifier provided comments on the inappropriate time of the public hearing being held between 5:00pm and 7:00pm.

One testifier provided comments on HAR § 13-231-3, regarding use permits for DOBOR harbors and facilities, specifically concerning the reduction in requirements to renew commercial permits.

**HAWAII ISLAND 7/27/2017 PUBLIC HEARING ASSESSMENT (HILO):**

ATTENDANCE

Roughly 30-35 individuals attended the Hawaii District public hearing at Hilo on 7/27/17. Twenty-nine individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Nineteen individuals provided oral testimony.

WRITTEN TESTIMONY

Two individuals submitted written versions of their oral testimony.

SUMMARY

Sixteen individuals provided testimony on HAR §§ 13-232-57.1 & 13-232-57.2, relating to feral and abandoned animals: all 16 testifiers opposed the proposal.

Two testifiers opposed the amendment package on the basis that DOBOR violated HRS § 91-3, concerning administrative rulemaking procedures, stating that the public was not given the opportunity to discuss rule proposals with DOBOR.

One testifier provided comments on HAR § 13-232-58, regarding camping rules, stating there was not enough information about the proposed rule changes.

**HAWAII ISLAND 7/28/2017 PUBLIC HEARING ASSESSMENT (KONA):**

ATTENDANCE

Roughly 35-40 individuals attended the Hawaii District public hearing at Kona on 7/28/17.

Thirty-three individuals signed in on the DOBOR sign-in sheet.

ORAL TESTIMONY

Fourteen individuals provided oral testimony. One individual testified twice to provide follow-up testimony.

WRITTEN TESTIMONY

No written testimony received from attendees.

SUMMARY

Nine individuals provided testimony on HAR §§ 13-232-57.1 & 13-232-57.2, regarding feral and abandoned animals: seven testifiers opposed HAR §§ 13-232-57.1 & 13-232-57.2, and two testifiers provided comments on the proposal.

Two testifiers provided comments that the public was not adequately notified of the proposed changes.

One testifier opposed the amendment package on the basis that DOBOR violated HRS § 91-3, concerning administrative rulemaking procedures.

One testifier provided comments on concerns about lack of enforcement of administrative rules.

One testifier provided comments on issues with people parking trailers overnight at harbors.

**MAILED TESTIMONY (POSTMARKED BY 8/5/2017)**

Two hundred seventy-six individuals mailed in written testimony: 236 were form letters and the remaining 40 were original testimony. All mailed-in testimony discussed HAR §§ 13-232-57.1 & 13-232-57.2, regarding feral and abandoned animals.

All form letters opposed proposed amendments to HAR §§ 13-232-57.1 & 13-232-57.2.

As to pieces of testimony that were not form letters, five individuals supported proposed amendments to HAR §§ 13-232-57.1 & 13-232-57.2, 2 individuals provided comments, and 33 individuals opposed the proposed amendments.

**EMAILED TESTIMONY (RECEIVED BY 8/5/2017 11:59 P.M.):**

Three individuals emailed testimony providing comments on the amendment package as a whole.

Twenty-six individuals emailed testimony providing comments on the topic of windsurfing, kiteboarding, and the relevant zones for such activities, which is not part of this amendment package and will be addressed in a rule amendment separate from this package.

One individual emailed testimony opposing HAR 13-245-9, concerning dive flag amendments.

Ten individuals emailed testimony regarding amendments to the 72-hour temporary anchoring limit for areas outside of an offshore mooring area under HAR § 13-244: eight individuals supported the 72-hour rule, one individual opposed the 72-hour rule; one individual provided comments on the 72-hour rule.

One individual emailed testimony supporting amendments to the definition for “camping” in HAR § 13-230-8, the main DOBOR definitions section.

Twenty-nine individuals emailed testimony supporting HAR §§ 13-232-57.1 & 13-232-57.2, regarding feral and abandoned animals; 729 individuals emailed testimony opposing the proposal.

**ADDITIONAL PUBLIC OUTREACH INFORMATIONAL MEETINGS ON LANAI AND MOLOKAI (8/16/17 AND 8/22/17)**

DOBOR held public informational meetings, organized with the assistance of Representative Lynn DeCoite, on Lanai (8/16/17) and Molokai (8/22/17) to help address any questions community members had regarding the definitions package. Because there are no DOBOR staff on Molokai or Lanai, the DOBOR Administrator personally attended the public informational meetings on the definitions package on those islands. Questions from the communities on both islands centered on clarification of how HAR provisions were being changed and how the amendment language was organized. There were no major issues or concerns with proposed amendments.

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 20, 2017

**NOTICE OF PUBLIC HEARING**

Pursuant to Chapter 91, Hawaii Revised Statutes, notice is hereby given that the Department of Land and Natural Resources (DLNR), State of Hawaii, will hold public hearings on proposed amendments to TITLE 13, SUBTITLE 11, OCEAN RECREATION AND COASTAL AREAS, PARTS I, II, and III, HAWAII ADMINISTRATIVE RULES.

The following sections are being amended: 13-230-4 Penalties and prosecution, 13-230-8 Definitions, 13-230-25 Particular categories, 13-231-3 Use permits; issuance, 13-231-6 Revocation of use permit, 13-231-13 Joint and several liability; non-transferability of use permits, 13-231-15 Boat owner required to report change of ownership, address, and other changes, 13-231-26 Use of a vessel as a place of principal habitation, 13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor, 13-231-29 Vessel used as a vacation site, 13-231-45 Marine inspections, 13-231-56 Definitions, gross receipts, 13-231-70 Water taxi operations, 13-232-8 Marine toilets - restrictions, 13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited, 13-232-30 Fire signal for vessels in small boat harbors, 13-232-57 Dogs, cats or other domestic pets, 13-232-58 Sleeping or camping prohibited, 13-232-60 Serving, sale, and consumption of liquor in state boat harbors and boat launching facilities, 13-233-13 Operation, parking, or storage of bicycles or play vehicles, 13-233-29 Eligibility for parking permits; fee per vehicle, 13-235-5 Owners required to report change in ownership, address and other changes, 13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area, 13-242-1 Duty to render aid and give information, 13-242-3 Immediate notice of accident; when required, 13-242-4 Written boating accident report; when required, 13-243-4 Mufflers, 13-244-15.5 Operation of power driven vessels, 13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition, 13-244-29 Makapuu ocean waters, 13-244-37 Zone A, Zone B, Ingress/Egress Zones, and Ingress/Egress Corridors, 13-245-9 Diver's flag, 13-251-57 Waikiki ocean waters, 13-253-1.3 Gross receipts, 13-255-1 Purpose and scope, 13-255-6 Waikiki beach uses and activities; restrictions, 13-256-3 Commercial use permit or catamaran registration certificate requirements, 13-256-5 Commercial use permits; public auction, 13-256-7 Business transfer fee, 13-256-8 Owner required to report change in ownership, address and other changes, 13-256-12 Gross receipts, 13-256-16 Thrill craft operations; general provisions, 13-256-17 Recreational thrill craft operations, 13-256-21 Ultralight float equipped aircraft, 13-256-22 Tow-in surfing, 13-256-56 Wailua River restricted area, 13-256-63 Sharks Cove, Three Tables and Waimea Bay ocean waters, 13-256-73.5 Large snorkel tour permit restrictions, 13-256-74 Kailua Ocean Waters Restricted Zones, 13-256-88 Maunaloa Bay waters, 13-256-91 Waikiki Ocean Waters Restricted Zones, 13-256-112 Maui Humpback whale protected waters, 13-256-128 Baldwin Park-Paia Bay Restricted Area, 13-256-162 Makaiwa Bay Swimming Zones.

The following sections are being added: 13-232-57.1 Feeding of wildlife or feral animals prohibited, 13-232-57.2 Animal abandonment and creating or contributing to colonies prohibited.

The following sections are being repealed: 13-230-21 Definitions, 13-240-5 Definitions, 13-243-5 Recognition of marine examination decals, 13-245-2 Definitions, 13-250-5 Definitions, 13-254-1 Definitions, 13-255-5 Definitions, 13-256-35 Owner required to report change in ownership, address and other changes.

These amendments to Hawaii Administrative Rules (HAR) are being proposed to allow DLNR to better manage and facilitate boating and ocean recreation related activities within State small boat harbors and nearshore waters and to reorganize the HAR provisions relating to DOBOR for clarity and general efficacy.

Meetings will be held as follows:

On Kauai at Wilcox Elementary School Cafeteria 4319 Hardy Street Lihue, HI 96766 on July 24, 2017 from 6:00pm to 8:00pm.

On Maui at Velma McWayne Santos Community Center Wailuku Community Complex 395 Waena Place Wailuku, HI 96793 on July 26, 2017 from 5:00pm to 7:00pm.

On Hawaii Island at Hilo State Building Conference Room 75 Aupuni Street Hilo, HI 96720 on July 27, 2017 from 5:30pm to 6:30pm.

On Hawaii Island at Kealakehe High School Cafeteria 74-5000 Puohulihuli Street Kailua-Kona, HI 96740 on July 28, 2017 from 6:00pm to 8:00pm.

On Oahu at Aiea Elementary School Cafeteria 99-370 Moanalua Road Aiea, HI 96701 on July 29, 2017 from 8:30am to 10:30am.

All interested parties are invited to attend the meetings and to present their views on the proposed amendments, either orally or in writing. Written comments may be submitted at the public hearings or to the Chairperson at 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813. Additionally, interested parties may submit comments electronically through email to [dlnr.harreview@hawaii.gov](mailto:dlnr.harreview@hawaii.gov). All forms of written comments will be accepted up to one week following the last public hearing date.

The proposed rule amendments can be reviewed online on the Division of Boating and Ocean Recreation (DOBOR) website located at <http://dlnr.hawaii.gov/dobor/draft-rules> or can be reviewed in person at the following DOBOR district offices:

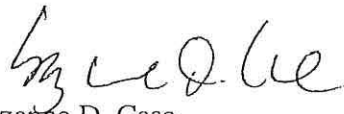
<b>Hawaii District Office</b> 74-380 Kealakehe Parkway Kailua-Kona, Hawaii 96740 Telephone: (808) 327-3690	<b>Maui District Office</b> 101 Maalaea Boat Harbor Road Wailuku, Hawaii 96793 Telephone: (808) 243-5824
<b>Kauai District Office</b>	<b>Oahu District Office</b>

4370 Kukui Grove Street, Suite 109 Lihue, Hawaii 96766 Telephone: (808) 245-8028	4 Sand Island Access Road, #19 Honolulu, HI 96819 Phone: (808) 832-3520
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Persons unable to review the proposed rule changes online or in person may request, verbally or in writing, a copy of the proposed rules. A charge of \$0.50 per page will be assessed for hardcopies. Hardcopies will be mailed at no charge upon receipt of a valid request and applicable payment. Please make requests to:

Division of Boating and Ocean Recreation  
4 Sand Island Access Road  
Honolulu, HI 96819  
(808) 832-3520

Meeting locations are disability accessible. For persons requiring special needs accommodations (e.g., large print, taped materials, sign language interpreter, etc.), please call (808) 832-3520 at least one week in advance of the designated date and time of the applicable public hearing to make special needs requests.



Suzanne D. Case  
Chairperson  
Board of Land and Natural Resources

Advertised:  
Garden Isle  
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DEPARTMENT OF LAND AND NATURAL RESOURCES

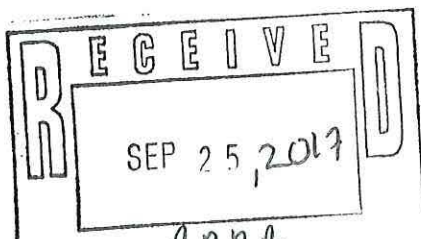
Amendments to chapters 13-230, 13-231, 13-232, 13-233,  
13-235, 13-240, 13-242, 13-243, 13-244, 13-245, 13-  
250, 13-251, 13-253, 13-254, 13-255, 13-256,  
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-230-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-4 Penalties and prosecution. (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~~] may 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 12/7/13; am \_\_\_\_\_]  
(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)



2. Section 13-230-8, Hawaii Administrative Rules, is amended to read as follows:

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

“Abandon” when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

“Adult” means a person who has reached majority.

“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.

“Approved” means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

“Approved backflow prevention device” means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

“Approved marine surveyor” means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with sections 13-231-45(h) and 13-231-45(i).

“Approved vessel inspector” means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

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

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

"Barge" means a non-self-propelled vessel.

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

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"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).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
  - (A) A person's death;
  - (B) The injury to a person requiring medical treatment beyond first aid;
  - (C) Damage to a vessel amounting to \$2,000 or more;
  - (D) Complete loss of a vessel; or
  - (E) The disappearance of a person from a vessel under circumstances indicating death or injury to that person.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
  - (A) On board a vessel;
  - (B) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
  - (C) Caused by flooding, fire, or explosion; or
  - (D) Caused when a person falls overboard.

"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.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"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~~] means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and

advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a State small boat harbor, boat launching facility or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"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, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"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] to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading and discharge of passengers or supplies at a State boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable consideration.

"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~~] within or on the water.

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

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

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a [state] State small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other State or county officer charged with the enforcement of State laws.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state and any offspring resulting therefrom.

"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.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for



services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

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

"Handboard" means any type of surf riding board that is (a) with or without skegs, (b) worn on one or both of the operator's hands, (c) is less than 16 inches in overall length, and (d) is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their 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.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"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~~] capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

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

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a use permit.

"Kayak" means a watercraft that has an open or covered top and is designed to hold one or more participants and propelled by use of a single- or double-bladed paddle.

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

"Legal dependent" or "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, or 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[~~7~~ ~~or~~ ] i
  - (C) [~~unmarried~~] Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
  - [~~(C)~~] (D) 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;
- (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] when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline.

Bowsprits, boomkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement.

In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.

In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the same as defined in section 281-1, Hawaii Revised Statutes.

"Litter" means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"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.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

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

"Minor" means a person who has not reached the age of majority.

"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] 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.

["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.]

"Motorboat" means any vessel which is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of said streams are physically opened or not to ocean waters for intra or interstate commerce or navigation.

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

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in Chapter 13-

256, Hawaii Administrative Rules, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee of surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

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

"Paddleboard" means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfriding.

"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"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.

"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 flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

~~["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.]~~

"Pet owner" means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.

"Power-driven vessel" means any vessel propelled by machinery.

"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 as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as for instance when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Reciprocal beneficiary" means [~~two adults who are parties~~] an adult who is a party to a valid reciprocal beneficiary relationship and [~~meet~~] meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker(s)" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that

the vessel's certificate of number is current and valid.

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

"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means 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 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.

"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, facilities under the jurisdiction of the division, and State ocean waters as set forth in [this part] the Hawaii Administrative Rules, Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels. These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST M16672.2B.



"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490: 1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure or land itself.

"Skeg" means any fin-like projection.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some

form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"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[~~]~~ used 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~~].

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"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.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a [~~state~~] 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.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"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.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"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.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is

generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

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

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

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

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize [state] State boating facilities, offshore mooring areas, offshore moorings [~~and state ocean waters~~] , State ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2, Hawaii Administrative Rules.

"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, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which [is used for the carriage of any person or persons for a valuable consideration whether] carries any person or persons for a valuable consideration that goes directly or indirectly [flowing] to the owner, charterer, operator, agent, or any person who has [~~a lien on~~] an interest in the vessel.

"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"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 a 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~~ boomkin, 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]~~ State small boat harbor.

"Visiting vessel" means a vessel ~~[having a mooring within the State and]~~ temporarily moored in ~~[another state]~~ a State small boat harbor while having a use permit applicable to a different State small boat harbor or other boating facility under the jurisdiction of the division.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports, and not necessarily for transportation.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official

message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof."  
[Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am \_\_\_\_\_] (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)

3. Section 13-230-21, Hawaii Administrative Rules, is repealed.

~~"§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] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)] REPEALED.~~  
[R \_\_\_\_\_]

4. Section 13-230-25, Hawaii Administrative Rules, is amended to read as follows:

"§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 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 person's spouse. However, the person must clearly state intent to make Hawaii the 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~~] reciprocal beneficiary who lives on board the vessel." [Eff 2/22/94; am and comp 12/7/13; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

5. Section 13-231-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-3 Use permits; issuance. (a) [~~"Use permit"~~ as used in these rules means the authorization

~~by the department to utilize state boating facilities, offshore mooring areas, offshore mooring, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.~~—]The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
  - (A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.
  - (B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.
  - (C) All applicants for a mooring permit shall provide documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the mooring permit.
- (2) Waikiki catamaran registration certificate. A Waikiki catamaran registration certificate is a document, issued by the department, that may authorize its holder to utilize state boating facilities, offshore and onshore mooring, in Waikiki ocean waters and beach. All applicants for a Waikiki catamaran registration certificate shall provide the following information:
  - (A) Vessel Documentation or registration.

- (B) Vessel Certificate of Inspection (if applicable).
  - (C) Certificate of business liability insurance pursuant to the requirements of section 13-231-65 of these rules.
  - (D) Certificate of good standing from the Hawaii Department of Commerce and Consumer Affairs.
  - (E) Tax clearance certificate from the department of taxation.
  - (F) Conservation District Use Permits (if applicable)
  - (G) Affidavit describing any and all sales or transfers of any ownership interest in the business.
  - (H) Documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the Waikiki catamaran registration certificate.
- (3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.
  - (4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.
  - (5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Keehi small boat harbor or in the Keehi Lagoon mooring area.

- (6) Commercial use permit. A use permit which authorizes the owner of a commercial vessel to engage in commercial activities as specified in the permit. All applicants for a commercial use permit shall provide the following information:
- (A) Vessel Documentation or registration.
  - (B) Vessel Certificate of Inspection (if applicable).
  - (C) Certificate of business liability insurance pursuant to the requirements of section 13-231-65 of these rules.
  - (D) Certificate of good standing from the Hawaii Department of Commerce and Consumer Affairs.
  - (E) Tax clearance certificate from the department of taxation.
  - (F) Conservation District Use Permits (if applicable)
  - (H) Affidavit describing any and all sales or transfers of any ownership interest in the business.
  - (J) Documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the commercial use permit.
- (7) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.
- (8) Miscellaneous permit. A use permit which authorizes use of a small boat harbor, ~~or~~ an offshore mooring area, or State ocean waters for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.
- (b) Use permits, or where applicable, Waikiki catamaran registration certificates, shall be issued only after the department has determined that all

applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of [state] State small boat harbors, facilities or [state] State ocean waters." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

6. Section 13-231-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-6 Revocation of use permit. (a) If after notice and lapse of a reasonable period of time set by the department, the permittee fails to remedy any breach of the duties, covenants or conditions of the use permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or [~~wilful~~] willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) A permittee's failure to pay all fees owed to the department within thirty days of the date payment is due shall result in suspension of the right to conduct business under the commercial use permit or catamaran registration certificate until all past due fees are paid in full. Each and every notification of default shall be sent by certified mail, return receipt requested to the last address of record of the permittee on record with the division of boating and ocean recreation. Any delinquency beyond the due date, even within the thirty days, may cause the commercial use permit or catamaran registration certificate to be revoked." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-10,



200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

7. Section 13-231-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-13 Joint and several liability; non-transferability of use permits. (a) All individuals and entities who have signed any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein. The new possessor, transferee, or owner shall have no right to use the permit.

(b) Upon written application to and approval by the department:

- (1) The original mooring permittee may retain the mooring space under the permittee's mooring permit; provided that within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth or mooring space and pays the appropriate fees therefor;
- (2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth or mooring space if an interest in a vessel is transferred to the owner's spouse or immediate family member or a [~~personal partner~~] reciprocal beneficiary authorized to live on board under a principal habitation permit;
- (4) The spouse or immediate family member, or a [~~personal partner~~] reciprocal beneficiary

authorized to live on board under a principal habitation permit, of a permittee, may retain all use permits upon the death of the permittee, provided that the permittee's will, trust, or a court decree (the department may require a court decree if the department finds it necessary) states that the spouse or immediate family member, or a [~~personal partner~~] reciprocal beneficiary authorized to live on board under a principal habitation permit shall be awarded ownership of the vessel identified in the use permit; or

- (5) The department may extend the deadline for the permittee holder to place a new vessel in the assigned berth or mooring space or in operation if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth or mooring space or in operation shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the individual holds a valid commercial use permit, a valid catamaran registration certificate, or is engaged in commercial fishing as a primary means of livelihood, and notifies the department in writing of an intended change in ownership. The transfer of all use permits or registration certificates from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall include the original individual owner;
- (2) The permittee or certificate holder shall apply for the reissuance of the commercial permit, mooring permit, catamaran registration certificate, and any other use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and
- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82.

(d) No corporation or other business entity shall be eligible for the initial issuance of a mooring permit at a state small boat harbor unless the entity is eligible for a then available commercial use permit or catamaran registration certificate.

(e) "Immediate family member" means, for purposes of this section, a natural individual who by blood line or adoption is a child, grandchild, parent, or grandparent of the deceased." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

8. Section 13-231-15, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The owner of any vessel moored, stored, or left in a small

boat harbor or offshore mooring area shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;
- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of agents or their telephone numbers or addresses.

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. ~~"Transfer" [as used in this section includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor or offshore mooring area]~~ includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit.

(c) Evidence of any ~~[wilful]~~ willful misstatement or omission of fact regarding the ownership of a vessel moored in a ~~[state]~~ State small boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other

business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any permit or catamaran registration certificates in the future." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

9. Section 13-231-26, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi small boat harbors may use that vessel as a place of principal habitation if the owner has applied for and secured a principal habitation permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) A haul-out facility.

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored

in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one [~~personal partner~~] reciprocal beneficiary of each, and their legal dependents may be issued a principal habitation permit. [~~A "personal partner" is an individual considered to be a "significant other" of the vessel owner principal habitation permittee who is not a relative by biology or adoption of the vessel owner principal habitation permittee.~~] While living together on the vessel, the vessel owner principal habitation permittee and [~~personal partner~~] reciprocal beneficiary shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittee's at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi small boat harbor may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its mooring shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11." [Eff 2/24/94; am 8/20/12; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

10. Section 13-231-28, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or Keehi small boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse or [~~personal partner~~] reciprocal beneficiary of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any one hundred twenty nights in a calendar year, including vessels used as a vacation site;
- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
  - (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
  - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
  - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year.

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may

secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times." [Eff 2/24/94; am 8/8/11; comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

11. Section 13-231-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or Keehi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or [~~personal partner~~] reciprocal beneficiary of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation." [Eff 2/24/94; am 8/8/11; comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

12. Section 13-231-45, Hawaii Administrative Rules, is amended to read as follows:



"§13-231-45 Vessel Inspections. (a) [~~"Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.~~] An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and may be valid for a period of two years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in Exhibit "B" located at the end of this chapter and incorporated herein entitled "vessel inspection report" and dated July 2012. The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine inspection have been corrected prior to issuing a mooring permit. All vessel owners shall also demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of Subsections (a) and (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to

do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision before an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29 provided that holders of commercial use permits and registration certificates with proof of certification of inspection from the United States Coast Guard shall be exempt from this requirement or state fees associated therewith.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or

compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State, and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(1) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. Any vessel operating under a commercial use permit or registration certificate

that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Keehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

13. Section 13-231-56, Hawaii Administrative Rules, is repealed.

~~"§13-231-56 [Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel] [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)]~~  
REPEALED." [R \_\_\_\_\_]

14. Section 13-231-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors provided that the owner of the water taxi operation has been issued a commercial use permit.

~~[For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.]~~

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

15. Chapter 13-232, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-232-57.1 Feeding of colonies, strays, wildlife, or feral animals prohibited. (a) While on any property under the jurisdiction of the division, no person shall feed or deliberately introduce any food material, substance, or attractant directly to, or in the vicinity of, any colony, stray, wildlife, or

§13-232-57.1

feral animal except as authorized by the department or the department's authorized representative.

(b) Animals include, but are not limited to birds, cats, chickens, deer, dogs, eels, fish, mongooses, pigs, rodents, seals, sharks, and turtles.

(c) Nothing in this section prohibits the use of bait or chum to attract fish for fishing or harvesting purposes." [Eff \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

16. Chapter 13-232, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-232-57.2 Animal abandonment and creating or contributing to colonies prohibited. (a) While on any property under the jurisdiction of the division, no person shall abandon an animal nor create or contribute to a colony.

(b) Violators shall be fined not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days, or both, for each violation and shall also be subject to penalties in accordance with chapter 143-2.6, Hawaii Revised Statutes." [Eff \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-25)

17. Section 13-232-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-8 Marine toilets - restrictions. (a) No toilet on a vessel or contrivance shall be operated so as to discharge any untreated sewage directly or indirectly into the waters of a small boat harbor.

(b) No person on a vessel or contrivance equipped with a toilet shall use, or permit the use of that toilet on the waters of a small boat harbor unless the toilet is equipped with facilities in good operating condition that will adequately treat, hold, incinerate, or otherwise handle sewage in a manner

that is capable of preventing water pollution. A water pollution control device that is acceptable for the purposes of this section is any device determined by the director of the department of health to be effective in arresting the possibility of pollution from sewage passing into or through a toilet aboard a vessel or contrivance.

(c) No person shall live on board a vessel or contrivance in any small boat harbor unless it contains one or more toilets equipped with water pollution control devices in good operating condition and of a type acceptable to the director of health; provided that, the department may permit the operator or other persons to live on board a vessel not equipped with a toilet and acceptable water pollution control device for a period not to exceed the period described in sections 13-231-21 and 13-231-22 if:

- (1) The vessel is from another state or a country other than the United States and is temporarily using the waters of this State or if the vessel has a home port in the ~~[state]~~ State but is visiting another small boat harbor;
- (2) Adequate on-shore toilet facilities are readily available, meaning within a walking distance of not more than two hundred feet, for ~~[the]~~ use by the persons living on board; and
- (3) A toilet aboard the vessel is not used while in the small boat harbor.

~~["Readily available" as used in this section means within a walking distance of not more than two hundred feet.]~~ [Eff 2/24/94; am \_\_\_\_\_]  
 (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-232-10

18. Section 13-232-10, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited. (a) No person shall connect a vessel's water supply system to a small boat harbor portable water supply system, unless an approved backflow prevention device has been installed at the hose bib or other point of connection. [~~An "approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).~~]

(b) No person shall use any water-operated siphon or other water operated de-watering device, equipment, or mechanism connected to a small boat harbor water supply system for the purpose of removing water or any liquid from the bilges of a vessel, provided such a device may be temporarily used when necessary during an emergency to prevent a distressed vessel from sinking if an approved backflow prevention device has been installed in accordance with subsection (a)." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

19. Section 13-232-30, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-30 Fire signal for vessels in small boat harbors. Five prolonged blasts, each from four to six seconds in duration, on a vessel's whistle, horn, or other sound producing device indicates:

- (1) A fire on board a vessel not underway; or
- (2) A fire at any facility to which the vessel may be moored.



~~[The words "prolonged blast" used in this section mean a blast of from four to six seconds duration.—]~~  
This fire signal shall not be used for other purposes in any small boat harbor." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4)  
(Imp: HRS §§200-2, 200-3, 200-4)

20. Section 13-232-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-57 Dogs, cats or other domestic pets.

(a) ~~[This section is applicable only in Ala Wai and Keehi boat harbors.—]~~As used in this section, unless the context otherwise indicates:

~~["At large" means:~~

- ~~(1) On a vessel not the property of the owner of the pet, without consent of the vessel owner; or~~
- ~~(2) In any public place within a small boat harbor, except when under control of the owner by leash, cord, chain, or other similar means of physical restraint, provided that such leash, cord, chain, or other means is not more than eight feet in length.]~~

~~["Owner"]~~ Pet owner" means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof. "Stray" ~~[or "stray dog"]~~ means [any dog running at large] any dog, cat, or other animal without a microchip or other registered owner-identifier or is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

(b) This section shall not apply to:

- (1) Service animals as defined in the Title II of the Americans with Disabilities Act (ADA)

as adopted by the United States Department of Justice;

- (2) Dogs trained and used by a law enforcement agency in law enforcement activities while the dogs are engaged in the performance of such work; or
- (3) An obedience trial, where tracking and show dogs are accompanied by their owners and are being trained or in competition, provided permission is first obtained from the department for such use.

(c) No person shall introduce or keep a dog aged three months or older in a small boat harbor unless the dog is licensed as prescribed in chapter 143, Hawaii Revised Statutes. Officers and employees of the department, and every other person authorized by law may seize any unlicensed dog found at large within a small boat harbor, and confine and dispose of the dog as provided in chapter 143, Hawaii Revised Statutes. A dog, cat, or other domestic pet is considered at large when:

- (1) On a vessel not the property of the pet owner, without consent of the vessel owner;  
or
- (2) In any public place within a small boat harbor, except when under control of the pet owner by leash, cord, chain, or other similar means of physical restraint, provided that such leash, cord, chain, or other means is not more than eight feet in length.

(d) No ~~dog~~ pet owner shall permit the owner's dog, cat, or other domestic pet to become a stray. [Any] Effective January 1, 2019, any dog, cat, or other domestic pet, while being a stray within a small boat harbor, may be seized by officers and employees

of the department, or by any other person authorized by law, and shall be disposed of as provided in chapter [143] 183D-65, Hawaii Revised Statutes.

(e) No pet owner shall permit the owner's pet to excrete any solid waste in any public place or on any premises in a small boat harbor not the property of the pet's owner, provided no violation of this subsection shall occur if the owner promptly and voluntarily removes the animal waste.

(f) No person shall introduce or keep any animals except for birds, fish, or other common domestic pets within the confines of a small boat harbor.

(g) In any event no person shall introduce or keep a dog, cat, or other domestic pet at any small boat harbor where dogs, cats, or other domestic pets are prohibited by a sign or other marker posted by the department." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

21. Section 13-232-58, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-58 Sleeping or camping prohibited. Sleeping and/or camping in any State facility or property under the jurisdiction of the division [~~small boat harbor~~] is prohibited except on board a vessel moored in a [the] small boat harbor with the proper authorization of the department." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

22. Section 13-232-60, Hawaii Administrative Rules, is amended to read as follows:

“§13-232-60 Serving, sale, and consumption of liquor in [state] State small boat harbors, and boat launching facilities. (a) It is declared to be the intent of the department to prohibit the open and unrestricted use or consumption of liquor on or within State small boat harbors and boat launching facilities. For the purpose of this section, “liquor” or “intoxicating liquor” shall mean the same [Liquor,] as defined in section 281-1, Hawaii Revised Statutes. [shall not be consumed within any state small boat harbor or boat launching facility except on a vessel issued with a valid mooring permit, or unless otherwise permitted by the department.

~~(b) No person shall sell any liquor within a state small boat harbor or boat launching facility unless that person is licensed as required by chapter 281, Hawaii Revised Statutes.]~~

(b) No person shall possess, other than in a container in the manufacturer’s sealed condition, intoxicating liquor on any street or sidewalk, or in any public off-street parking area or any building located thereon within a state small boat harbor and/or State boat launching facility.

(c) The prohibitions contained in subsection (b) of this section shall not apply to:

- (1) Possession, use or consumption of intoxicating liquor on board a vessel with a valid mooring permit;
- (2) Intoxicating liquor procured from a vendor dispensing intoxicating liquor pursuant to a permit or license issued by the department when the intoxicating liquor is possessed or consumed in a manner and in a place consistent with the terms and conditions of such permit or license;
- (3) The consumption or possession of an intoxicating liquor in a motor vehicle upon any public street, road, or highway; or

(4) The possession of a container of wine authorized to be removed from liquor-licensed premises pursuant to HRS Section 281-31(q), provided that the container has been corked or resealed.

(d) Subject to the provisions of HRS Chapter 281, as amended, and if the sale and consumption of intoxicating liquor is permitted by a disposition or agreement with the department, the prohibitions contained in subsection (b) of this section shall not apply within the licensed premises (as described in a liquor license) of concessionaires or licensees of the department.

(e) The penalties provided in this section are criminal penalties and the article shall be enforced by the Division of Conservation and Resources Enforcement (DOCARE), the county police department, and any other authorized entity as provided by law.

(1) A DOCARE officer or police officer may arrest an alleged violator of any provision of this article or may issue a citation in lieu of arrest as provided in section 803-6, Hawaii Revised Statutes.

(2) Penalty. Any person convicted of a violation of any provision of this article shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 30 days, or both such fine and imprisonment."

[Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

23. Section 13-233-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-13 Operation, parking, or storage of bicycles or play vehicles. (a) [~~This section is applicable only in Ala Wai and Kechi boat harbors. As used in this section, "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any~~

~~device generally recognized as a bicycle though equipped with two front or two rear wheels.~~

~~(b)~~] Effect of section.

- (1) The parent of any child or the guardian of any ward shall not authorize or knowingly permit the child or ward to violate this section.
- (2) This section applicable to bicycles and play vehicles shall apply whenever a bicycle or play vehicle is ridden, operated, parked, or stored within the confines of a small boat harbor.

~~(e)~~ (b) Bicycle tax. No bicycle shall be used for conveyance of any person within the confines of a small boat harbor unless the annual tax has been paid and a valid license tag is attached to the bicycle in accordance with section 249-14, Hawai'i Revised Statutes.

~~(d)~~ (c) The department may erect signs on any sidewalk, roadway, pier, wharf, catwalk, or other location prohibiting the riding of bicycles thereon, and when such signs are in place, no person shall disobey the same.

~~(e)~~ (d) Parking or storage of bicycles. No person shall park, store, place, or leave a bicycle on catwalks, piers, sidewalks, roads, parking areas, or any other public area except in bicycle parking racks.

~~(f)~~ (e) Traffic and bicycle equipment laws applicable to persons riding bicycles. Every person riding a bicycle within the confines of a small boat harbor shall be granted all the rights and shall be subject to all the duties applicable to the bicycle operator and to the driver of a vehicle by chapter 291C (Statewide Traffic Code), Hawai'i Revised Statutes, which by reference is hereby incorporated in these rules and made a part hereof as though fully recited herein, except as to those provisions of chapter 291C which by their nature can have no

application to a bicycle operator." [Eff 2/24/94; comp 4/5/08; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

24. Section 13-233-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-29 Eligibility for parking permits; fee per vehicle. (a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

Eligible persons	Fees Per Vehicle
(1) An owner holding a valid Use permit (permittee) authorizing the mooring of the owner's vessel at the small boat harbor, and any co-owner of the vessel.	\$25 per month
(2) The spouse or [ <del>personal partner</del> ] <u>reciprocal beneficiary</u> of each owner, and their legal dependents 18 years of age or older.	\$25 per month
(3) An owner or co-owner holding a valid use permit authorizing the mooring of the owner's vessel at the small boat harbor may secure a temporary parking permit, for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the small boat harbor.	\$10 for each 24-hour period or fraction thereof
(4) An owner or employee of a firm, business, or organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to engage in a business or commercial activity at the small boat harbor.	\$90 per month
(5) Other non-boating related	not less

person(s) parking in any paid parking stalls. than \$100 per month

(b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

(c) Not more than one parking permit shall be issued to a person eligible for a parking permit." [Eff 2/24/94; am and comp 4/5/08; am 8/8/11; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

25. Section 13-235-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-235-5 Owners required to report change in ownership, address and other changes. (a) It shall be the responsibility of an offshore mooring permittee to notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel, houseboat or contrivance;
- (2) All or any interest in the vessel, houseboat, or contrivance is transferred to or assigned to another person or business entity; or
- (3) The owner's address or telephone number changes.

(b) Failure to comply this section will result in automatic termination of the offshore mooring permit.

~~[(c) "Transfer" as used in this section means any sale, agreement of sale, assignment, lease of a vessel or the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of interest in any other business entity which results in a change of the owner holding the majority interest.~~

~~(d) "Interest" as used in this section includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership,~~



~~joint venture or any other business entity that has a mooring permit issued under this subchapter.]” [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-1, 200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)~~

26. Section 13-235-9, Hawaii Administrative Rules, is amended to read as follows:

“§13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area. (a) No person shall anchor [or moor] a vessel [outside of a State offshore mooring area without a permit issued by the department, provided that recreational and commercial fishing vessels shall not be required to obtain an offshore mooring permit to moor or anchor for a period not to exceed seventy-two hours except in areas where anchoring or mooring is prohibited] in an Ocean Recreation Management Area (ORMA) or a non-designated area for a cumulative period of time exceeding seventy-two hours within any fourteen day period subject to the following restrictions:

- (1) Calculation of the seventy-two hour time limit shall not restart if a vessel is relocated or temporarily moved and then later returned to the same site or location or in close proximity thereto.
- (2) The department or the department’s authorized representative may authorize an extension of the seventy-two hour time limit if, under the particular circumstances, an extension of time is reasonable and warranted.

(b) No person shall anchor or moor a houseboat on the ocean waters or navigable streams of the State outside of a designated mooring area.

(c) No person shall live aboard any vessel or use any vessel as a principal place of habitation on the ocean waters or navigable streams of the [state] State outside of a designated mooring area, provided that staying aboard or use of a vessel as a vacation site may be permitted in accordance with provisions

set forth in sections 13-231-22, 13-231-28, and 13-231-29.

(d) The owner of a vessel desiring to moor a vessel outside a designated mooring area may be issued a permit by the department, subject to compliance with all other provisions of this chapter, provided that:

- (1) There is no designated mooring area within a reasonable distance of the desired location specified in the permit application;
- (2) A permit for installation of a mooring at that location is approved by the board of land and natural resources; and
- (3) In the case of commercial vessels, a permit is also approved for installation of the mooring by the U. S. Army Corps of Engineers.

(e) Transient or visiting vessels may be issued a temporary permit to anchor outside of a designated mooring area for a period not to exceed ninety days." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

27. Section 13-240-5, Hawaii Administrative Rules, is repealed.

~~"§13-240-5 [Definitions. As used in this part: "Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated.~~

~~"Barge" means a vessel with no motive power of its own.~~

~~"Boat dealer" means a person who is engaged in the business of selling, offering for sale, buying or taking in vessels for the purpose of reselling them.]~~

~~"Boat livery" means a person who is engaged in the business of renting, leasing, or chartering vessels.~~

~~"Boat manufacturer" means a person engaged in the business of building or assembling vessels.~~

~~"Boating accident":~~

- ~~(1) Means collision, accident, or other casualty involving:
  - ~~(A) A person's death;~~
  - ~~(B) The injury to a person requiring medical treatment beyond first aid;~~
  - ~~(C) Damage to a vessel amounting to \$200 or more;~~
  - ~~(D) Complete loss of a vessel; or~~
  - ~~(E) The disappearance of a person from a vessel under circumstances indicating death or injury to that person.~~~~
- ~~(2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
  - ~~(A) On board a vessel;~~
  - ~~(B) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;~~
  - ~~(C) Caused by flooding, fire, or explosion; or~~
  - ~~(D) Caused when a person falls overboard.~~~~

~~"Certificate" means certificate of numbers as explained in chapter 13-241.~~

~~"Chairperson" means the chairperson of the department of land and natural resources or the chairpersons' duly authorized representatives or subordinates.~~

~~"Coast guard" means the United States Coast Guard or any of its successor agencies.~~

~~"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.~~

~~"Commercial motorboat" means any power-driven vessel used for hire, profit, or gain.~~

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

~~"Diver's flag" means a red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner).~~

~~"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.~~

~~"Federal laws and requirements" mean all statutes, regulations, and other laws of the United States, which may be applicable to this chapter.~~

~~"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.~~

~~"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.~~

~~"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.~~

~~"High seas" mean the following:~~

- ~~(1) Those waters outside of Mamala Bay whose outer boundary is represented by a straight line drawn from Barber's Point Light to Diamond Head Light; and~~
- ~~(2) At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries, for which specific lines are not described in this section, the waters outside of a line approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids.~~

~~"Humpback whale cow/calf area" are shown on Exhibit "A" dated November 23, 1988, located at the end of this chapter and described as follows:~~

- ~~(1) Adjoining the island of Lanai. All waters within two miles of the shoreline along the north and east coast between lines extending perpendicular to the shoreline from Kaena Point to Kamaiki Point.~~
- ~~(2) Adjoining the island of Maui. All waters inshore of a straight line drawn between Hekili Point and Puu Olai.~~

~~"Inland waters" mean the waters inshore of lines described in the definition of "high seas" in this section.~~

~~"Kaanapali ocean waters" mean the area confined by the boundaries shown and defined in Exhibit C, July 9, 1984, located at the end of this chapter.~~

~~"Length", when applied to vessels covered by this chapter, means the measurement of a vessel from end to end over the deck. It is a straight line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline. Bowsprits, bumpkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. "Sheer" is the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.~~

~~In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.~~

~~In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.~~

~~"Lienholder" means a person holding a security interest in a vessel.~~

~~"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.~~

~~"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.~~

~~"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.~~

~~"Motor vessel" means any vessel more than sixty-five feet in length, which is propelled by machinery other than steam.~~

~~"Motorboat" means any vessel sixty-five feet in length or less which is equipped with propulsion machinery including steam and includes wet bikes,~~

~~motorized surfboards and any other vessel propelled by a motor engaged in towing discs, boards, parasails or any other device which may be towed. This term includes a vessel temporarily or permanently equipped with a motor.~~

~~"Number", "numbering", and "certificate of number" are the equivalents of the terms "register", "registration", and "certificate of registration" respectively.~~

~~"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.~~

~~"Owner" means a person, other than a lienholder, having the property in or title to a vessel. This term includes a person entitled to the use and possession of a vessel subject to a security interest in another person, but excludes a lessee under a lease not intended as security.~~

~~"Passenger" means every person other than the master and members of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel. In the case of a vessel on an international voyage, a child under one year of age is not counted as a passenger.~~

~~"Person" means an individual, partnership, firm, corporation, association, or other legal entity including the servant, employee, agent, or representative of any of the foregoing.~~

~~"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.~~

~~"Power-driven vessel" means any vessel propelled by machinery.~~

~~"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as for instance when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.~~

~~"Registration stickers" mean a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.~~

~~"Rules of the road" mean the federal statutory and regulatory rules governing navigation of vessels. These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST M16672.2B.~~

~~"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.~~

~~"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.~~

~~"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, of chapter 490 and section 490:1-201, Hawaii Revised Statutes.~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.~~

~~"State" means the State of Hawaii.~~

~~"Underway" means the vessel is not at anchor, aground, or made fast to shore.~~

~~"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal~~

~~Regulations, Subchapter C, Part 67, Documentation of Vessels.~~

~~"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 carries any person or persons for a valuable consideration, whether that consideration goes directly or indirectly to the owner, charterer, operator, agent, or any person who has a lien on the vessel.~~

~~"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.~~

~~"Waters of the State" mean any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State. [Eff 2/24/94; am 7/5/03] (Auth: HRS §§200-21, 200-22, 200-23, 200-24) (Imp: HRS §§200-21, 200-22, 200-23, 200-24)] REPEALED." [R \_\_\_\_\_]~~

28. Section 13-242-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-1 Duty to render aid and give information. (a) It shall be the duty of the operator of a vessel involved in a boating accident, as defined in section [~~13-240-5~~] 13-230-8, if and so far as the operator can do so without serious danger to the operator's own vessel or persons aboard to render to the other persons affected by the accident, such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the accident and also to give the operator's name, address, and identification of the operator's vessel to any person injured and to the owner of any property damaged in the accident.



(b) The duties imposed by chapter 13-242 shall be in addition to any duties otherwise provided by law." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-28)

29. Section 13-242-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-3 Immediate notice of accident; when required. (a) The operator of any recreational vessel which is involved in a boating accident as defined in section [~~13-240-5~~] 13-230-8, if the casualty results in death or injury of any person sufficient to cause reasonable belief that the injury will require medical treatment beyond first aid or if a person disappears from on board under circumstances which suggest any possibility of their death or injury shall, as soon as possible after fulfilling the requirements of section 13-242-1, by the quickest means of communication, give notice of the accident to a harbor official, police officer or the nearest police station with the following:

- (1) The date, time, and exact location of the occurrence;
- (2) The name of each person who was a casualty;
- (3) The number and name of the vessel; and
- (4) The names and addresses of the owner and operator.

(b) The above action shall be followed up by a written report as required in section 13-242-4.

(c) Whenever the operator of a vessel is physically incapable of giving an immediate notice of an accident as required in subsection (a) and there was another occupant on the vessel at the time of the accident capable of doing so, the occupant shall make or cause to be given the notice not given by the operator." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-28, 200-29)

30. Section 13-242-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-4 Written boating accident report; when required. (a) Whenever a recreational boating accident results in: (1) loss of life or the disappearance of any person; (2) injury causing any person to require medical treatment beyond first aid; or (3) actual damage to any recreational vessel or to any other property in excess of [~~\$200~~] \$2,000, then the operator of the vessel shall submit within forty-eight hours of the happening thereof, and within seven days of every other accident, a written report to the department on forms furnished by the department which report must contain information as prescribed in section 13-242-7.

(b) This section shall apply to the operator of: (1) any recreational vessel involved in a boating accident in the waters of the State; and (2) any recreational vessel required to be numbered or numbered pursuant to these rules and involved in a boating accident in any waters; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

(c) A written accident report is not required under this section from any person who is physically incapable of making a report during the period of the incapacity.

(d) Whenever the operator is physically incapable of making a written report of a recreational boating accident as required in this section and the operator is not the owner of the vessel, then the owner of the vessel involved in the accident shall make the report not made by the operator." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-29)

31. Section 13-243-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-243-4 Mufflers. A vessel propelled by an internal combustion engine shall, when in operation, be equipped with an efficient muffler, underwater exhaust or other modern device in good working order

and in constant operation capable of adequately muffling the sound of the exhaust of the engine. An engine is considered adequately muffled when the motor's exhaust at all times is muffled or suppressed so as to not create excessive or unusual noise. The discharge of cooling water through the exhaust of an inboard engine shall be considered an adequate muffling device. The use of cutouts, or open exhaust stacks is prohibited, except: (1) for motorboats competing in a race or regatta approved by the department or a federal agency; (2) while competing in official trials for speed records; or (3) for such vessels while on trial runs as is incidental to the tuning up of the boats and engines. [~~The phrase "adequate muffling" means that the motor's exhaust at all times be so muffled or suppressed as to not create excessive or unusual noise. The discharge of cooling water through the exhaust of an inboard engine shall be considered an adequate muffling device.~~] [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §200-24) (Imp: HRS §200-24)

32. Section 13-243-5, Hawaii Administrative Rules, is repealed.

~~"§13-243-5 [Recognition of marine examination decals. In order to free enforcement personnel for other inspections and duties and in recognition of the exacting requirements of the Courtesy Marine Examination, enforcement personnel shall not stop and board any vessel properly displaying a valid United States Coast Guard Auxiliary Courtesy Marine Examination decal for the purpose of determining compliance with this chapter except upon reasonable belief that the vessel is being operated in violation of these rules or other regulations or laws. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)] REPEALED."~~ [R \_\_\_\_\_]

§13-244-15.5

33. Section 13-244-15.5, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-15.5 Operation of power driven vessels.

(a) Any person operating a power driven vessel on the waters of the State shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators (NASBLA) approved course on the safe use and operation of a power driven vessel that contains a component on Hawaii waters approved by the department. Exempt from this requirement are persons who:

- (1) Possess a valid merchant mariner credential to operate a vessel issued by the United States Coast Guard pursuant to 46 [CFR] C.F.R. Part 10;
- (2) Operate a thrill craft in a commercial thrill craft zone as authorized by the State;
- (3) Operate a [~~motor vessel~~] motorboat that is ten horsepower or less, or
- (4) Are on a voyage originating outside of the State and remain in the State less than sixty calendar days.

(b) A person under sixteen (16) years of age shall not operate a power driven vessel on the waters of the State unless the person possesses a certificate of completion and is also accompanied on-board and directly supervised by a person twenty-one (21) years of age or older who holds the required certificate of completion.

(c) A person or the person's responsible managing employee or agent engaged in the business of renting or leasing power driven vessels shall not rent or lease a power driven vessel to any person for operation on the waters of the State unless the person:

- (1) Meets all the requirements of this section by receiving a safety briefing provided by the rental or leasing business that is approved by the department; and

(2) Is identified on the rental or lease agreement for a power driven vessel by name and age. A person or the person's agent or employee renting or leasing power driven vessels who fails to request and inspect certificates or evidence of exemption is in violation of this section.

(d) A person who is operating a power driven vessel on any waters of the State and who is stopped by a law enforcement officer shall present to the officer, upon request, a certificate of completion required by this section or acceptable evidence of exemption from the required certificate. Failure to present a certificate of completion or acceptable evidence of exemption shall constitute a violation of this section, unless the person presents the required certificate or evidence of exemption to a court of law and satisfies the court that this person held a proper certificate or was exempt at the time the person was asked to produce the certificate.

(e) A person who alters, forges, counterfeits, or falsifies a certificate or other document used as evidence, or who possesses a certificate or other document that has been altered, forged, counterfeited, or falsified, or who loans or permits that person's certificate or other document to be used by another person, shall be in violation of this section.

(f) The department shall maintain a list of NASBLA approved courses that provide a department approved component on Hawaii waters, which shall include but not be limited to:

- (1) Local ocean safety principles and practices; and
- (2) Any rules or laws pertaining to protected species and power driven vessel operation in the State.

(g) This section shall be enforced beginning on the second anniversary date of the section's effective date.

(h) Pursuant to section 200-25, Hawaii Revised Statutes, any person violating this section shall be fined not less than \$50 and not more than \$1000 or

sentenced to a term of imprisonment of not more than thirty days, or both, for each violation; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the court may deprive the offender of the privilege of operating any vessel in the waters of the State for a period of not more than thirty days." [Eff 11/10/12; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25)

34. Section 13-244-19, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition.

~~(a) [Definition of terms used in this chapter. "Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.~~

~~—(b)—~~] Authorization required; submission of application.

- (1) Any person or organization planning to hold a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of persons or property on the waters of the State shall submit an application to the chairperson of the board of land and natural resources. No person shall hold such a regatta or marine parade, unless the authorization of the chairperson, has been secured, except that the chairperson's authorization is not required if prior authorization has been secured from the United States Coast Guard. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of

life include, but are not limited to: an inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channels which may reasonably be expected to result, and the expected accumulation of spectator craft.

- (2) Where the events are to be held regularly or repeatedly in a single area by an individual or organization, the chairperson may, subject to conditions set from time to time by the department, grant a permit for the series of events for a fixed period of time, not to exceed one year.
- (3) The application shall be submitted no less than thirty days prior to the start of the proposed event.
- (4) The application shall include the following details:
  - (A) Name and address of sponsoring organization.
  - (B) Name, address and telephone number of person or persons in charge of the event.
  - (C) Nature and purpose of the event.
  - (D) Information as to general public interest.
  - (E) Estimated number and type of watercraft participating in the event.
  - (F) Estimated number and type of spectator watercraft.
  - (G) Number of boats being furnished by sponsoring organization to patrol event.
  - (H) Time schedule and description of events.

(I) A section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials, and spectator craft.

~~[-e-]~~ (b) An authorization by the chairperson does not exempt a person holding an event from compliance with applicable federal law." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

35. Section 13-244-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-29 Makapuu ocean waters. (a) Makapuu ocean waters means the area confined by boundaries as shown on Exhibit F, June 1, 1981, and located at the end of this chapter, and also described as follows:

- (1) Beginning at a point being the mean high water mark which is directly opposite from the northeast corner of the Makapuu Beach Park building;
- (2) In the Makapuu Point direction along the mean high water mark to the tip of Makapuu Point; and
- (3) Along a straight line connecting such point described in paragraph (2) above to, and ending at, the point of beginning.

(b) Restrictions. No person shall operate a vessel in the Makapuu ocean waters as the same are defined in this section. This subsection shall not apply in the case of emergency or to patrol or rescue craft." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

36. Section 13-244-37, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-37 Zone A, Zone B, Ingress/Egress Zones, and Ingress/Egress Corridors. The KaaNapali



ocean waters shall be divided into the following zones:

- (a) Zone A, Kaanapali ocean waters
  - (1) This zone is designated primarily for swimming, bathing, snorkeling, and diving, and means the area confined by the boundaries shown and described in Exhibit G, July 1, 1984, located at the end of this chapter, which boundaries are described as follows:
 

Beginning at a point on the vegetation line six hundred fifty feet north along the vegetation line from the intersection of the extended centerline of Kaniau Road and the vegetation line; thence running by azimuths measured clockwise from True South: 080 degrees for a distance of two hundred feet; 146 degrees 30 minutes for a distance of three thousand seven hundred fifty feet; 206 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.
  - (2) No person shall navigate or moor a vessel, surfboard, sailboard, or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:
    - (A) Paipo boards not in excess of four feet in length and without skegs or any other [~~fin-line~~] fin-like projections protruding from the bottom of the boards;
    - (B) Hawaiian design club canoes engaged in crew training;
    - (C) Vessels engaged in fishing during periods of low use of the beach.
- (b) Zone B, Kaanapali ocean waters
  - (1) This zone is an area designed primarily for swimming, bathing, snorkeling, and diving, and means the area confined by the boundaries shown on Exhibit G, July 1, 1984,

located at the end of this chapter and defined as:

Beginning at a point on the vegetation line seven hundred fifty feet south along the vegetation line from the southernmost tip of Keka'a Point shoreline, thence running by azimuths measured clockwise from True South: 068 degrees for a distance of two hundred feet; 156 degrees for a distance of two hundred fifty feet; 078 degrees 30 minutes for a distance of three hundred fifty feet; 156 degrees for a distance of six hundred feet; 221 degrees for a distance of five hundred feet; 287 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.

- (2) Restrictions: The same restrictions and exceptions thereto applicable to Zone A are applicable to Zone B.
- (c) Ingress/Egress zones.
- (1) These zones shall be established at intervals along the shoreline to provide beach access, through corridors, for all vessels governed by this chapter. Each zone shall be five hundred feet wide at the shoreline and shall extend seaward for a distance of five hundred feet.

Zone number one begins at the point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.

Zone number two begins at a point on the vegetation line which is two thousand three hundred feet north along the vegetation line from a point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.

Zone number three begins at a point on the vegetation line which is two thousand four hundred feet south along the vegetation line from the mean high water mark of the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.

Zone number four begins at a point on the vegetation line which is seven hundred fifty feet south along the vegetation line from the mean high water mark from the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.

Zone number five begins at a point on the vegetation line which is eight hundred twenty-five feet north along the vegetation line from the vegetation line from the southernmost tip of Keka'a Point shoreline, then northward along the vegetation line for a distance of five hundred feet.

- (2) No person shall navigate a vessel within an ingress/egress zone unless operating within an ingress/egress corridor, provided that this restriction shall not apply to Hawaiian design club canoes engaged in crew training.
- (d) Ingress/Egress corridors.
  - (1) These corridors shall be contained within each ingress/egress zone. Each corridor shall be one hundred feet wide and shall be established daily by markers placed by the users of the corridor to determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.
  - (2) No person shall:
    - (A) Navigate a commercial vessel or non-commercial motor powered vessel to or from the beach area unless using a designated ingress/egress corridor;
    - (B) Navigate a catamaran, registered for carrying passengers for hire, in an

ingress/egress corridor, or approach the shoreline within a distance of five hundred feet, if another catamaran is beached within the boundaries of the intended corridor of use;

- (C) Beach a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor in excess of thirty minutes; and
  - (D) Navigate a vessel within an ingress/egress corridor at a speed exceeding slow-no-wake.
- (3) Exceptions to the restrictions for Ingress/Egress Zones are applicable to Ingress/Egress Corridors.

(e) This section shall not apply in the event of an emergency, to law enforcement or rescue craft, or to vessels operating under a valid ocean waters permit issued by the department." [Eff 2/24/94, am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4)  
(Imp: HRS §§200-2, 200-3, 200-4)

37. Section 13-245-2, Hawaii Administrative Rules, is repealed.

~~"§13-245-2 [Definitions.~~

~~"Buoy" means any [device designed to float which is anchored in the water and which is used to convey a message] floating aids to navigation moored to the seabed and used to convey a message.~~

~~"Display area" means the area on a sign or buoy [needed] used for display of a waterway marker symbol.~~

~~"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.~~

~~"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure or land itself.~~

~~"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.~~

~~"Symbols" means geometric figures such as a diamond, circle, rectangle, used to convey a basic message.~~

~~"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition. [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24) (Imp: HRS §§200-22, 200-23, 200-24)]~~  
REPEALED. [R \_\_\_\_\_]

38. Section 13-245-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-245-9 Diver's flag. (a) A "diver's flag" as defined by rule and measuring not less than twelve inches by twelve inches shall be required to be displayed on the surface of the water by any person or group of persons engaged in free diving or SCUBA diving.

(b) [~~Notwithstanding subsection (a), a~~] A diver's flag measuring not less than twelve inches by twelve inches[~~7~~] shall be displayed on the highest point of the main structure of a [~~non-motorized~~] vessel that is sixteen feet or less in length overall in order to provide an unobstructed view of the diver's flag from all directions when diving from the vessel.

(c) [~~Notwithstanding subsection (a), in addition to the "Alpha flag," required by the United States Coast Guard, i.e., a blue flag with a white horizontal strip running from the upper left side to the lower left side,~~] A diver's flag measuring not less than twenty inches by twenty-four inches, shall be displayed on the highest point of the main structure of any [~~motorized or non-motorized~~] vessel that is

greater than sixteen feet in length overall in order to provide an unobstructed view of the diver's flag from all directions when diving from the vessel.

(d) ~~[No person shall engage in free diving or SCUBA diving, or display a diver's flag, in a manner that shall unreasonably or unnecessarily interfere with vessels or with free and proper navigation of the waterways of the State]~~ If snorkeling, free diving, or SCUBA diving is in progress between sunset and sunrise, the diver's flag shall be clearly illuminated. A diver's flag is considered clearly illuminated when it is identifiable from at least one hundred feet away.

(e) ~~[Except in cases of emergencies, free diving, swimming, or SCUBA diving within navigation channels shall be prohibited]~~ There shall be no restriction on subsurface distance from a diver's flag. However, snorkelers, free divers, and SCUBA divers are prohibited from surfacing more than one hundred feet away from the diver's flag in the ocean waters of the State and more than fifty feet from the diver's flag in navigable streams, except in cases of emergencies.

(f) All vessels shall be prohibited from approaching within one hundred feet of a displayed diver's flag or within fifty feet of a displayed diver's flag on navigable streams~~[, except within marked navigation channels.]~~ with the following exceptions:

(1) Vessels approaching a displayed diver's flag to conduct SCUBA, snorkeling, or free diving activities within the one hundred foot or fifty foot restricted area shall be allowed to do so provided that the vessel approaches at a speed of slow-no-wake.

(2) Vessels approaching a displayed diver's flag navigating through marked navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow-no-wake through the navigation channel when a

diver's flag is displayed adjacent to the navigation channel.

- (3) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.

(g) Except in cases of emergencies, snorkeling, free diving, swimming, or SCUBA diving within navigation channels shall be prohibited.

~~[Vessels navigating through marked navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow-no-wake through the navigation channel when a diver's flag is displayed adjacent to the navigation channel.]~~

~~(h) The diver's flag shall be displayed only when free diving or SCUBA diving is in progress, and its display in a water area when no diving is in progress in that area shall constitute a violation of these rules.~~

~~(i) There shall be no subsurface distance restrictions from a dive flag, however, except in cases of emergencies, free divers or SCUBA divers shall be prohibited from surfacing more than one hundred feet away from the diver's flag in the ocean waters of the State and fifty feet in navigable streams.~~

~~(j) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.]~~

(h) No person shall engage in snorkeling, free diving, or SCUBA diving or display a diver's flag in a manner that shall unreasonably or unnecessarily interfere with vessels or with free and proper navigation of the waterways of the State.

(i) A diver's flag shall be displayed only when snorkeling, free diving, or SCUBA diving is in progress, and display of a diver's flag in a water area when no snorkeling or diving is in progress in that area shall constitute a violation of these rules.

~~[(k)]~~ (j) Anyone violating any provision of this section shall be subject to fines and penalties as provided in sections 200-14, 200-14.5, and 200-25, HRS." [Eff 2/24/94; am 7/5/03; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25)

39. Section 13-250-5, Hawaii Administrative Rules, is repealed.

~~"§13-250-5 [Definitions. As used in this part, unless the context clearly indicates otherwise:~~

~~"Barge" means a non-self-propelled, generally large, flat-bottomed vessel.~~

~~"Boat" means a small vessel propelled by oars or paddles or by sail or power.~~

~~"Business" includes all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.~~

~~"Canoe" means outrigger canoe.~~

~~"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.~~

~~"Catamaran" means a vessel with two or more hulls side by side.~~

~~"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.~~

~~"Coast Guard" means the United States Coast Guard.~~

~~"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.~~

~~"Commercial high speed boating" does not include:~~

- ~~(1) The use of an open ocean racing boat during an official racing competition; or~~



~~(2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.~~

~~"Commercial motorboat" means any motorboat used for hire, profit or gain.~~

~~"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.~~

~~"Compensation" means any valuable consideration.~~

~~"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 within the water.~~

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

~~"Global Positioning System (GPS)" means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.~~

~~"Handboard" means any type of surf riding board that is (a) with or without skegs, (b) worn on one or both of the operator's hands, (c) is generally 15 inches in overall length, and (d) is used for the sport of wave riding.~~

~~"Humpback whale cow/calf area" are shown on Exhibit "B" dated November 23, 1988, located at the end of this chapter and described as follows:~~

~~(1) Adjoining the island of Lanai. All waters within two miles of the shoreline along the north and east coast between lines extending perpendicular to the shoreline from Kaena Point to Kamaiki Point.~~

~~(2) Adjoining the island of Maui. All waters inshore of a straight line drawn between Hekili Point and Puu Olai.~~

~~"Kaanapali ocean waters" means the area confined by the boundaries shown on Exhibit E (1), July 9, 1984, located at the end of chapter 13-251 and defined as:~~

~~—Beginning at the intersection of the extended centerline of Wahikuli Road at the vegetation~~

~~line, thence running by azimuths measured clockwise from True South; 088 degrees for a distance of one thousand feet; 177 degrees for a distance of two thousand fifty feet; 145 degrees for a distance of two thousand six hundred twenty-five feet; 117 degrees 30 minutes for a distance of two thousand fifty feet; 150 degrees for a distance of one thousand seven hundred seventy feet; 175 degrees 45 minutes for a distance of four thousand one hundred feet; 197 degrees 15 minutes for a distance of two thousand three hundred twenty-five feet; 177 degrees 30 minutes for a distance of four thousand fifty feet; 201 degrees 30 minutes for a distance of one thousand six hundred twenty-five feet; thence on a straight line to a point on the vegetation line of the south bank of Honokowai Stream; then southward along the vegetation line to the point of beginning.~~

~~"Kayak" means a portable boat styled like an Eskimo canoe and propelled by use of a double-bladed paddle.~~

~~"Motorboat" means any vessel sixty-five feet in length or less which is equipped with propulsion machinery including steam and includes wet bikes, motorized surfboards and any other vessel propelled by a motor engaged in towing discs, boards, parasails or any other devices which may be towed. This term includes a vessel temporarily or permanently equipped with a motor.~~

~~"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the state, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of said streams are physically opened or not to ocean waters for intra or interstate commerce or navigation.~~

~~"Ocean recreation management area" means ocean waters of the State that have been designated for specific activities as described in Chapter 13-256, Hawaii Administrative Rules, Ocean Recreation Management Rules and Areas.~~

~~"Ocean Waters" means the waters seaward of the shoreline within the jurisdiction of the State.~~

~~"Open ocean racing boat" means a motorized vessel which:~~

~~(1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and~~

~~(2) Has the capacity to carry not more than the operator and five passengers.~~

~~"Operate" means to navigate or otherwise use a vessel, surfboard, or paddle board (paipo board).~~

~~"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee, surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the state.~~

~~"Outrigger canoe" means a boat equipped with a framework terminating in a float, extended outward from the side of the boat to prevent upsetting.~~

~~"Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use and possession of a vessel subject to a security interest in another person, but excludes a lessee under a lease not intended as security.~~

~~"Paipo boards" means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfriding.~~

~~"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline which is towed by a vessel.~~

~~"Person" includes every individual, partnership, firm, society, incorporated association, joint venture, group, hui, joint stock company, corporation, trustee, or any other legal entity, including the servant, employee, agent, or representative of any of the foregoing.~~

~~"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.~~

~~"Recreation" means to create anew, restore, refresh, a diversion such as a hobby or other leisure time activities.~~

~~"Rules" means the rules governing Hawaii Ocean Waters, Navigable Streams and Beaches of the department of land and natural resources, State of Hawaii.~~

~~"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.~~

~~"Sailing catamaran" means a catamaran propelled by sail only, including a catamaran temporarily or permanently equipped with a motor being propelled by sail only.~~

~~"SCUBA" means self-contained underwater breathing apparatus."~~

~~"Shore waters and shores" means any shores or waters between the three nautical mile limit and the mean high tide mark on the shores of the islands of the State of Hawaii.~~

~~"Skeg" means any fin-like projection.~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.~~

~~"State" means the State of Hawaii.~~

~~"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.~~

~~"Territorial sea baseline" means the line from which the territorial sea is measured, which is generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets and other similar indentations.~~

~~"Thrill craft" means any motorized vessel which is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and two other persons while in operation. The term includes but is not limited to~~

~~a jet ski, wet bike, surf jet, miniature speed boat, and hovercraft.~~

~~"Tow-in surfing" means utilizing a surfboard equipped with foot straps to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow line and a tow-in rope.~~

~~"Ultralight float equipped aircraft" means an aircraft of light weight construction and limited range carrying not more than two individuals able to land on water surfaces using floats.~~

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

~~"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part at the bow to the aftermost part at the stern; provided, that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in such 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.~~

~~"Waikiki ocean waters" means the area confined by the boundaries shown on Exhibit A, June 1, 1981, located at the end of this chapter which boundaries are described as follows:~~

- ~~(1) Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline and extending seaward from the Diamond Head Lighthouse;~~
- ~~(2) In the Ewa direction along the mean high water mark to the point where the mean high water mark meets the revetment on the Waikiki side of the Kewalo Basin entrance channel;~~
- ~~(3) Along a straight line connecting the point described in (2) above to the Kewalo Basin entrance channel buoy ("1" Black);~~
- ~~(4) Along a straight line connecting the buoy described in (3) above to the Ala Wai boat harbor entrance lighted buoy (Red "2");~~

- ~~(5) Along a straight line connecting the buoy described in (4) above to the Diamond Head buoy (Red "2"); and~~
- ~~(6) Along a straight line connecting the buoy described in (5) above to, and ending at, the point of beginning.~~

~~"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is round with a hollow center, the width shall be measured as a straight line:~~

- ~~(1) Starting from a point on the outer edge of the apparatus;~~
- ~~(2) Bisecting the hollow center; and~~
- ~~(3) Ending at the farthest point on the opposite outer edge.~~

~~"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports, and not necessarily for transportation. [Eff 2/24/94; am 9/10/01; am 4/27/02; am 10/19/02; 10/2/03] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)] REPEALED." [R~~

40. Section 13-251-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-251-57 Waikiki ocean waters. Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline below the Diamond Head Lighthouse; then in the Ewa direction along the mean high water mark to the makai boundary of the Ala Wai Small Boat Harbor and buoy R"8"; then west across the

channel to the seawall on the Diamond Head side of Magic Island; then following along the mean high water mark to the seaward prolongation of the parking lot on the Ewa side of Magic Island; then along the edge of the reef to the revetment on the Waikiki side of the Kewalo Basin entrance channel; then along a straight line to the Kewalo Basin entrance channel buoy R"2"; then southeasterly along a straight line to the Ala Wai boat harbor entrance lighted buoy R"4"; then along a straight line to the Diamond Head buoy R"2"; then along a straight line the point of beginning.

The Waikiki ocean waters are reserved primarily for use by bathers, swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers. This section shall not apply in the event of an emergency, or to law enforcement or rescue craft, or vessels participating under a valid regatta permit issued by the department or the Coast Guard.

(a) Zone A is described as follows:

Beginning at the breakwater makai of the Hilton Hawaiian Village rainbow tower; then following the mean high water mark northwesterly to the Duke Kahanamoku Lagoon; then southerly to 21°16'25.36"N, 157°50'12.15"W; then in a straight line ending at the starting point;

(1) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone A, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been issued a permit by the department, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the

provisions of section 13-251-52, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport.

Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph.

(b) Zone B is described as follows:

Beginning at the breakwater makai of the Hawaiian Village Rainbow Tower; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then seaward along the Ewa wall of the natatorium to the outer edge of the reef at 21°15'52.26"N, 157°49'31.67"W; then along the reef in the north direction to the seaward end of the wall at Kapahulu; then in a straight line eastward ending at the starting point;

(1) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been issued a permit by the department to navigate in the waters. Notwithstanding this subsection, a sailing catamaran may temporarily operate in [~~Zone B~~] Zone B as a power-driven catamaran when necessary to protect life or property and [~~is~~] if that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;

(B) No person shall navigate or moor a catamaran in or on the waters of Zone B or on the shore below the mean high



water mark if four catamarans are navigating or moored in such zone;

(C) The minimum distance separating any two catamarans moored in Zone B shall be eighty feet; and

(D) For this subchapter, surfboards are not considered to be a vessel.

(c) Zone C is described as follows:

Beginning at the end of the Ewa groin at the Duke Kahanamoku statue; then following the groin shoreward and along the Kuhio Beach shoreline to the mauka end of the wall at Kapahulu; then to the end of the wall; then following the seawall in a northward direction to the point of beginning.

(1) Restrictions: Zone C is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kuhio seawall to the shoreline between the wall at Kapahulu and the Ewa groin.

(d) Zone D is described as follows:

Beginning at the makai-Ewa corner of the wall at Kapahulu; then 160 yards in the Diamond Head direction on a straight line perpendicular to the beach to  $21^{\circ}16'11.35''N$ ,  $157^{\circ}49'24.49''W$ ; then 100 yards seaward on a straight line ending at  $21^{\circ}16'10.43''N$ ,  $157^{\circ}49'27.89''W$ ; then 310 yards in the Ewa direction on a straight line ending at  $21^{\circ}16'19.32''N$ ,  $157^{\circ}49'30.27''W$ ; then 100 yards shoreward to  $21^{\circ}16'20.27''N$ ,  $157^{\circ}49'26.90''W$ ; then in a straight line back to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone D, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.

(e) Zone E is described as follows:

Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark at 21°15'50.66"N, 157°49'18.30"W; then following the mean high water mark in a Diamond Head direction to the Colony Surf Hotel at 21°15'44.76"N, 157°49'17.45"W; then in a seaward direction to 21°15.44.16"N, 157°49'19.32"W; then north to the makai-Diamond Head corner of the Natatorium; then in a straight line to the point of beginning.

- (1) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone E, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1." [Eff 2/24/94; am and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

41. Section 13-253-1.3, Hawaii Administrative Rules, is amended to read as follows:

"§13-253-1.3 Gross receipts. [~~(a)~~ "~~Gross receipts~~" as used in this chapter means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales has a direct relationship to the vessel.

~~(b)~~] Each commercial permittee or catamaran registration certificate holder shall be responsible

for submitting to the department a monthly statement of its gross receipts." [Eff and comp 9/25/14; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

42. Section 13-254-1, Hawaii Administrative Rules, is repealed.

~~§13-254-1 [Definitions.~~

~~"Makapuu ocean waters" means the area confined by boundaries as shown on Exhibit F, June 1, 1981, and located at the end of this chapter, and also described as follows:~~

- ~~(1) Beginning at a point, being the mean high water mark which is directly opposite from the northeast corner of the Makapuu Beach Park Building;~~
- ~~(2) In the Makapuu Point direction along the mean high water mark to the tip of Makapuu Point; and~~
- ~~(3) Along a straight line connecting the point described in (2) above to, and ending at the point of beginning.~~

~~"Operate" means to navigate or otherwise use a vessel, surfboard, or paddle board (paipo board).~~

~~"Outrigger canoe" means a boat equipped with a framework terminating in a float, extended outward from the side of the boat to prevent upsetting.~~

~~"Paddleboards" (paipo boards) means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfriding. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)] REPEALED."~~

~~[R \_\_\_\_\_]~~

43. Section 13-255-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-255-1 Purpose and scope. The purpose of these rules is to further the public interest and welfare and to promote safety by keeping Waikiki Beach, as defined in section [~~13-255-5~~] 13-255-6, free and clear of business activities and obstructions and open for the use of the public as a bathing beach and for passing over and along by foot." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

44. Section 13-255-5, Hawaii Administrative Rules, is repealed.

~~"§13-255-5 [Definitions. As used in this part, unless the context clearly indicates otherwise:~~

~~"Business" means all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.~~

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

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

~~"Person" means any individual, partnership, firm, society, incorporated association, joint venture, group, hui, joint stock company, corporation, trustee or any other legal entity.~~

~~"Rules" means the Rules Governing Hawaii Ocean Waters, Navigable Streams and Beaches of the department of land and natural resources, State of Hawaii.~~

~~"State" means the State of Hawaii.~~

~~"Waikiki Beach" means any and all lands along the shores of the island of Oahu from the Diamond Head boundary of the Elks Club (Tax Map Key No. 3-1-32-6) to the Diamond Head boundary of Fort DeRussy (Tax Map Key No. 2-6-05), seaward of line "A" as shown on exhibit "A" and described in exhibit "B", dated July~~

~~13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)] REPEALED." [R ]~~

45. Section 13-255-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-255-6 Waikiki Beach uses and activities; restrictions. (a) "Waikiki Beach" as used in these rules means any and all lands along the shores of the island of Oahu from the Diamond Head boundary of the Elks Club (Tax Map Key No. 3-1-32-6) to the Diamond Head boundary of Fort DeRussy (Tax Map Key No. 2-6-05), seaward of line "A" as shown on exhibit "A" and described in exhibit "B", dated July 13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter acquires an easement for the use of the public as a bathing beach and for passing over and along by foot.

~~[-(a)]~~ (b) Permitted activities. Waikiki Beach is open to public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, will not unduly disrupt others from enjoying the beach.

~~[-(b)]~~ (c) Business operations, soliciting prohibited. No person shall engage in, conduct, transact, or solicit business of any kind on or at Waikiki Beach.

~~[-(e)]~~ (d) Storage, parking, and display prohibited. No person shall store, park, moor, place, or display any thing or personal property on or at Waikiki Beach for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger canoe or sailing catamaran registered by the department pursuant to Hawaii ocean waters and shores rules may be placed, moored, or anchored below the mean high water mark.

~~[(d)]~~ (e) Structures and obstructions prohibited. No person shall construct, erect, place, deposit, or set up any building, structure, booth, wall, obstruction, or any improvement of any kind, whether temporary, portable, or permanent in nature, on or at Waikiki Beach, except such as may be approved by the department for sporting events, public safety, or for beach construction, repairs, preservation, or cleaning. In addition to any other available remedies, the department may remove, raze, or demolish the same wherever found at Waikiki Beach.

~~[(e)]~~ (f) Ball, etc., playing and kite flying prohibited. No person shall throw, cast, catch, kick, or strike any type of ball, frisbee, or other similar object while on or at Waikiki Beach. No person shall fly a kite of any kind while on or at Waikiki Beach." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-06)

46. Section 13-256-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-3 Commercial use permit or catamaran registration certificate requirements. ~~[(a)]~~ All operators of commercial vessels, water craft or water sports equipment or activities conducting commercial tours or instruction on State ocean waters ~~[shall apply for]~~ must obtain a commercial use permit or where applicable a catamaran registration certificate to be issued by the department, except for those operating out of a ~~[state]~~ State commercial harbor~~[-or Kewalo Basin]~~. The applicant for such permit shall comply with the applicable provisions stated in sections 13-231-50 to 13-231-70.

~~[(b)]~~ ~~The department may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial use permits or catamaran registration certificate to be issued by the department. The department shall consider the recommendations of the Advisory Committee, but is not bound by the~~

~~recommendations. Members of the Recreation Advisory Committee shall have not less than three years of experience in their area of specialty.]” [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)~~

47. Section 13-256-5, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-5 Commercial use permits; public auction. (a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter for thrill craft or parasail operations may be made at public auction under sealed bid after public notice.

(b) Before any prospective bidder is entitled to submit a bid for a commercial use permit, the prospective bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice of its intention to bid to the officer charged with issuing the commercial use permits. Each prospective bidder shall submit answers, under oath, to questions contained in a questionnaire, provided by the department, setting forth a complete statement of the experience, competence and financial standing of the prospective bidder. The names and the number of persons who have submitted a notice of intention to bid shall not be divulged. Information contained in the answers to the questionnaire shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be fined not more than \$250. A questionnaire so submitted shall be returned to the bidder after having served its purpose.

(c) Advertisement for bids. Publication of a call for tenders shall be made not less than three times on not less than three different days in a newspaper of general circulation printed and published within the State and in a newspaper of general circulation published in the county in which the designated area is located. The first publication

shall be not less than three weeks prior to the date designated for the opening of tenders. Notice of the call for tenders shall contain the following:

- (1) Location where the bid questionnaire is available;
- (2) Time and place of the opening of tenders;
- (3) General description of the designated area;
- (4) Specific use for which the commercial use permit is intended; and
- (5) The upset price as established by the department. Unless a higher amount is specified for a specific commercial use permit the annual upset price [~~small~~] shall be \$900.00, which is the monthly charge of \$75.00. If the commercial use permit is located within an area which requires less than twelve months of operation, the upset price shall be adjusted accordingly.

(d) All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the time and place to be stated in the call for tenders which time shall not be less than ten days after the last publication, in the presence of all bidders who attend, and may be inspected by any bidder. All bids which do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids may reject any or all bids and waive any defects when in the officer's opinion such rejection or waiver will be in the best interest of the public.

(e) All bids shall be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, or on a savings institution insured by the Federal Savings & Loan Insurance Corporation or by a share certificate issued by a credit union insured by the National Credit Union Administration, in a sum of not less than five per cent of the amount bid, payable at sight to the officer advertising for tenders. A bid deposit may also be in the form of a surety bond



conforming to the requirements of Section [~~103-31~~]  
102-8, Hawaii Revised Statutes.

(f) If the highest bidder to whom the commercial use permit is awarded fails or neglects to fully comply with the terms and conditions for the issuance of the commercial use permit within ten days after the award or within such further time as the officer awarding the permit may allow, the bidder shall forfeit the bid deposit to the State. If the permit is issued, the bid deposit shall be returned to the permittee upon receipt of the first monthly payment. The deposits made by the unsuccessful bidders shall be returned to them after the commercial use permit is issued or if the commercial use permit is not awarded or issued after the officer's determination to publish another call for tenders or not to issue any commercial use permit.

(g) The commercial use permit shall be awarded to the highest qualified bidder. If there is more than one authorized commercial operating area in a particular designated area, then the permit for each operating area shall be made by a separate call for tenders.

(h) No commercial operator shall be awarded more than one commercial use permit per designated area. Each bidder shall be awarded only one commercial use permit per designated area. Thus, if a bidder is the highest qualified bidder on more than one operating area then that bidder shall choose one operating area and the bidder's other bids shall be deemed withdrawn.

(i) Each commercial use permit shall be valid for one year with an option to renew the commercial use permit no more than four times, which shall be accomplished on or before the anniversary date of its initial issuance. A permittee interested in renewing its commercial use permit, shall however, notify the department sixty days before the expiration of the commercial use permit of its intent to renew. The terms and conditions during the renewal period shall be the same as those applicable to the initial issuance except as to the renewal option which shall in no event cause the commercial use permit to be

renewed more than four times. At the end of the fourth renewal period of the permit, the permit may again be offered for public auction, provided that the previous permittee shall be offered the right of first refusal at the new upset price.

(j) Monthly payments for a commercial use permit shall be based upon 1) one-twelfth of the bid price or 2) a percentage of the monthly gross receipts equal to [~~two~~] three per cent, whichever is greater. [~~Gross receipt~~] "Gross receipts" is defined in [~~§ 13-256-12~~] section 13-230-8.

(k) The commercial use permit does not give the permittee any vested property rights. The department reserves the right not to issue or renew any commercial use permits." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4)  
(Imp: HRS §200-2, 200-3, 200-4)

48. Section 13-256-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-7 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers stock or interest in the corporation, either as a single transaction or as aggregate of several transactions, to any person or business entity who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee which is the greater of (1) two per cent of the gross receipts which are directly attributable to the use of the [~~commercial~~] commercial use permit issued by the department for the twelve month period prior to the date of sale, or (2) ten per cent of the net value of the sale of the stock or interest in the business as determined by the difference between the sale price and an equal percentage of the appraised value of the assets of the business.

(b) The value of the stock or interest transferred shall be as mutually agreed to by the

seller and the department. In the case of a business which engages in more than one type of business activity, only the value of the business activity which is dependent upon the possession and use of the commercial use permit shall be considered for the purposes of this section. In those cases where the transfer is made for consideration other than legal tender, the appraised or market value of the item of consideration given in exchange for the interest in the business shall be used.

(c) If the seller and the department are unable to agree on the value of the interest transferred, that value shall be determined through arbitration by an independent party acceptable to both the seller and the department. The cost of the arbitration shall be borne by the party in whose favor the final value is determined." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

49. Section 13-256-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-8 Owner required to report change in ownership, address and other changes. [~~a~~] In addition to the provisions in section 13-251-44, the holder of any commercial use permit issued under this chapter shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the permitted vessel or water sports equipment~~[-]~~ ; or
- (2) All or any interest in the permitted vessels or water sports equipment is transferred to or assigned to another person or business entity~~[-]~~ as defined in these rules; or
- (3) The owner's address or telephone number changes.

~~[(b) "Transfer" as used in this section means any sale, assignment or lease of the permitted vessel or water sports equipment; the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder; or the sale or assignment of interest in any other business entity which results in a change of the owner holding the majority interest.~~

~~(c) "Interest" as used in this section includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a commercial permit issued under this Chapter.]~~ [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

50. Section 13-256-12, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-12 Gross receipts. ~~[(a) Gross receipts as used in this chapter means all moneys paid or payable to the account of the commercial permittee, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, and sales have a direct relationship to the vessel.~~

~~(b)]~~ Each commercial permittee shall be responsible for submitting to the department a monthly statement of its gross receipts." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

51. Section 13-256-16, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-16 Thrill craft operations; general provisions. (a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to: 1) avoid possible adverse impacts on humpback whales or other protected marine life; 2) provide for increased public access; 3) reduce user conflicts; and 4) promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from [~~an accredited institution of higher education~~] a State approved course on the safe use and operation of a thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1.

(f) All persons holding or receiving a certificate of completion under this rule are exempt from section 13-244-15.5 for purposes of operating thrill craft." [Eff 2/24/94; am 7/5/2003; am

\_\_\_\_\_ ] (Auth: HRS §§200-22, 200-24) (Imp:  
HRS §§200-22, 200-24)

52. Section 13-256-17, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-17 Recreational thrill craft operations. (a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) Thrill craft operation shall be prohibited in State waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau. In all other ~~[In]~~ non-designated ocean recreation management areas of State waters, recreational thrill craft may operate ~~[only in state waters between]~~ seaward of five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater ~~[-and two miles off the islands of Kauai, Oahu, Maui and Hawaii. Thrill craft operation shall be prohibited in State waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau].~~

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private ~~[beach front]~~ beachfront property.

(f) The State may exempt thrill craft from the requirements of this section, and allow thrill craft to operate outside of designated thrill craft areas,

as described in subchapters two through eleven, conditioned upon application for, and receipt of, a miscellaneous use permit pursuant to section 13-231-13 of these rules. [Eff 2/24/94; am \_\_\_\_\_]  
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

53. Section 13-256-21, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-21 Ultralight float equipped aircraft.

(a) For the purpose of this section, ultralight or experimental float equipped aircraft means an ultralight or experimental aircraft as defined by [~~Part 103 of the Federal Aviation Regulations and equipped with floats~~] section 13-230-8 of these rules.

(b) The takeoff, landing and inflight portions of all ultralight or experimental float equipped aircraft operations on or above any ocean recreation management area shall be governed by Parts 91 and 103 of the Federal Aviation Regulations, which are incorporated by reference. No person shall operate an ultralight or experimental float equipped aircraft in a careless or reckless manner so as to endanger the life or property of another.

(c) The operator of any aircraft designed to maneuver on the water shall abide by all rules governing the operation of motorized vessels during the launching, retrieval and taxi. No person shall operate an ultralight or experimental aircraft registered as an experimental or ultralight aircraft by the Federal Aviation Administration when operating within a designated ocean recreation management area while carrying passengers for hire.

(d) The use of shuttle vessels in support of ultralight or experimental float equipped aircraft operations is prohibited on the ocean waters of the

[state] State, except for small watercraft carried aboard the aircraft." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

54. Section 13-256-22, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-22 Tow-in surfing. (a) The State assumes no responsibility or liability associated with tow-in surfing.

(b) Only thrill craft may be used for tow-in surfing.

(c) All thrill craft being used for tow-in surfing shall be recorded with the department using forms provided by the department.

(d) Tow-in surfing decals shall be provided at the time the vessel is recorded with the department and shall be required to be prominently displayed on the front half of the vessel.

(e) Thrill craft not recorded with the department for tow-in surfing are prohibited from displaying a tow-in surfing decal.

(f) Effective September 1, 2004, both the thrill craft operator and surfer, who engage in, or operate a thrill craft for tow-in surfing, shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education in Hawaii on the safe use and operation of a thrill craft in high surf, that includes but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) Hawaii Administrative Rules as they apply to boating;



- (3) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (4) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(g) When operating a thrill craft for tow-in surfing, all operators shall:

- (1) Carry on board a two-way communicating device;
- (2) Tow-in a maximum of one person at any one time;
- (3) Carry dive fins and a safety knife on their person; and
- (4) Yield right of way to all other boating or ocean recreation activities by leaving the same surfing break area and remaining a minimum of one thousand feet from the other activities.

(h) Notwithstanding section 13-256-17, within designated ocean recreation management areas, thrill craft used for tow-in surfing may enter the ocean recreation management area to gain access to and from a surfing site and for board and personnel recovery, rescue, and emergency purposes only in areas designated specifically for this activity as described in sections 13-256-23, 13-256-24 and 13-256-25.

(i) Unless otherwise provided by rule, towing surfers into waves within a designated ocean recreation management area shall be prohibited.

(j) Tow-in surfing may only be conducted during periods of high surf warning as declared by the National Weather Service in the region or around the island or islands for which the high surf warning has been issued.

(k) Notwithstanding section 13-244-18, surfers engaged in tow-in surfing shall not be required to wear a life-saving device.

(l) Thrill craft used for tow-in surfing may gain access to State waters from boat ramps, harbor facilities or from private beach front property and access the designated tow-in surfing area by the most direct route consistent with safety considerations.

(m) In addition to equipment required by the U.S. Coast Guard for vessels, all thrill craft used for tow-in surfing shall be equipped with the following:

- (1) A rescue sled that is a minimum of three feet wide, four feet long and three inches thick. The sled shall have a minimum of five hand-grip handles, two of which shall be on the port side, two on the starboard side and one at the bow of the sled. The sled shall not exceed the thrill craft load capacity recommended by the manufacturer;
- (2) A quick-release tow-rope a minimum of thirty-feet long; and
- (3) A bow tow-line a minimum of six feet long.

(n) Notwithstanding section 13-244-9, thrill craft used for tow-in surfing may be in proximity of the shoreline and tow-in surfers and travel at a speed greater than slow-no-wake when accessing the ocean or shoreline or when retrieving a surfboard or surfer in accordance with this subchapter.

(o) The thrill craft shall be operated at all times with due care for the rights and safety of people and property and the operator shall abide by any state or federal laws as they pertain to protected species.

(p) All participants in tow-in surfing special events shall be required to possess a certificate of completion as described in subsection (f).

(q) Notwithstanding section 13-256-17(d), operators of a thrill craft used for filming tow-in surfing shall possess a certificate of completion as required by subsection (f)." [Eff 10/2/03; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

55. Section 13-256-35, Hawaii Administrative Rules, is repealed.

~~"§13-256-35 Owner required to report change in ownership, address and other changes. (a) In addition to the provisions in section 13-251-44, the holder of any commercial vessel permit issued under this chapter shall notify the department in writing within seven days if:~~

- ~~(1) The owner no longer has possession of the vessel;~~
- ~~(2) All or any interest in the vessel is transferred to or assigned to another person(s) or business entity; and~~
- ~~(3) The owner's address or telephone number changes.~~

~~(b) "Transfer" as used in this section means any sale, assignment, lease of a vessel or the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of interest in any other business entity which results in a change of the owner holding the majority interest.~~

~~(c) "Interest" as used in this section includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership,~~

~~joint venture or any other business entity that has a commercial vessel permit issued under this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)] REPEALED." [R \_\_\_\_\_]~~

56. Section 13-256-56, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-56 Wailua River restricted area. (a) Restrictions described in this section shall not apply to department vessels, department personnel or emergency, patrol or rescue craft while performing official duties.

(b) The Wailua River restricted area means the navigable waters of the Wailua River, Kauai, as defined by the boundaries as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter. The boundaries begin at a point at the high water mark at the mouth of the Wailua River and include all the navigable waters along the Wailua River in a westerly direction to the base of Kaholalele Falls on the north fork of the river and all of the navigable waters to the base of the Wailua Falls on the south fork of the river.

(c) The Wailua River restricted area shall be divided into four zones:

- (1) Zone 'A' includes all the navigable waters beginning fifty feet into the river from the western side of the Wailua River bridge and from seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline, then extends from the banks of the north shoreline to approximately seven hundred and eighty-three yards upstream as indicated by navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B', as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone 'A',"

dated February 27, 1998, and located at the end of this subchapter.

- (2) Zone 'B' includes all waters extending approximately two miles upstream from the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B' to the base of Kaholalele Falls on the north fork of the river and approximately three and a half miles from the navigational aids designating the boundary between Zones 'A' and 'B' to the base of the Wailua Falls on the south fork of the river as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter.
- (3) Zone 'C' includes the waters beginning at the west side of the Wailua River bridge between the north and south banks and extends fifty feet into the river, then proceeds along the north shoreline extending seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.
- (4) Zone 'D' begins at the eastern boundary of Zone 'C' and extends under the Wailua River bridge between the north and south banks, extending to the shoreline.
- (d) General rules for Wailua River.
- (1) Only commercial and recreational vessels not exceeding twenty-one feet in length shall be allowed to utilize the Wailua River and shall be limited to:
  - (A) Vessels used for waterskiing;
  - (B) Motorized vessels, excluding thrill craft; and
  - (C) Manually-propelled vessels.

- (2) Commercial barges, or vessels otherwise allowed by the department, shall be exempt from vessel length restrictions described in paragraph (1).
  - (3) Recreational motorized vessels, and recreational and rented manually-propelled vessels may utilize Zones 'A', 'B' and 'C' as provided for in this section.
  - (4) Zone 'C' shall be designated a swimming zone indicated by marker buoys. Motorized vessels launching from launch ramp 'A' shall proceed with caution while within Zone 'C'.
  - (5) All manually-propelled vessels shall be required to operate along side the northern river bank.
  - (6) All vessel operators shall possess a state park permit to embark or disembark along the shores only within the state park in Zone 'B'.
- (e) Commercial vessel activity requirements for Wailua River.
- (1) Unless otherwise provided by law, anyone conducting commercial activities on the Wailua River shall possess a valid commercial activity permit from the department.
  - (2) All individuals possessing a commercial activity permit to utilize the Wailua river as of June 11, 1999, may retain the commercial activity permit on the effective date of these rules.
  - (3) All available commercial activity permits may be issued in accordance with section 13-231-60.
  - (4) Reissuance of commercial activity permits shall be in accordance with section 13-231-61.
  - (5) Commercial barges, or vessels otherwise allowed by the department, may only utilize Zones 'A' and 'B'.
  - (6) All commercial vessel activity is prohibited from Zones 'C' and 'D'.

- (7) Commercial waterskiing commercial activity permittees shall abide by the requirements described in subsection (g).
- (8) Commercial manually-propelled vessel commercial activity permittees shall abide by the requirements described in subsection (f).
- (f) Commercial manually-propelled vessel requirements for the Wailua River.
  - (1) Not more than fifteen manually-propelled vessel commercial activity permits, with a maximum of twelve vessels per commercial activity permit per day, and with a maximum of four guides per permit, may be issued for guided tours for the Wailua River.
  - (2) Not more than four manually-propelled vessel commercial activity permits, with a maximum of six vessels per commercial activity permit, may be issued for rented manually-propelled vessels for the Wailua River.
  - (3) In addition to the provisions in subsection (e) (1), manually-propelled vessel commercial activity permittees utilizing the Wailua River shall abide by the following:
    - (A) For guided tours, a minimum of one tour guide shall be required for each group of twelve people;
    - (B) Tour guides shall be required to wear a bright orange shirt with the company name printed on the shirt when guiding tours; and
    - (C) All commercial manually-propelled [~~vessels~~] vessel permittees shall be provided a Wailua River restricted area decal for each commercial manually-propelled vessel and shall be required to display it on the bow of the vessel.
- (g) Waterskiing activity requirements for the Wailua River.
  - (1) Waterskiing may be conducted in Zone 'A' in an area designated by the department, as shown in Exhibit "L-1", titled "Island of

Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter, and shall be prohibited in Zone 'C'.

- (2) Waterskiing may be conducted in Zone 'B' only between sunrise to 9:00 a.m. and from 5:00 p.m. to sunset.
- (3) A maximum of one commercial activity permit may be issued for waterskiing activities.
- (4) The vessel towing water skiers may tow not more than one person at any one time.
- (5) Waterskiing shall be conducted in accordance with section 13-244-18.
- (6) Waterskiing activities shall be exempt from the speed restrictions of section 13-244-9.
- (7) Waterskiing vessel traffic patterns shall be in a counter-clockwise direction.(8)  
Waterskiing tow ropes shall not exceed seventy-five feet in length.
- (9) Vessels engaged in waterskiing activities shall not exceed a speed of thirty-six miles per hour.
- (10) The only water [~~water~~] towing apparatus allowed shall be those equipped with boots, straps, or a leash on the board or ski.
- (h) Launch ramp restrictions.
  - (1) All commercial vessels are prohibited from utilizing Launch ramp 'A', as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter, and shall be required to utilize Launch ramp 'B', as shown in Exhibit "L-1," titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.
  - (i) The eastern half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this



subchapter, shall be used exclusively for the launching and recovery of Hawaiian outrigger canoes.

(j) The western half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A', "dated February 27, 1998, and located at the end of this subchapter, may be utilized by recreational vessels, other than Hawaiian outrigger canoes, allowed on Wailua River." [Eff 10/19/02; am \_\_\_\_\_]  
 (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)  
 (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

57. Section 13-256-63, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-63 Sharks Cove, Three Tables and Waimea Bay ocean waters. (a) Sharks Cove, Three Tables and Waimea Bay ocean waters means the area confined by the boundaries shown on Exhibit "Q", titled "Ocean Recreation Management Areas, Sharks Cove, Three Tables and Waimea Bay ocean waters", dated October 20, 2000, and located at the end of this subchapter.

- (1) Zone 'A' begins at a point in the water at approximately 21°38.296 N, 158°04.092 W, then in a northerly direction along the shoreline to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a straight line in a southwesterly direction for approximately one thousand eight hundred thirty-seven feet back to the point of origin.
- (2) Zone 'B' begins at a point in the water Three Tables Point at approximately 21°38.751 N, 158°03.925 W; then along the shoreline in a northeasterly direction to a point in the water at approximately 21°39.010 N, 158°03.842 W, then due west to approximately 21°39.010 N, 158°03.874 W, then in a straight line in a southwesterly direction back to the point of origin.
- (3) Zone 'C' begins at a point in the water at approximately 21°39.010 N, 158°03.842 W,

then in a northerly direction along the shoreline to Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then in a straight line in a southwesterly direction to approximately 21°39.010 N, 158°03.874 W, then in a straight line due east back to the point of origin.

- (4) Zone 'D' begins at Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then due west for one hundred yards, then in a straight line in a southwesterly direction to the Wananapaoa Islet at approximately 21°38.340 N, 158°04.198 W, then in a straight line in a southeasterly direction to 21°38.296 N, 158°04.092 W, then in a straight line in the northeasterly direction to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a northeasterly direction along the shoreline to approximately 21°38.751 N, 158°03.925 W and then in a straight line in a northeasterly direction to the point of origin.
- (b) Following are restrictions for Zone 'A':
- (1) Except where permitted by law, motorized vessels, except sailing vessels with auxiliary engines, are prohibited in Zone 'A'.
- (2) Sailing vessels with auxiliary engines shall be required to enter and leave Zone 'A' on sail power or by oar only.
- (3) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline of Zone 'A'.
- (4) Any vessel anchoring within Zone 'A' shall be prohibited from anchoring within two hundred feet of the shoreline and shall anchor only in sandy areas.
- (5) All vessels shall proceed at a speed of slow-no-wake, as defined in section [~~13-250-5~~] 13-230-8, when in Zone 'A'.
- (c) Following are restrictions for Zone 'B':

- (1) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline in Zone 'B'.
- (2) Except where permitted by law, motorized vessels, including sailing vessels with auxiliary engines, are prohibited in Zone 'B'.
- (d) ~~[Following are restrictions for Zone 'C':~~  
(1) Except where permitted by law, all vessels are prohibited from embarking or disembarking from the shoreline into Zone 'C'.
- (e) In addition to any federal, state or county law, rule, permit or ordinance requirements, a commercial activity permit shall be required to conduct commercial SCUBA or commercial snorkeling activities in Zone 'C,' issued by the department. This applies to all for-profit and not-for-profit companies or organizations. Allocation of the commercial activity permits shall be in accordance with section 13-231-60 and the applicant shall submit the following with the application:
  - (1) A list of all instructors or guides to be named on the commercial activity permit. The onus shall be on the commercial activity permittee to update any additions or deletions of the names of the persons utilized for instruction or guided tours;
  - (2) Proof of insurance, as described in section 13-231-65, for each individual listed on the commercial activity permit;
  - (3) A copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;
  - (4) Vehicle license numbers for vehicles utilized for shuttling customers; and
  - (5) Proof of a leadership level professional credential, i.e., dive master or above, from an internationally recognized SCUBA diving training agency, e.g., PADI, for each instructor or guide listed on the commercial activity permit for commercial SCUBA and snorkeling activities.

(f) Commercial activity permits for commercial SCUBA or snorkeling activities shall be valid for a period not to exceed one year.

(g) Renewal of a commercial activity permit shall be in accordance with section 13-231-61, except that subsection (b)(1), (4) and (8) shall not apply. The minimum revenue standard shall be the fees provided in subsection (j).

(h) A yearly non-refundable commercial activity permit application fee of \$50 shall be paid at the time the application is submitted.

(i) In addition to the commercial activity permit described in subsection (e), a use permit, as described in subsection (j) shall be required when using Zone 'C'.

(j) A maximum of six use permits, with a combination of commercial activity permittees and customers not to exceed ten individuals, including instructors and assistants per use permit, shall be issued for any one of three time periods and the permittee shall only be allowed to use Zone 'C' during the periods reserved by the permittee via a reservation system established by the department.

(k) Use permit fees, that shall be paid in full at the time of the reservation for use periods, shall be as follows:

- (1) A seasonal user fee of \$420 or
- (2) A monthly user fee of \$75; or
- (3) A weekly user fee of \$56; or
- (4) A daily user fee of \$10.

(l) Individuals who possess a commercial activity permit and pay fees in accordance with section 13-234-25, shall be exempt from the fee requirements provided in subsection (k) but shall be required to make reservations as described in subsection (j).

(m) Commercial activities may be allowed from April 1st through October 31st of each year but shall be prohibited between the hours of 9:00 p.m. to 8:00 a.m. and from November 1st through March 31st of each year.

(n) Individuals conducting instruction or guided tours shall be required to make available to representatives of the department a copy of the use permit upon demand.

(o) Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules shall be subject to fines as prescribed in sections 200-14, 200-14.5, and 200-25, [HRS] Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.

(p) Commercial activity permittees shall make available to customers maps or charts that show the boundaries of the area(s), outlined restricted zones, and dangerous areas and conditions and shall establish an education program acceptable to the department addressing the historical, cultural, ecological significance of the area, and any rules or laws pertaining to protected species and marine resource conservation etiquette.

(q) Unless otherwise allowed by the County, commercial activity permittees shall be required to shuttle their customers to and from the parking area fronting Zone 'C', when utilizing Shark's Cove for commercial activities.

(r) Following are restrictions for Zone 'D' [-] :

(1) All vessels shall proceed at a speed of slow-no-wake, as defined in section [~~13-250-5~~] 13-230-8, when in Zone 'D'.

(2) When installed, all vessels mooring in Zone 'D' shall utilize day-use-moorings or shall anchor in sandy areas.

(s) Individuals conducting special events in Zones 'A', 'B', 'C' or 'D', shall be required to obtain a special events permit in accordance with 13-244-19." [Eff 2/24/94; am 4/27/02; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

58. Section 13-256-73.5, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-73.5 Large snorkel tour permit restrictions. (a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe [By] Bay waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized

vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted." [Eff 11/7/11; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

59. Section 13-256-74, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-74 Kailua Ocean Waters Restricted Zones. (a) Zone A Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the extension of the western boundary of Kailua Beach Park; then along the low water mark of the shoreline in a eastern direction for a distance of three hundred feet; then by azimuth measured clockwise from True South, 180 degrees for a distance of one thousand one hundred fifty feet; 090 degrees for a distance of three hundred feet; then by a straight line to the point of beginning.

Zone A Kailua ocean waters restricted zone is designated for windsurfing. No person shall operate a ~~[motor vessel]~~ motorboat and no person shall swim in the zone when used by windsurfers.

~~[-(e)]~~ (b) Zone B Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the center of the bridge of Kawailoa Road at the entrance to Kaelepulei Pond; then for fifty feet either side of a line by azimuth measured clockwise from True South, 240 degrees for a distance of one thousand feet.

Zone B Kailua ocean waters restricted zone is designated an ingress/egress zone for manually propelled vessels. Swimming in the zone is prohibited when in use by vessels." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4)  
(Imp: HRS §§200-2, 200-3, 200-4)

60. Section 13-256-88, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-88 Maunalua Bay waters. (a) Maunalua Bay waters means the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the southern point on the shoreline of Kawaihoa Point, then by azimuth



measured clockwise from True South, 107 degrees for a distance of seventeen thousand and eighty-five feet to the southwestern tip of Wailupe Peninsula, then along the shoreline of Maunalua Bay to the point of beginning.

(b) Commercial ocean recreation activities shall be restricted within Maunalua Bay waters as follows:

- (1) No commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a [~~motor vessel~~] motorboat towing a person engaged in water sledding during all weekends, and state or federal holidays.
- (2) All commercial ocean recreation activities in Maunalua Bay waters are prohibited on Sunday, effective January 1, 1991.

(c) Zone A Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 325 degrees for a distance of two thousand three hundred twenty-five feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(d) Zone B Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 330 degrees for a distance of one thousand six hundred eighty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(e) Zone C Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 340 degrees for a distance of two thousand five hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zones A, B and C are designated commercial thrill craft operating zones. No commercial operator permittee shall operate more than six rental thrill craft within each designated area at any one time. No commercial thrill craft shall be operated within Zones A, B and C except between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Fridays. No commercial thrill craft shall be operated within Zones A, B and C on Saturdays, Sundays and state or federal holidays.

(f) Zone D Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 012 degrees for a distance of seven hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zone D is designated a recreational thrill craft operating zone for use by inexperienced operators only. Commercial thrill craft operations are prohibited.

(g) Zone E Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South 076 degrees for a distance of four thousand one hundred feet from Buoy "1", then 076 degrees for a distance of eight thousand four hundred feet; 168 degrees for a distance of one thousand four hundred fifty-five feet; 259 degrees for a distance of eight thousand five hundred eighty feet; then in a straight line to the point of beginning.

Zone E is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft within this area. Other vessels shall exercise caution when transiting this area. This zone shall be closed to all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(h) Zone F Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water at Buoy "1", by azimuth measured clockwise from True South, then 157 degrees for a distance of one thousand nine hundred thirty-five feet; 092 degrees for a distance of one thousand nine hundred five feet; 085 degrees for a distance of three thousand three hundred feet; 075 degrees for a distance of four thousand two hundred eighteen feet; 347 degrees for a distance of two thousand four hundred feet; 259 degrees for a distance of eight thousand eight hundred eighty feet; 000 degrees for a distance of eight hundred eighty-five feet; then by a straight line to a point of beginning.

No person shall operate a vessel within this area at a speed in excess of slow-no-wake. This is a green sea turtle resting and foraging area.

(i) Zone G Maunaloa Bay Parasail Zone is the area encompassed by the boundaries shown of the zone on Exhibit "FF", dated May 15, 1990, and located at

the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at entrance buoy "1" to the Hawaii-Kai Marina and Maunalua Bay boat launching ramp, establishing the eastern boundary along the extended centerline of the Ku'i channel entrance; then by straight line to buoy R-2 off Diamond Head, establishing the western boundary.

Zone G Maunalua Bay Parasail Zone is designated for parasail operations. All operating parasail vessels shall remain seaward of the boundary line. No more than two commercial operating area use permits for parasailing operations shall be authorized for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. No person shall operate within one thousand feet of any buoy when the parasail is aloft. All other vessels using this area shall exercise extreme caution. This zone, except for that portion which is encompassed by alternate parasail zone G1, shall be closed to parasail operations from January 6 to May 15 of each year.

(j) Zone G1 Maunalua Bay Alternate Parasail Zone is the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G1 are as follows:

Beginning at a point on the [~~the~~] eastern boundary of Zone G at the intersection of the straight line following a line from Kawaihoa Point at Koko Head to buoy R-2 off Diamond Head, establishing the shoreward boundary; then at a point on the shoreward boundary intersected by a line on a bearing of 000 degrees to the Kahala Hilton Hotel establishing the western boundary.

Zone G1 Maunalua Bay Alternate Parasail Zone is that portion of parasail Zone G which is designated for parasail operations from January 6 to May 15 of each year. No permittee shall operate more than one parasail vessel within this zone during this period. No parasail vessel shall exceed the speed of 18 knots

within this zone. All other vessels using this area shall exercise caution.

(k) Zone H Ingress-egress corridor means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point at the shoreward western boundary of Maunalua Beach Park boat ramp; then by azimuth measured clockwise from True South, 120 degrees for a distance of seventy-five feet, 030 degrees for a distance of one hundred feet to a point in the water; 120 degrees for a distance of one hundred feet to a point in the water; 218 degrees for distance of one hundred feet to a point on land; then in a straight line to the point of beginning.

Zone H is designated for recreational thrill craft ingress-egress to the ocean waters of Maunalua Bay. No person shall operate or moor a vessel, surfboard, or sailboard within this area.

(l) Zone I means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water 270 degrees by azimuth measured clockwise from True South, at a distance of twenty-five feet from daybeacon R"2" of Ku'i channel; then 270 degrees for a distance of three hundred feet, 025 degrees for a distance of one thousand one hundred twenty-five feet; 090 degrees for a distance of three hundred feet; then in a straight line to the point of beginning.

Zone I is designated for recreational water skiing and commercial water sledding. Only one commercial operating area use permit shall be issued for this zone for safety purposes.

(m) Maunalua Bay, Ku'i Channel speed restrictions.

- (1) The speed of any watercraft shall not exceed 10 knots when within the confines of the Ku'i channel as shown on Exhibit "GG" dated May 15, 1990, and described as follows:

Beginning at a line drawn between buoys R "2" and G"1A", then through each and every daybeacon in ascending order to daybeacons R"8" and G"9".

- (2) The speed of any watercraft shall not exceed 5 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a line drawn between buoys R"8" and G"9", then through each and every daybeacon and buoy in ascending order to the boundaries of Hawaii Kai Marina Bridge, May Way Bridge and Kuli'ou'ou stream." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

61. Section 13-256-91, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-91 Waikiki Ocean Waters Restricted Zones. (a) Waikiki Speed Zone.

- (1) Waikiki speed zone means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water of the shoreline at the southern tip of Magic Island on a straight line to the Ala Wai Entrance Buoy G "1", then on a straight line to Diamond Head Buoy R "2", then on a straight line toward Diamond Head Lighthouse to intersect the Diamond Head windsurfing zone boundary, then along the boundary to the low water mark at Diamond Head Beach

Park, then along the low water mark following the shoreline to the point of beginning.

(2) Restriction. No person shall operate a vessel or watercraft within the Waikiki speed zone at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers.

- (b) Waikiki Commercial Thrill Craft Zone A.
- (1) Waikiki Thrill Craft Zone A means the area confined by the boundaries shown on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 045 degrees for a distance of three thousand six hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

- (c) Waikiki Commercial Thrill Craft Zone B.
- (1) Waikiki Commercial Thrill Craft Zone B means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 025 degrees for a distance of three thousand eight hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

- (d) Restrictions. Waikiki Commercial Thrill Craft Zone A and Zone B are designated commercial thrill craft areas. No commercial operator permittee shall operate more than six rented thrill craft within

[~~it~~] its assigned area at any one time." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-23, 200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

62. Section 13-256-112, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-112 Maui Humpback whale protected waters. The Maui Humpback whale protected waters means the area encompassed by the boundaries shown on Exhibit "00-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the shoreline of the southwestern tip of Puu Olai Point, then by azimuths measured clockwise from True South, 082 degrees for a distance of two nautical miles; 141 degrees for a distance of nineteen nautical miles; 164 degrees for a distance of three nautical miles; 184 degrees for a distance of two and five-tenths nautical miles; 200 degrees for a distance of four and three-tenths nautical miles; 295 degrees to Hawea Point; then along the shoreline of west and south Maui to the point of beginning.

Between December 15 and May 15 of the following year during the whale season, no person shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a [~~motor vessel~~] motorboat towing a person engaged in water sledding or parasailing within this area." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

63. Section 13-256-128, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-128 Baldwin Park-Paia Bay Restricted Area. (a) The Baldwin Park-Paia Bay restricted area means the area confined by the boundaries shown for said zone on Exhibit "XX/YY", dated August 23, 1988,



located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark at the northern tip of Fly Water Point, then by azimuth measured clockwise from True South, 157 degrees for a distance of five hundred feet; 070 degrees for a distance of six thousand two hundred feet; 344 degrees to the low water mark of the shoreline; then along the low water mark of the shoreline in an easterly direction to the point of beginning.

(b) Restrictions. The Baldwin Park-Paia Bay restricted area is designated for swimming, diving and fishing. No person shall operate a [~~motor vessel~~] motorboat at a speed in excess of slow-no-wake, or operate a sailboard within this area." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

64. Section 13-256-162, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-162 Makaiwa Bay Swimming Zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northwestern tip to the entrance of the boat ramp; then by azimuth measured clockwise from True South, 110 degrees for a distance of seven hundred ten feet to a point of low water of the shoreline; then along the shoreline in a south and easterly direction to the point of beginning.

(b) Zone B.

(1) Zone B means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northeastern tip to the entrance of the boat ramp; then by azimuth measured clockwise from True South, 226 degrees for a distance of five hundred forty feet to a point of low water of the shoreline; then along the shoreline in a south and westerly direction to the point of beginning.

(c) Restrictions. The Makaiwa Bay swimming zones A and B are designated for swimming and diving. No person shall operate or moor a [~~motor vessel~~] motorboat within this zone." [Eff 2/24/94; am \_\_\_\_\_] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: §§200-2, 200-3, 200-4)

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

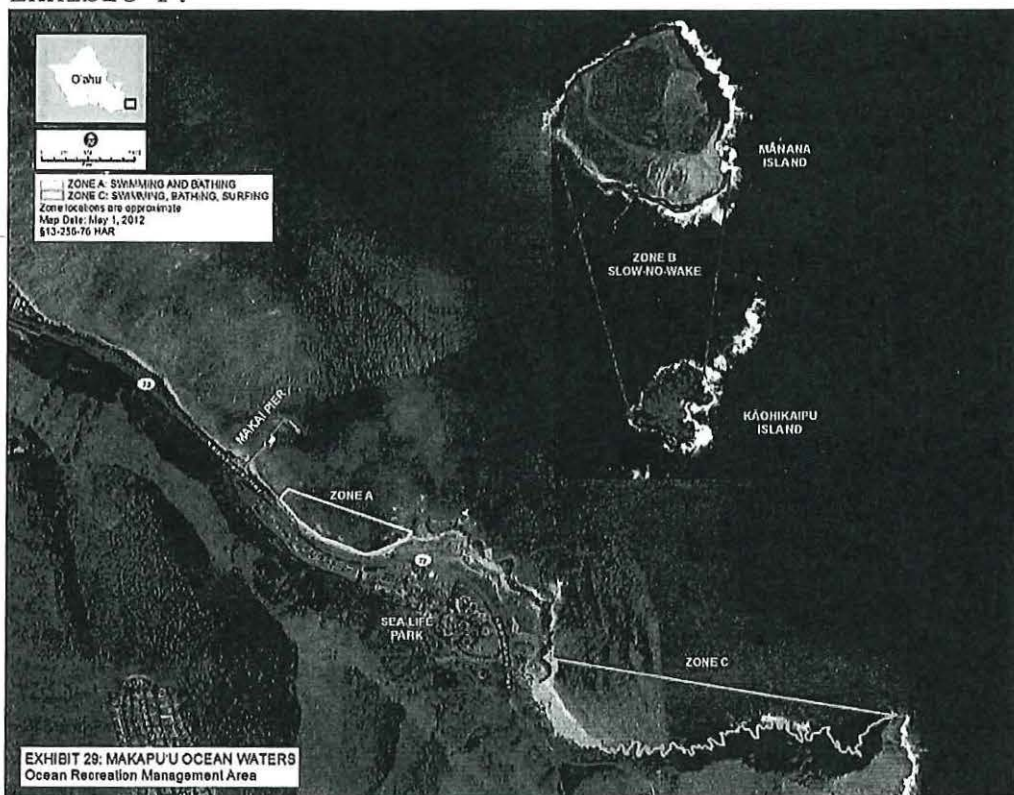
66. Additions to update source notes to reflect this amendment is not underscored.

67. The amendments to chapters 13-230, 13-231, 13-232, 13-233, 13-235, 13-240, 13-242, 13-243, 13-244, 13-245, 13-250, 13-251, 13-253, 13-254, 13-255, 13-256, 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

Exhibit F:



### **III. Old Business**

#### C. Discussion and Action on the Small Business

Statement After Public Hearing and Proposed

Amendments to Title 15, Chapter 218, **Kakaako**

**Reserved & Workforce Housing Rules**, promulgated  
by HCDA / DBEDT



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



David Y. Ige  
Governor

John Whalen  
Chairperson

Jesse K. Souki  
Executive Director

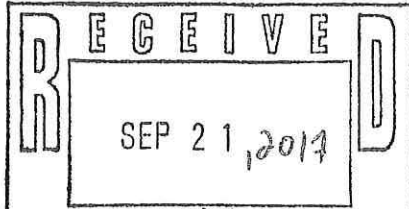
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SBR22

Ref. No.: GF PRA 16-10.218.1

September 15, 2017

To: The Honorable David Y. Ige  
Governor of Hawaii

From: Jesse K. Souki, Executive Director  
Hawaii Community Development Authority 

Subject: Final Approval of the Amendments to Hawaii Administrative Rules  
(HAR) Chapter 15-218, Relating to the Kakaako Reserved Housing  
Rules of the Hawaii Community Development Authority

Pursuant to Administrative Directive No. 09-01, the Authority is requesting your approval of the enclosed Amendments to HAR Chapter 15-218, Kakaako Reserved Housing Rules. Your approval to conduct a public hearing on the Amendments was received on October 21, 2016.

In accordance with Hawaii Revised Statutes Section 206E-5.6, the Authority held two public hearings on the Amendments. The public hearings were held on August 16 and September 6, 2017. Notice was published in newspapers of general circulation in all the counties with a link to the Amendments that were posted online. All public testimony received for this version of the Amendments was considered before the Authority adopted the Amendments at a public hearing on September 6, 2017. A summary of testimonies received and staff analysis of the testimonies is provided as Exhibit A.

In addition to the legally required hearings, the Amendments before the Authority were shaped by formal public hearings on March 28, May 3, May 17, May 31, and various public meetings and stakeholder input as early as May 7, 2014, when the Authority first decided at a public meeting that it would initiate rulemaking on this matter. Information and materials are archived online at <http://dbedt.hawaii.gov/hcda/2017-reserved-housing-rules-proposed-amendments/>.

Among other things, the Amendments include the following:

- Preserves affordable for-sale and rental units produced under the Authority's mandatory Reserved Housing and voluntary Workforce Housing programs for 30 years;
- Relaxes off-street parking requirements;

- Allows cash-in-lieu payment as an alternative to built units;
- Removes restriction preventing Workforce Housing program from receiving financial assistance from county, state, and federal sources;
- Reduces sales price from a fixed 140 percent of adjusted median income (AMI) to 120 percent of AMI on average of all Reserved Housing or Workforce Housing units in a project;
- Applies the existing protections for Reserved Housing units to Workforce Housing units to ensure more affordable units are preserved, including the buy-back provision for resale by the Authority to other families needing affordable units, the 30-year requirement discussed above, and shared equity to ensure a portion of the public's investment is returned to the Authority's housing programs and the buyer is able to benefit from a portion of the accumulated equity;
- Allows the Authority to designate another buyer for the affordable units, like a land trust, to ensure long-term affordability; and
- Clarifies certain definitions and existing provisions.

The Amendments do not affect existing incentives and bonuses, like the 100 percent bonus developable area under the voluntary Workforce Housing program that is an allowed deviation from the community development plan in exchange for affordable units. Or, the fact that project area set aside for affordable units are not used to compute public facilities fees and other rule based requirements.

The Attorney General's Office has reviewed the proposed Amendments and has signed off as to form.

The Amendments were presented to the Small Business Regulatory Review Board (SBRRB) at its September 21, 2016 meeting. The SBRRB subsequently approved the Authority's request to proceed with the public hearings. SBRRB is copied on this transmittal.

Please contact me at 594-0320 (desk), 824-0392 (mobile), or by email at [jesse.k.souki@hawaii.gov](mailto:jesse.k.souki@hawaii.gov) if you require additional information.

Exhibit A-Summary of Public Testimony and HCDA Staff Analysis

Attachment: (1) 3 sets of the Amendments to HAR Chapter 15-218, Kakaako Reserved Housing Rules

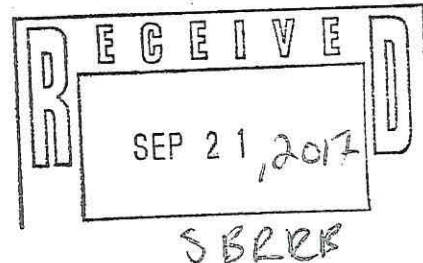
c: Small Business Regulatory Review Board, DBEDT ✓

## Summary of Public Testimony and HCDA Staff Analysis

Proposed Amendment	Public Testimony	HCDA Staff Analysis
§ 15-218-5 "Moderate-income household" means a household whose household income is greater than eighty percent but does not exceed one hundred forty percent of the area median income.	Moderate income should be 120% of AMI or below.	The term "moderate income" is not defined for HCDA by statute. HHFDC defines "moderate income" households as those earning above 120% up to 140% of AMI (HAR§15-307-2). City and County of Honolulu Affordable Housing Rules for Unilateral Agreements defines moderate income household as "a household whose income is greater than 80%, but which does not exceed 140% of the AMI". HUD guidelines also include household income of 140% or greater, depending on the locality, within the definition of "moderate income".
§15-218-19 Unit Type and Corresponding Factor	Remove proposed unit size factor.	Section 15-218-19 provides incentive if developers provide larger reserve housing units. The unit type and corresponding factor also act as a higher multiplier factor in determining sales price of the unit for larger units thus providing financial incentives to developers.
§15-218-20 Occupancy guidelines for sale or rental of reserved housing units	Remove Occupancy Guidelines	Section 15-218-20 is a guideline for developers to be utilized when the number of applications for a reserved housing units exceed the number and type of reserved housing units available. It allows for families to purchase a reserved housing unit based on family size. It can be modified by the Authority, if necessary.
§15-218-34 Maximum allowable sales price for reserved and workforce housing calculated based on an AMI of no more than 140%, provided that the weighted average sales of all reserved housing or workforce housing units shall be the price calculated based on an AMI of no more than 120%	Since moderate income should be 120% of AMI or below, the maximum sales price should be based on 120% of AMI rather than 140% of AMI	Limiting the weighted average sales price to 120% of AMI as proposed; will result in at least 50% of the required reserved housing units priced at or below 120% of AMI. Similarly at least 50% of the workforce housing units will be priced at or below 120% of AMI. Limiting the maximum allowable sales price to 120% of AMI, as suggested, could make projects financially unfeasible and/or unattractive to a developer, therefore, impacting the production of reserved or workforce housing units.
§15-218-35 Terms of Reserved Housing and Workforce Housing for sale. (1) The Authority or an entity approved by the Authority shall have the first option to purchase. (2) Buyback price based on the original fair market value of the unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors. (3) Subsequent mortgage placed on reserved housing or workforce housing unit by the owner shall not exceed eighty percent of the original price and require approval by the executive director.	(1) Imposing buyback with no term limit and requiring equity sharing with the HCDA could hamper the ability to sell such mortgages into secondary market such as Fannie Mae, Freddie Mac, VA, and FHA. (2) Use of price index fails to provide true and accurate representation of the reserved housing units in Kakaako and serves to limit purchasers upside potential associated with owning reserved housing units. (3) Acts as disincentive for owners of reserved housing or workforce housing owners to maintain or make improvements to the units, especially when combined with the buyback provisions. (4) Wording in §15-218-35(c) appears to indicate that improvements made by the owner will not be considered in determining buyback price.	(1) Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Mauka Area Rules) since the rules were first adopted in the early 1980s. In the sale and resale of reserved housing units over the years, concerns regarding secondary market such as Freddie Mac, Fannie Mae, VA, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, VA and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies. In a telephone conference held between Freddie Mac representative, Mortgage Bankers Association of Hawaii, and HCDA staff on June 5, 2017, the Freddie Mac representative indicated that a longer regulated term will not hamper the ability for financial institutions to sell mortgages in a secondary market. In fact, Freddie Mac would prefer a longer regulated term. Considering all testimonies provided on this matter the regulated term for buyback was changed to 30 years instead of continuous buyback. (2) In the proposed rule amendment, the buyback price is calculated based on annual median sales price percent change for condominiums published by the Honolulu Board of Realtor (HBR). The past 30 year of annual median sales price change data for condominiums published by HBR shows an annual return of 4.7%. The proposed formula for calculating buyback price provides good return to the reserved housing owner on his/her equity in the reserved housing unit. Additionally, buyback by the HCDA will not necessitate the reserved housing owner to engage a real estate broker for the sales, thus resulting in substantive savings for the owner. (3) The intent of the provision is to protect HCDA's shared equity in the unit, which could be achieved by modifying the provision in a manner where the amount of subsequent mortgage is no more than the fair market value of the unit minus HCDA equity sharing. Based on testimonies provided on this provision,

Exhibit A

Page 1 of 4



		<p>the limit on second mortgage placed on a RH or Workforce housing unit was changed from 80% of original sale price to the buyback price established by the HCDA.</p> <p>(4) The intent is to include the value of owner improvements in calculating buyback price. The language in §15-218-35(c) will be modified to include that.</p>
§15-218-41 Equity Sharing Requirements.	<p>(1) Imposing buyback with no term limit and requiring equity sharing with the HCDA could hamper the ability to sell such mortgages into secondary market such as Fannie Mae, Freddie Mac, VA, and FHA.</p> <p>(2) Equity sharing and buyback provisions will make reserved housing and workforce housing units unattractive to buyers and decrease the buyer pool.</p> <p>(3) Buyback price formula will not allow owners of reserved housing or workforce housing to realize the maximum financial gain from sale of the unit.</p>	<p>(1) Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Mauka Area Rules) since the rules were first adopted in the early 1980s. In the sale and resale of reserved housing units over the years, concerns regarding secondary market such as Freddie Mac, Fannie Mae, VA, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, VA and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies. In a telephone conference held between Freddie Mac representative, Mortgage Bankers Association of Hawaii, and HCDA staff on June 5, 2017, the Freddie Mac representative indicated that a longer regulated term will not hamper the ability for financial institutions to sell mortgages in a secondary market. In fact, Freddie Mac would prefer a longer regulated term. Considering all testimonies provided on this matter the regulated term for buyback was changed to 30 years instead of continuous buyback.</p> <p>(2) The purpose of reserved housing program is to provide housing opportunity for low to moderate income households. Workforce housing is a voluntary program and not a requirement on the developer. The sale of reserved housing units in projects such as the Symphony, and Ke Kiihana indicates that there are buyers that are very willing to purchase reserved housing units with equity sharing and buyback restrictions.</p> <p>(3) The purpose of reserved housing program is to provide housing opportunity for low to moderate income households. Workforce housing is a voluntary program and not a requirement on the developer. The buyback price formula is equitable and provides for substantial gain by the owners in case of buyback, while preserving the public's interest in preserving affordability.</p>
§15-218-46 Cash-in-lieu. Cash-in-lieu is based on higher of (a) 7% of gross revenue of the project; or (b) difference between the average fair market value of the unit and average reserved housing sales price multiplied by the number of reserved housing units required.	<p>Cash-in-lieu requirement shall not be less than the cost to build a reserved housing or workforce housing unit. Oppose proposed cash-in-lieu formula.</p>	<p>The proposed cash-in-lieu formula is based on a sliding scale. Projects with luxury units will be subject to higher cash-in-lieu payment than projects that are affordable to household incomes closer to 140% of AMI. Several cities, including Boston, San Francisco, and Denver utilize a similar formula.</p>
General.	<p>(1) Decision making on reserved housing rules amendment should be postponed to provide small landowners/stakeholders in the central and mauka area of the Kakaako Community Development District more time to evaluate the impact of the proposed amendments on properties, businesses, and people.</p> <p>(2) It is not prudent to place additional regulation and restrictions on the housing market that benefits working class and first-time home buyers. Buyback and equity sharing provisions may have unforeseen consequences.</p> <p>(3) To address the current housing crisis there needs to be a shift in focus of how government views housing development and move from regulatory</p>	<p>(1) Several meetings were held by HCDA staff and HCDA Reserved Housing Taskforce with stake holders to discuss proposed Reserved Housing Rules amendments. In addition Kakaako Reserved Housing Rules amendment was discussed at the Authority's public meetings on March 1, 2015; May 6, 2015, September 2, 2015; February 3, 2016; July 7, 2016; September 7, 2016; January 4, 2017; and March 1, 2017. Various stakeholders were also contacted by HCDA staff by email and provided information on Kakaako Reserved Housing Rules amendments. In addition 4 separate public hearing were scheduled to collect public testimony, beyond the 2 hearings required by law.</p> <p>(2) The proposed rule amendments provide opportunity for "moderate to low income" households to become home owners. It also ensures long-term affordability of reserved housing units. Without the proposed maximum allowable pricing, qualifying income, equity sharing, and buyback provisions, reserved housing and workforce housing units will be sold at market.</p> <p>(3) The proposed rule amendments provide substantial incentives to the developer for producing reserved housing units. These incentives are: (a) 20% floor area bonus for providing reserved housing, (b) 100% floor area bonus for workforce housing projects, (c) no public facilities dedication fee requirement for reserved housing and workforce housing, (d) flexibility in providing off street parking and loading, (e)</p>



stance to production oriented stance. The proposed amendments revert to inclusionary zoning and exaction process that have proven ineffective over time. Incentivize the developers to build more affordable housing using one or more of the following incentive: (a) access to infrastructure, (b) density bonus, (c) waiver of sewer, water, and permitting fees, (d) waiver of GET, (e) waiver of real property taxes for a fixed period of time.

(4) Make creative rules that encourage development of affordable housing instead of making the task more difficult by placing increased burden on residential developments community and un-subsidized buyers. Spread affordable housing requirement to all new projects including retail, commercial, and hotel development.

(5) The HCDA should consider amendments to its administrative rules that provide for hardships concerning share appreciation equity policies and programs. The HCDA may wish to consider amendments similar to those promulgated by HHFDC.

(6) Supports the provision of a maximum sale or rental amount equal to a weighted average of no more than 120% of area median income (AMI) for all reserved and workforce housing units. Would not be opposed to if the weighted average was lowered to 110% of AMI. Kakaako was envisioned as a mixed use mixed income community and the Authority should reinforce housing policies that support mixed income community in the district.

(7) Opposes change of percentage of reserved housing units required if the units are provided as rental reserved housing unit. The proposed amendment requires 20% instead of the current 15%.

(8) Opposes provisions of §15-218-30(b).

(9) Opposes provisions of §15-218-35(c), §15-218-41, and §15-218-42. No appreciation for affordable housing should accrue to the owners because it is a transfer of wealth from everyone in the state to a few lucky individuals. The Authority should be able to purchase the unit at the original sale price. No equity should be shared and all equity increase should go to the Authority. Deferral of first option to purchase and equity sharing will create legacy

additional building height, and (f) flexibility in yard setbacks. Additionally, the HCDA invested over \$225 million in infrastructure improvement in the Kakaako Community Development District to encourage development. Through the provisions of Hawaii Revised Statutes Section 201H-38, a developer can receive exemptions from permit fees and waivers from City & County and HCDA zoning requirements for affordable housing projects. Waiver of GET and property tax is also available for affordable housing projects. There are a number of incentives that are already available to developers for developing affordable housing projects.

(4) Since over 80% of redevelopment in the Kakaako Community Development District is residential development, imposing reserved housing requirement on commercial, retail, and hotel projects will not result in any significant gain in reserved housing units. It will not lighten the burden on residential projects.

(5) The comment pertains to provisions of §15-218-35(d) and §15-218-42. §15-218-35(d) has been amended to provide that any subsequent mortgage placed on the reserved housing or workforce housing unit shall not exceed the buyback price established by the Authority. Previously the provision limited the amount of subsequent mortgage placed on the reserved housing unit to 80% of the original sales price. The amended language gives the owner of the reserved housing unit opportunities to benefit from owner's equity in the unit while protecting the Authority's share of equity in the unit. §14-218-42 was amended to include language from Hawaii Administrative Rules §15-307-127 (HHFDC Rules cited in the testimony).

(6) Limiting the weighted average sales price to 120% of AMI as proposed will result in at least 50% of the required reserved housing units priced at or below 120% of AMI. Similarly, at least 50% of the workforce housing units will be priced at or below 120% of AMI. The HCDA's Mauka Area Plan and Rules and the Kakaako Reserved Housing Rules implement policies that are supportive of mixed use, mixed income community in Kakaako. In the last 30 years, approximately 1,500 rental housing units that are affordable at 100% or below of area median income have been developed in Kakaako. Another 300 affordable rental housing units are scheduled to be developed in the foreseeable future increasing the supply of affordable rental units to over 1,800. This combined with over 2,000 for-sale units priced at or below 140% of AMI provides a good mix of housing for low to moderate income households. Out of approximately 11,000 housing units developed in Kakaako in the last 30 years approximately 34% is affordable for household income of 140% of AMI or below.

(7) Reserved housing units can be provided as for-sale units or rental units. The proposed amendment makes the requirement 20% of the total residential units whether the reserved housing provided are for-sale units or rental units.

(8) §15-218-30(b) allows for owners of reserved housing units to purchase a larger reserved housing unit if the owner's household size has increased. Income qualification is still required. The provision was added to encourage families to continue living in Kakaako even when their family size increased. This promotes diversity in the district.

(9) §15-218-35(c) establishes the buyback price formula and provides for opportunity for the reserved housing or workforce housing unit to build equity in the unit and benefit from the equity. It is reasonable that the owner of a reserved or workforce housing unit benefit financially from sale of the unit at a later date. The buyback formula prevents the owner from benefiting from a windfall from sale of the unit while realizing a fair return. Similarly, §15-218-41 provides for owner to benefit from equity in the unit. Provisions of §15-218-42 will create legacy units since the new buyer will have to meet income and other qualification requirements.

units where families can pass the unit from one generation to the next.

- (10) Opposes provisions of §15-218-45.
- (11) Opposes provisions of §15-218-31(d).
- (12) Supports deleting §15-218-55 to provide flexibility.
- (13) Supports §15-218-17(e) which requires developers to provide financial guarantee to the Authority for construction of reserved housing units.
- (14) Supports §15-218-18(b)(3) which provides flexibility in off street parking requirements.

- (10) §15-218-45 provides for rental of a reserved or workforce housing unit by the owner. Household income and other qualifying requirements are still applicable so the unit will still remain a qualifying reserved or workforce housing unit.
- (11) 15-218-31(d) gives priority for applicants who have been displaced from housing within the Kakaako Community Development District as a result of redevelopment. It is reasonable to provide additional opportunities for families living in Kakaako to remain in Kakaako if those families qualify to purchase a reserved or workforce housing

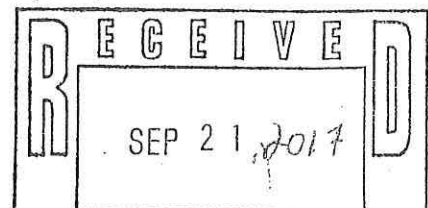
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPOMNET AND  
TOURISM

Amendments and Compilation of Chapter 15-218  
Hawaii Administrative Rules

September 6, 2017

SUMMARY

1. §15-218-1 is amended
2. §15-218-3 to §15-218-5 are amended
3. §15-218-17 and §15-218-18 are amended
4. §150218-19 to §15-218-21 are added
5. §15-218-29 to §15-218-35 are amended
6. §15-218-36 and §15-218-37 are repealed
7. §15-218-38 to §15-218-42 are amended
8. §15-218-43 is renumbered to §15-218-47 and amended
9. §15-218-44 to §15-218-46 are added
10. §15-218-48 is added
11. §15-218-55 is repealed
12. Chapter 218 is compiled



SGRRB

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 218

KAKAAKO RESERVED & WORKFORCE HOUSING RULES

Subchapter 1 General Provisions

- §15-218-1 Purpose and intent
- §15-218-2 Administration
- §15-218-3 Severability
- §15-218-4 Interpretation by the executive  
director
- §15-218-5 Definitions

§§15-218-6 to 15-218-16 (Reserved)

Subchapter 2 Reserved Housing and Workforce  
Housing Requirements

- §15-218-17 Requirement for reserved housing units
- §15-218-18 Adjustments to height, density, and  
general development requirements for  
reserved housing units
- §15-218-19 Unit type and corresponding factor
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§§15-218-22 to 15-218-28 (Reserved)

Subchapter 3    Sale and Rental of Reserved  
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Units

- §15-218-29        Purpose
- §15-218-30        General Qualifications for purchase of reserved housing and workforce housing units
- §15-218-31        Sale and rental of reserved housing and workforce housing units
- §15-218-32        Income
- §15-218-33        Occupancy requirements
- §15-218-34        Factors to be used for reserved housing and workforce housing unit sale price determination
- §15-218-35        Terms of reserved housing and workforce housing units for sale
- §15-218-36        Repealed
- §15-218-37        Repealed
- §15-218-38        Foreclosure
- §15-218-39        Transfers of title pursuant to a mortgage foreclosure
- §15-218-40        Incorporation in deed
- §15-218-41        Equity sharing requirements
- §15-218-42        Deferral of first option to purchase and equity sharing
- §15-218-43        Terms of reserved housing and workforce housing for rent
- §15-218-44        Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent
- §15-218-45        Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term
- §15-218-46        Cash-in-lieu
- §15-218-47        Effects of subsequent rule amendments
- §15-218-48        Fees for administering reserved housing and workforce housing program

§§15-218-49 to 15-218-54    (Reserved)

Subchapter 4 Repealed

§15-218-55 Repealed

Historical note: Chapter 15-218 is based substantially upon Chapter 15-22. [Eff 9/8/86; am and comp 1/28/88; am 7/28/88; am 12/10/88; am 3/9/89; am 7/8/89; am 10/28/89; am 1/29/90; am and comp 2/24/90; am 7/26/90; am 9/15/90; am 10/3/94; am 12/15/94; am 8/14/95; am 11/25/96; am 1/25/97; am 3/27/97; am 6/13/97; am 8/1/97; am 9/19/97; am 8/16/99; am 1/13/00; am 9/15/01; am 6/13/05; R 11/11/11]

## SUBCHAPTER 1

### GENERAL PROVISIONS

§15-218-1 **Purpose and intent.** Consistent with the intent of section 206E-33, Hawaii Revised Statutes, the purpose of this chapter is to establish an increased supply of housing for low-or moderate-income households within the Kakaako community development district. Such housing targeted to low-or moderate-income households, is henceforth termed "reserved housing" and "workforce housing" in the subsequent subchapters. Reserved housing shall be required as a condition of multifamily residential development or redevelopment within the Kakaako community development district. Workforce housing shall be voluntary as part of workforce housing program described in this chapter. [Eff 11/11/11; am and comp ]  
Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-2 **Administration.** The authority, through its executive director, shall administer the provisions of this chapter. [Eff 11/11/11; comp ] Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-3 **Severability.** If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective. [Eff 11/11/11; am and comp ] Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-4 Interpretation by the executive director.** (a) In administering this chapter, the executive director, when deemed necessary, may render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity, and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the problem;
- (3) A statement of interpretation; and
- (4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to this chapter shall be public record, and shall be effective on the date signed by the executive director. [Eff 11/11/11; am and comp ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-5 Definitions.** As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Area median income" means the area median family income (AMI) determined by the United States, Department of Housing and Urban Development annually for the Honolulu metropolitan statistical area as adjusted for household size.

"Authority" or "HCDA" means the Hawaii community development authority established by section 206E-3, Hawaii Revised Statutes.

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any man-made change over, upon, under, or across improved or unimproved real property within the mauka area.



"Executive director" means the executive director of the authority.

"Fair market value" means the unencumbered fair market value of a property that has no state or county restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, Hawaii Revised Statutes.

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a percent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot.

"Gross revenue" means the gross receipt from sale of all residential units, associated parking, and other common area elements in a project for the purpose of calculating cash-in-lieu payment in lieu of providing for-sale reserved housing units. For rental reserved housing, the capitalized value of net operating rent shall be utilized as gross revenue for the purpose of calculating cash-in-lieu payment.

"Household" means:

- (1) Single person;
- (2) Two or more persons regularly living together related by blood, marriage, or by operation of law;
- (3) A live-in aide, who is essential to the care and well-being of a household member subject to proper documentation and credential as a qualified caregiver; or
- (4) No more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to the authority in its sole discretion. Affidavits from family members or neighbors are not acceptable.

"Household income" means the total annual income, before taxes and personal deductions, received by all members of the applicant's household, including but not limited to wages, salaries, overtime pay, commissions, fees, tips and bonuses, compensation for

personal services, social security payments, retirement benefits, income derived from assets, cost of living allowance, net income from business or profession, unemployment benefits, welfare benefits, interest and dividend payments. Household income shall exclude income of a co-mortgagor who is not a household member, income from employment of minor children including foster children, and income from employment of full-time students under the age of twenty-three years.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States, Department of Housing and Urban Development.

"Land trust" means a recorded instrument as defined in chapter 558, HRS.

"Licensed life care facilities" means licensed assisted living facilities as defined in section 321-15.1, HRS.

"Low-income household" means a household whose household income does not exceed eighty percent of the area median income.

"Moderate-income household" means a household whose household income is greater than eighty percent but does not exceed one hundred forty percent of the area median income.

"Multi-family residential development" means residential building consisting of more than one residential unit.

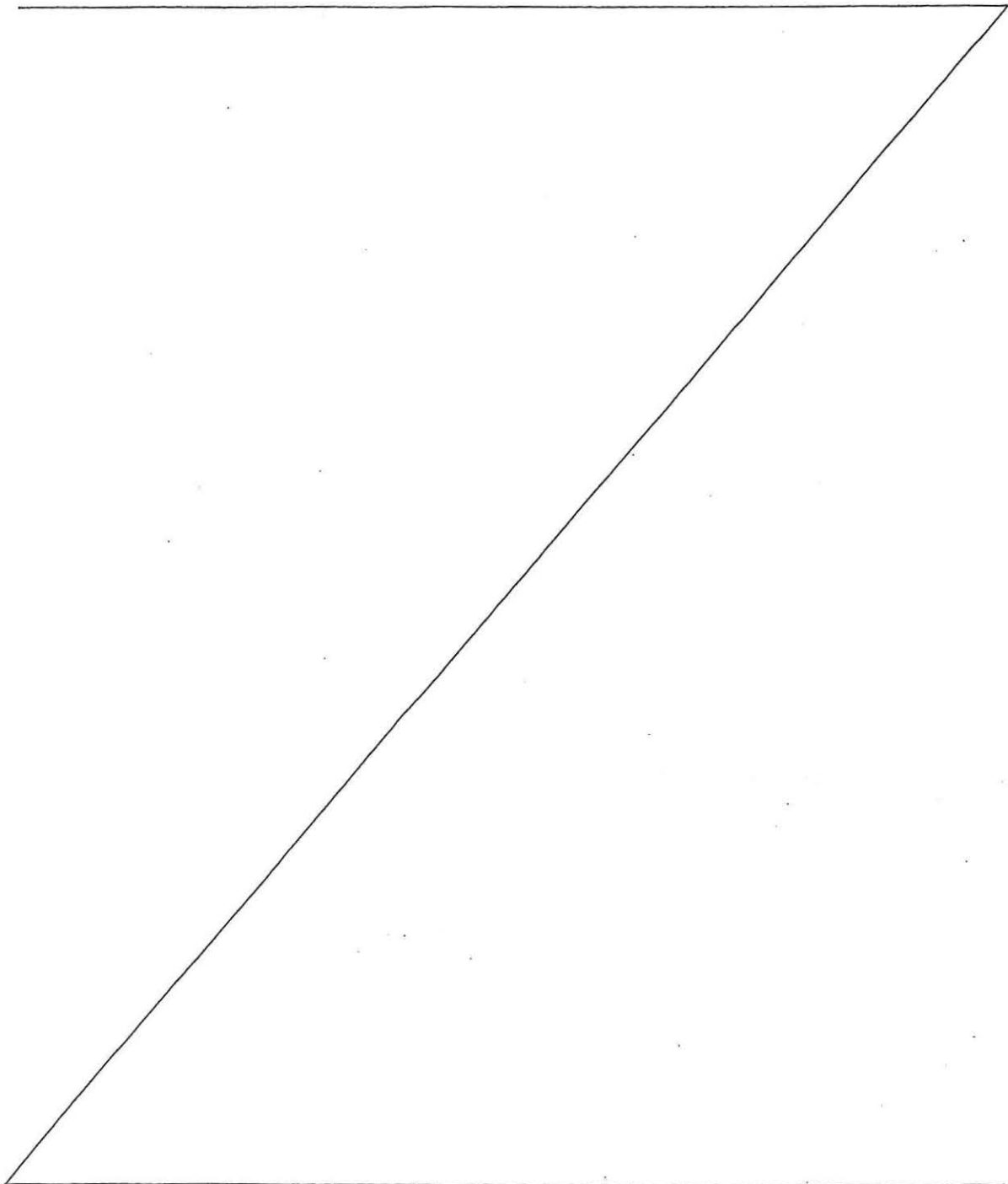
"Reserved housing" means housing designated for residents in the low-income or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.

"Workforce housing project" means new multi-family residential development where at least seventy-five percent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty per cent of the AMI.

Terms not defined in this section shall be accorded their commonly accepted meanings. [Eff 11/11/11; am and comp ] (Auth: HRS

§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5,  
206E-7)

§§15-218-6 to 15-218-16 (Reserved)



## SUBCHAPTER 2

### RESERVED HOUSING AND WORKFORCE HOUSING REQUIREMENTS

**§15-218-17 Requirement for reserved housing units.** (a) Every developer applying for a development permit for approval to construct multi-family dwelling units on a lot greater than 20,000 gross square feet shall provide at least twenty percent of the total number of residential units in the development as reserved housing units. Reserved housing units may be provided as for-sale units or rental units.

(b) Reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 3. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and the agreements shall be binding upon the developer and any successors in interest, and shall run with the land. The agreement shall provide that the developer must provide certification to the authority as to the compliance of the requirements herein to qualify for a certificate of occupancy for the project for which provisions of this chapter are applicable.

(c) Occupants of reserved housing units shall have access to and use privileges for the same amenities as all other occupants of the development. Reserved housing units shall be distributed in the building in such a manner that they do not form an isolated section of the project.

(d) If the authority so determines, it may allow the developer to meet the requirement of subsection (a) through the following alternatives instead of providing reserved housing units within the development:

- (1) By providing reserved housing units elsewhere within the mauka area;
- (2) By providing reserved housing units elsewhere within urban Honolulu. The authority may impose additional reserved housing requirements in approving transfer

of reserved housing from mauka area to other locations within urban Honolulu. The additional reserved housing requirements shall be determined on a case-by-case basis by the authority at the time of approval of the development permit; or

- (3) By allowing a cash-in-lieu payment instead of providing reserved housing units.

(e) The construction of reserved housing units shall commence prior to the issuance of the initial certificate of occupancy for the project for which reserved housing is required and shall be secured by the developer with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the authority prior to the approval of the building permit for the project by the authority. In addition, the developer shall provide the authority a copy of a duly executed construction contract with a general construction contractor licensed to conduct business in the State of Hawaii for the construction of the reserved housing units.

(f) The developer shall execute such agreements as are necessary to implement any alternative reserved housing requirement, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land.

(g) Licensed life care facilities shall be exempt from the reserved housing requirement. In a proposed development that includes licensed life care facilities as well as residential dwelling units, the reserved housing requirements shall apply only to the residential dwelling portion of the development.

(h) No construction shall commence for any development within the mauka area on a lot greater than 20,000 square feet unless the development conforms to the provisions of this chapter and the authority has certified that the development complies with the requirements of this chapter.

(i) The authority may require guarantees, may enter into recorded agreements with developers and

with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to ensure that the reserved housing units are provided and that they are occupied by qualified persons for the regulated term.

(j) The authority may suspend the requirements for reserved housing for a limited duration, if, in its sole judgment, it determines that the requirements may unduly impede, preclude, or otherwise negatively impact the primary objective of the authority to promote redevelopment within the Kakaako community development district.

(k) When it has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the development permit application approved as to the reserved housing requirements of this chapter. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-18 Adjustments to height, density, and general development requirements for reserved housing units.** (a) Except as otherwise provided, any multi-family residential development on a lot greater than 20,000 square feet that meets applicable provisions of this chapter shall be entitled to adjustments in FAR and general development requirements as follows:

- (1) Residential floor area for reserved housing shall be excluded from calculations of floor area ratio; and
- (2) Residential floor area for reserved housing shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(b) The authority may also consider modifying the following requirements of the mauka area rules as an incentive to providing reserved housing by an applicant:

- (1) Building height;

- (2) Street setbacks;
- (3) Off-street parking; and
- (4) Loading space.

[Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-19 Unit type and corresponding factor. The Reserved Housing Unit Type and Corresponding Factor Table below shall be utilized in determining the total number of reserved housing units required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND CORRESPONDING FACTOR TABLE

Unit Type	Factor
0 Bedroom	0.70
1 Bedroom	0.90
2 Bedrooms	1.00
3 Bedrooms	1.08
3+ Bedrooms	1.16

[Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-20 Occupancy guidelines for sale or rental of reserved housing and workforce housing units. (a) The following occupancy guidelines shall be used for sale or rental of reserved housing units during the initial application period when the number of applications exceeds the number and type of reserved housing units available:

OCCUPANCY GUIDELINE

Unit Type	Preferred Household Size	Minimum Household Size
Studio	1 person	1 person
1 Bedroom	2 persons	1 person
2 Bedrooms	3 persons	2 persons
3 Bedrooms	4 persons	2 persons
4 Bedrooms	5 persons	3 persons

The corresponding household size may be modified by the authority if the units are unsold, unrented, or includes a live-in aide.

(b) The maximum household size shall be based on permissible household size determined by the City and County of Honolulu housing code.

[Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-21 Workforce housing project(s). (a) New residential project(s) where at least seventy-five percent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty percent of the AMI shall qualify as a workforce housing project.



(b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

(c) Workforce housing project(s) shall receive a floor area bonus of one hundred percent, provided that the bonus floor area shall be used towards the construction of workforce housing project(s) only.

(d) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(e) The authority may also consider modifying off street parking and loading requirements of the mauka area rules for workforce housing projects. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7)  
(Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-22 to 15-218-28 (Reserved)

### SUBCHAPTER 3

#### SALE AND RENTAL OF RESERVED HOUSING AND WORKFORCE HOUSING UNITS

§15-218-29 Purpose. The rules set forth in this subchapter shall govern the sale, rental, or transfer of reserved housing and workforce housing provisions of subchapter 2. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-30 General qualifications for purchase of reserved housing and workforce housing units. (a) The following shall be qualifications for purchasing or renting reserved housing or workforce housing units by a buyer or a tenant. The buyer or the tenant:

- (1) Shall be at least the age of majority;
- (2) Shall not have a majority interest in a principal residence or a beneficial interest in a land trust on a principal residence within or without the State for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;
- (3) Shall not have a spouse or dependent child who has a majority interest, in a principal residence or a beneficial interest in a land trust on a principal residence for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;
- (4) Has never before purchased a reserved housing or workforce housing unit under this chapter;
- (5) Shall be the owner or lessee and occupant of the reserved housing or workforce housing unit;
- (6) Shall not have a record or history of conduct or behavior, including past rent

payments, which may prove detrimental to other tenants or the authority. This criterion shall be applied within parameters set by federal laws on discrimination, including the Americans with Disabilities Act; and

- (7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing or workforce housing unit, or in case of a rental reserved housing or workforce housing unit demonstrate an ability to pay rent as established by the authority and meet any additional criteria established by the authority for the respective rental housing development for which the applicant is applying.

(b) Subject to approval of the executive director, a current owner of a reserved housing or workforce housing unit may apply to purchase a larger reserved housing or workforce housing unit provided that:

- (1) The applicant's current household size determined by the number of individuals on title and their dependents, has increased and exceeds the occupancy guideline established in section 15-218-20;
- (2) The applicant has resided in the current reserved housing or workforce housing unit for at least one year; and
- (3) The applicant qualifies to purchase a reserved housing or workforce housing unit in accordance with subsection (a), except that the applicant's current ownership of a reserved housing or workforce housing unit shall not disqualify the applicant under subsection (a)(2), (3), and (4).

(c) If a household includes two or more persons regularly living together that are related by blood, marriage, or by operation of law, the majority interest restriction shall apply to all household members. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp:

HRS §§206E-4, 206E-5, 206E-7)

§15-218-31 Sale and rental of reserved housing and workforce housing units. (a) The authority may advertise the sale or rental of reserved housing and workforce housing units and qualify and select persons for reserved housing and workforce housing units. It may also permit the developer of such units, or the developer's designated representative, to be responsible for advertising, qualifying, and selecting persons subject to the provisions of this chapter.

(b) Applications for the purchase or rental of reserved housing and workforce housing units shall be accepted on a first-come, first-served or on a lottery basis. The applications shall be submitted in person by the applicant. Only completed applications shall be acceptable. Applicants shall not be required to submit a deposit amount exceeding \$500.

(c) Notice of the proposed sale or rental of reserved housing and workforce housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include but not be limited to the following:

- (1) General description of the project in which the reserved housing or workforce housing units are located including its location, number of reserved housing or workforce housing units, size of the reserved housing or workforce housing units by number of bedrooms, and sales prices or rental rates;
- (2) Qualification requirements for purchase of reserved housing or workforce housing units including maximum income limits, restrictions on ownership of property, the authority's first option to purchase and shared equity requirements for reserved housing or workforce housing units for sale, and occupancy guidelines;
- (3) A statement that buyers or renters shall be selected on a first-come, first-served or on a lottery basis, whichever is applicable;

- (4) Where and when applications may be obtained and the first date, including time and place, when applications will be accepted, and subsequent dates, times, and places for submission of applications;
- (5) Deadline for submission of applications; and
- (6) In the case of a reserved housing unit and workforce housing for sale, the deposit amount and mode of acceptable payment.

The time period between publication of the notice and the first acceptance of applications shall not be less than fourteen business days. The period shall be computed from the first day of publication of the notice.

(d) Priority shall be given to applicants who have been displaced from housing within the Kakaako community development district as a result of redevelopment in the mauka area within a five-year period.

(e) Applicants shall be allowed to select a reserved housing or workforce housing unit based on maximum income limits, qualifying income, preference, occupancy guidelines, and availability of the reserved housing or workforce housing unit.

(f) In the event the developer, or the developer's designated representatives have accepted and processed applications and selected applicants for reserved housing or workforce housing units, a certification shall be submitted to the authority that the selection was made on a first-come, first-served or a lottery basis. Applicants shall be listed in the order in which the applications were accepted and the list shall be available for inspection by the authority. The final applications for those persons selected shall be made available to the authority and the authority shall review the applications to ensure that the applicants meet the eligibility requirements established under this chapter.

(g) Reserved housing and workforce housing applicants shall provide financial and family information with the reserved housing or workforce housing application.

(h) The authority may also require applicants to provide documentation to verify information submitted to the authority, including but not limited to:

- (1) Asset verification;
- (2) Verification of deposit;
- (3) Verification of employment; and
- (4) Credit bureau report. An applicant found to have willfully submitted false information, made misstatements, or withheld important information shall be disqualified from purchasing or renting a reserved housing or a workforce housing unit under this chapter. The authority retains its right to recover any money wrongfully gained by the applicant or to any other recourse provided by law.

[Eff 11/11/11; am and comp ] (Auth:  
HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E  
4, 206E-5, 206E-7)

**§15-218-32 Income.** (a) The household income of the applicant shall not exceed one hundred forty percent of the area median income (AMI) as determined by the United States Department of Housing and Urban Development.

(b) The adjusted household income shall be the income earned during the most current calendar year preceding the date of application to purchase or rent a reserved housing or workforce housing unit and shall be verified by submittal of most current state and federal tax returns.

(c) The assets of the applicant shall not exceed one hundred thirty-five percent of the applicable income limit set forth in subsection (a). As used in this section, assets include all cash, securities, and real and personal property at current fair market value, less any outstanding liabilities secured by these assets. Qualified retirements accounts and gifts of up to twenty percent of the purchase price to assist in the down payment for purchase of a reserved housing or a workforce housing unit shall not be

counted towards assets. [Eff 11/11/11; am and comp  
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)

**§15-218-33 Occupancy requirements.** (a) The following are occupancy requirements for reserved housing and workforce housing units:

- (1) Applicants for reserved housing and workforce housing units shall certify that, if selected, all applicants will be occupants of the unit; and
- (2) The purchaser or lessee shall physically occupy the reserved housing or workforce housing unit.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section 15-218-35 or evict the renter from the unit, as applicable. The authority may require verification of occupancy from the purchaser or the lessee of a reserved housing or workforce housing unit and the purchaser or the lessee shall provide occupancy verification within thirty calendar days from the date of receipt of notification from the authority.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority shall expressly contain the restrictions on occupancy prescribed in this section.

(d) The restriction prescribed in subsection (a) above shall not apply if the authority waives its option to purchase the reserved housing or the workforce housing unit or subsequent to the expiration of the option to purchase period. [Eff 11/11/11; am and comp  
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-34 Factors to be used for reserved housing and workforce housing unit sale price determination.** (a) The following factors shall be

used in determining the reserved housing and workforce housing unit respective sale price:

- (1) Down payment amount shall not exceed ten percent of the purchase price;
- (2) Maximum allowable monthly housing cost consisting of mortgage payment including principal and interest, real property taxes, mortgage insurance premium, and fees and costs required by the bylaws of a condominium property regime, shall not exceed thirty-three percent of gross monthly household income;
- (3) Interest rate shall be derived by taking the average of the thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by the Federal Home Loan Mortgage Corporation (Freddie Mac); and
- (4) Unit type and corresponding factor as provided in section 15-218-19.

(b) Annually within forty-five days of HUD's update of area median income (AMI) limits, the executive director shall establish and publish a formula for calculating the applicable sale price of reserved housing and workforce housing units based on the factors enumerated in subsection (a).

(c) The maximum allowable sales price of a reserved housing or a workforce housing unit may be calculated based on an AMI of no more than one hundred forty percent, provided that the weighted average sales price of all reserved housing or workforce housing units in a project shall be the price calculated based on an AMI of no more than one hundred and twenty percent. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-35 Terms of reserved housing and workforce housing units for sale.** (a) If the owner of either a reserved housing unit or a workforce housing unit wishes to sell the unit within thirty



years from the date of purchase of the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(b) Sale or transfer of reserved housing or workforce housing units shall be as follows:

- (1) The owner shall notify the authority in writing of the intent to sell the reserved housing or workforce housing unit;
- (2) The authority shall notify the owner of authority's decision within sixty days of receipt of the owner's notification required in subsection (b) (1). The authority may:
  - (A) Waive its option to purchase the unit;
  - (B) Agree to purchase the unit; or
  - (C) Designate another buyer for the unit;
- (3) If the authority fails to notify the owner of a decision in the manner prescribed in paragraph (2), the authority shall have waived its first option to purchase the unit;
- (4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority.

(c) The buyback price shall be determined based on the original fair market value of the reserved housing or workforce housing unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors plus the allowable cost of

improvements made by the owner, if any, less the authority's share of equity in the unit. The owner shall provide financial documents acceptable to the authority indicating the actual cost of the improvements before the cost shall be eligible for inclusion in determining the buyback price. The buyback price shall be no less than the original sale price of the reserved housing or workforce housing unit. The amount paid by the authority to the seller shall be the difference, if any, between the buyback price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

(d) Any subsequent mortgage placed on the reserved housing or workforce housing unit by the owner shall require approval from the executive director and shall not exceed the buyback price established by subsection (c). [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-38 Foreclosure.** In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing or workforce housing unit subject to the restrictions of section 15-218-35, shall, prior to commencing mortgage foreclosure proceedings, notify the authority of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS.

The authority shall be a party to any foreclosure action and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record, up to a maximum of the authority's share of equity in the unit. The person in default shall be entitled to any amount remaining after payment of the authority's share of

equity in the unit. [Eff 11/11/11; am and comp  
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)

**§15-218-39 Transfers of title pursuant to a mortgage foreclosure.** The conditions prescribed in section 15-218-35 and section 15-218-41 shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff 11/11/11; am and comp  
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)

**§15-218-40 Incorporation in deed.** The provisions of sections 15-218-35 and 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for reserved housing and workforce housing units. [Eff 11/11/11; am and comp  
] (Auth: HRS  
§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5,  
206E-7)

**§15-218-41 Equity sharing requirements.**

(a) The authority's share of the equity in the reserved housing or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one percent.

(b) If the authority waives its first option to purchase a reserved housing or workforce housing unit as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or

workforce housing unit shall become due upon sale of the unit.

(c) If the authority's percentage share of equity is less than one-half of one percent, or if the resale fair market value of the reserved housing or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (a) shall not be applicable.

(d) The authority shall determine the fair market value of the reserved housing or workforce housing unit at the time of original sale and also at the time of resale.

(e) The resale price and terms shall be approved by the authority.

(f) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

[Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-42 Deferral of first option to purchase and equity sharing.** The authority may defer its first option to purchase and equity sharing in the following instances:

- (1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;

- (2) Transfer to a relative who meets eligibility requirements upon death of the purchaser;
- (3) Transfer to spouse or children who meet eligibility requirements;
- (4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes the owner;
- (5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
- (6) Transfer into a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

[Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-43 Terms of reserved housing and workforce housing for rent.** Reserved housing and workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. The maximum allowable rent may be calculated based on an AMI of one hundred and forty percent. The weighted average rent of all reserved housing or workforce housing units in a project shall not exceed the allowable rent calculated based on one hundred twenty percent of AMI.

[Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent.** Monthly rent for reserved housing or workforce housing units for rent shall be based on no more than thirty percent of the applicable AMI. Monthly rent shall include all utilities and other building operating costs but may exclude

telephone, cable television, and internet service, and parking fees. Allowance for tenant furnished utilities and other services shall be based on data published by the authority on an annual basis. Annually within forty-five days of HUD's update of area median income limits, the executive director shall establish and publish a formula for calculating the applicable monthly rents for reserved and workforce housing units based on the factors enumerated in this section. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term. The authority may on a case-by-case basis consider requests from a reserved housing or workforce housing unit owner to rent the reserved housing or workforce housing unit during the regulated term. The rental of reserved housing or workforce housing units by owner shall be regulated by sections 15-218-32, 15-218-43 and 15-218-44. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-46 Cash-in-lieu. The authority, at its sole discretion, may allow a developer to provide a cash payment in lieu of providing the required reserved housing units. The amount of such cash-in-lieu payment shall be the higher of:

- (1) Seven percent of the gross revenue of the development project; or
- (2) The difference between the average fair market value of the unit in the development project and the average reserved housing unit sale price in the development project multiplied by the number of reserved housing units required.

For determining a partial cash-in-lieu payment, a

proportional formula shall be utilized. [Eff and comp  
] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)

**§15-218-47 Effects of subsequent rule amendments.**

(a) In the case of subsequent rule amendments, reserved housing and workforce housing owners shall be permitted at their election to:

- (1) Remain subject to the rules in effect at the time of the purchase of the unit; or
- (2) Be governed by the amended rules.

(b) The authority or any other entity that the authority transfers the reserved housing or workforce housing to shall notify all reserved housing or workforce housing owners of any change made by law, ordinance, rule, or regulation within one hundred eighty days of the changes. The notice shall clearly state the enacted or proposed new provisions, the date upon which they are to be effective and offer to each owner of reserved housing units constructed and sold prior to the effective date, an opportunity to be governed by the new provision.

(c) No reserved housing or workforce housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing or workforce housing unit, without the written permission of the holder of a duly-recorded first mortgage on the unit and the owner of the fee simple or leasehold interest in the land underlying the unit.

(d) This section shall apply to all reserved housing and workforce housing units developed, constructed and sold pursuant to this chapter. [Eff 11/11/11; §15-218-43; am, ren §15-218-47, and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-48 Fees for administering reserved housing and workforce housing program.** The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient,

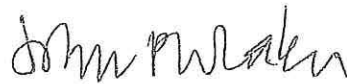
for administering its reserved housing and workforce housing program. At the beginning of each fiscal year the executive director shall publish a schedule of fees for administering the reserved housing and workforce housing program. [Eff and comp ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-49 to 15-218-54 (Reserved)



Amendments to and compilation of chapter 218, title 15, Hawaii Administrative Rules, on the Summary Page dated September 6, 2017, were adopted on September 6, 2017, following public hearings held on August 16, 2017, and September 6, 2017, after public notice was given in the Honolulu Star Advertiser, The Maui News, West Hawaii Today, Hawaii-Tribune Herald, and the Garden Isle on July 16, 2017.

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



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John P. Whalen  
Chairperson  
Hawaii Community Development  
Authority

APPROVED AS TO FORM:



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Deputy Attorney General

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DAVID Y. IGE  
Governor  
State of Hawaii

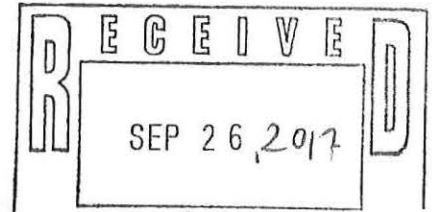
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Filed

## **IV. New Business**

A. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, **Administration of Taxes**, Section 25.05(f), **Cost Recovery Fees for Collection Actions**, promulgated by DoTax



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

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** September 26, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by amending section 18-231-25.5-02(f). Under current rules the Department charges a fee of \$50 for processing a delinquent taxpayer's account. The proposed rules reduce this fee to \$25 for taxpayers who agree to pay by electronic means, and increase it to \$75 for taxpayers who pay by paper means.

The proposed rules will be made available on the Department's website after the Governor provides approval to hold a public hearing.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

- 1. Description of the small businesses that will be required to comply with the proposed rules, and how they may be adversely affected.**

Any small business with a delinquent tax account will be required to comply with the proposed rules. Any small business with a delinquent account that pays by paper means

will be adversely affected by the increased processing fee. However, any small business with a delinquent account that pays by electronic means will be positively impacted by a reduced processing fee.

**2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance:**

The proposed rules increase the processing fee for delinquent taxpayers who pay by paper means from \$50 to \$75, but decrease the fee for taxpayers who pay electronically from \$50 to \$25.

**a. Amount of the current fee or fine and the last time it was increased.**

The current fee is \$50 for the processing of a delinquent taxpayer account. It has never been increased.

**b. Amount of the proposed fee or fine and the percentage increase.**

The proposed fee is \$25 for payment by electronic means and \$75 for payment by paper means. This represents a 50% decrease in fee for payments by electronic means and a 50% increase in fee for payments by paper means.

**c. Reason for the new or increased fee or fine.**

The Department wants to encourage payment by electronic means.

**d. Criteria or methodology used to determine the amount of the fee or fine.**

The Department believes the new fee structure will encourage payment by electronic means without unduly punishing taxpayers who still wish to pay by paper means.

**3. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used:**

The proposed rules will benefit the Department by increasing electronic payments, which the Department prefers to paper payments. It is unclear whether this change in the fee structure will increase or decrease the amount the Department collects in fees.

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

The Department did not consider methods to reduce impact on small business specifically. However, the Department believes the reduced fee for taxpayers who pay electronically should benefit all taxpayers, small or large.

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

The proposed rules offer a decreased processing fee and are therefore less restrictive than existing rules in the Department's opinion.

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

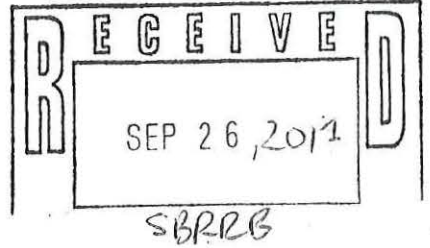
The Department did not consider alternative methods of compliance for small business.

- 7. How the agency involved small business in the development of the proposed rules:**

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Section 18-231-25.5-02, Hawaii Administrative Rules, is amended by amending subsection (f) to read as follows:

"(f) The fees that may be charged under this section are:

- (1) For processing a delinquent taxpayer's account, [~~\$50~~] \$75 shall be charged at the close of business on the deadline date specified in subsection (d) if the debt or any part of the debt remains unpaid; provided that \$25 shall be charged if a taxpayer agrees to pay by electronic means. If a taxpayer agrees to pay by electronic means but later pays by paper means, the taxpayer shall be charged the additional \$50 for a total charge of \$75;
- (2) For handling a foreclosure action, \$50 shall be charged upon the completion of the detailed statement of taxes (prepared in connection with the filing of the department's court complaint or affirmative statement of claim), plus any costs including court costs or recording fees (such as a fee for recording the interlocutory decree of foreclosure) that are actually charged to and incurred by the department;
- (3) For garnishment, levy, or other seizures of a delinquent taxpayer's wages, property or rights to property, \$15 upon each service, including service by mail, of official notice upon the payor or custodian of the asset levied, or physical seizure of the

- asset levied, plus any court costs, recording fees, or related costs (such as a fee paid to a United States marshal for seizure of a vessel or bank charges for honoring a levy) that are actually charged to and incurred by the department;
- (4) For any collection action requiring the services of collection agencies or attorneys, any reasonable fees charged by those attorneys or collection agencies that are actually incurred by the department;
  - (5) For recording a certificate of tax lien or a release of tax lien, \$25 for recording at the Bureau of Conveyances, plus any other recording fees that are actually charged to and incurred by the department for recording with other agencies (such as with a county director of finance);
  - (6) For serving a subpoena in connection with a collection effort, \$25 shall be charged, plus any other fees that are actually incurred by the department; and
  - (7) For collection actions other than that set forth in paragraph (1) to (6), any fees or costs that are actually charged to and incurred by the department." . [Eff 12/15/95; am and ren §18-231-25.5-01 3/03/97; am ] (Auth: HRS §§231-3(9), 231-17, 231- 25.5(e)) (Imp: HRS §231-25.5)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-231, Hawaii Administrative Rules, are provided in Ramseyer format for reference only.

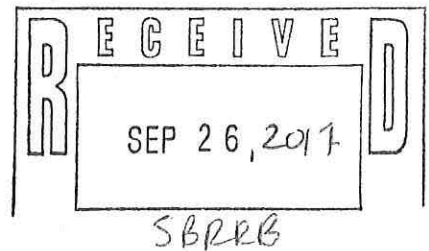
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §18-231-25.5-02 is amended.





**§18-231-25.5-02 Cost recovery fees for collection actions. \*\*\***

(f) The fees that may be charged under this section are:

- (1) For processing a delinquent taxpayer's account, \$75 shall be charged at the close of business on the deadline date specified in subsection (d) if the debt or any part of the debt remains unpaid; provided that \$25 shall be charged if a taxpayer agrees to pay by electronic means. If a taxpayer agrees to pay by electronic means but later pays by paper means, the taxpayer shall be charged the additional \$50 for a total charge of \$75;
- (2) For handling a foreclosure action, \$50 shall be charged upon the completion of the detailed statement of taxes (prepared in connection with the filing of the department's court complaint or affirmative statement of claim), plus any costs including court costs or recording fees (such as a fee for recording the interlocutory decree of foreclosure) that are actually charged to and incurred by the department;
- (3) For garnishment, levy, or other seizures of a delinquent taxpayer's wages, property or rights to property, \$15 upon each service, including service by mail, of official notice upon the payor or custodian of the asset levied, or physical seizure of the asset levied, plus any court costs, recording fees, or related costs (such as a fee paid to a United States marshal for seizure of a vessel or bank charges for honoring a levy) that are actually charged to and incurred by the department;
- (4) For any collection action requiring the services of collection agencies or attorneys, any reasonable fees charged by

- those attorneys or collection agencies that are actually incurred by the department;
- (5) For recording a certificate of tax lien or a release of tax lien, \$25 for recording at the Bureau of Conveyances, plus any other recording fees that are actually charged to and incurred by the department for recording with other agencies (such as with a county director of finance);
  - (6) For serving a subpoena in connection with a collection effort, \$25 shall be charged, plus any other fees that are actually incurred by the department; and
  - (7) For collection actions other than that set forth in paragraph (1) to (6), any fees or costs that are actually charged to and incurred by the department." . [Eff 12/15/95; am and ren §18-231-25.5-01 3/03/97; am ] (Auth: HRS §§231-3(9), 231-17, 231- 25.5(e)) (Imp: HRS §231-25.5)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: 8/22/17

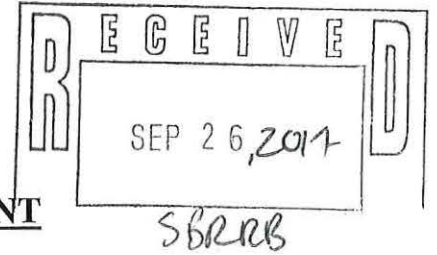
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DEPARTMENT OF TAXATION; Standard format amendment to §18-231-  
25.5-02 for pre-hearing approval pursuant to Hawaii  
Administrative Directive 09-01.

## **IV. New Business**

- B. Discussion and Action on Proposed New HAR  
Title 18, Chapter 237, **General Excise Tax Law**,  
Section 34-13, **Persons with a Material Interest  
In A Tax Return**, promulgated by DoTax

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



**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-237

**Chapter Name:** General Excise Tax

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** September 26, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 237, Hawaii Administrative Rules (HAR), by adding a new section 18-237-34-13, which defines a person with a material interest in a return to include persons whose tax liability is based on gross income, deductions, exemptions or tax liability reported by the taxpayer.

In certain audit situations where a tax benefit is dependent on the actions of more than one taxpayer, such as a General Excise Tax (GET) deduction for subcontracting, to properly review and assess the appropriate tax, the Department must examine more than one taxpayer's return. In the example of the subcontracting deduction, the Department would examine the returns of both the contractor and the subcontractor, and an assessment made may potentially require the disclosure of one taxpayer's return information to the other.

It is the Department's position that such a disclosure is allowed as a disclosure to a person with a material interest in the return under section 237-34(b), Hawaii Revised Statutes (HRS). The Department believes adopting this proposed administrative rule will formalize its position and add clarity to the GET Law.

The draft rules will be made available for public inspection after the Governor gives approval to hold a public hearing.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

1. **Description of the small businesses that will be required to comply with the proposed rules, and how they may be adversely affected.**

The proposed rules do not add any new compliance requirements.

2. **In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance:**

The proposed rules do not increase any costs, fees or fines.

3. **The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used:**

The proposed rules will benefit the Department by adding clarity to audit procedures and allowing for more effective audits of taxpayer claiming the wholesale rate, subcontract deduction, income-splitting under section 237-18, HRS, or other tax benefits dependent on information contained in the returns of multiple taxpayer.

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

The proposed rules should not have any direct impact on existing tax compliance requirements for any business, including small businesses.

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

The proposed rules do affect existing tax compliance requirements and merely formalize the Department's position on its internal audit procedures, and thus do not affect restrictiveness.

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

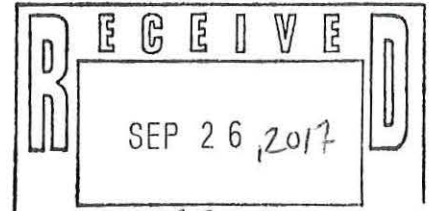
The proposed rules do not affect the existing tax compliance requirements for any business, including small businesses.

**7. How the agency involved small business in the development of the proposed rules:**

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



DEPARTMENT OF TAXATION

Amendments to Chapter 18-237  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-34-13 Persons with a material interest in a tax return. Persons with a material interest in a tax return or return information of a taxpayer include persons whose tax liability is based on the gross income, deductions, exemptions, or tax liability reported by the taxpayer, including but not limited to persons who make sales at wholesale under section 237-4, HRS, claim the subcontractor's deduction under section 237-13(3), HRS, and divide gross income under section 237-18, HRS; provided that the department will only disclose return information of a taxpayer if the person with a material interest is under audit or examination by the department and the department determines that the return information is directly relevant to the tax liability of the person under audit or examination. If a disclosure is made pursuant to this section, the department shall maintain the confidentiality of information that is not directly relevant by taking appropriate action, including redacting confidential information." [Eff  
] (Auth: HRS §231-3(9), 237-8) (Imp:  
HRS §237-34)

2. New material is underscored.

3. These amendments to chapter 18-237, Hawaii Administrative Rules, are provided in Ramseyere format for reference only.



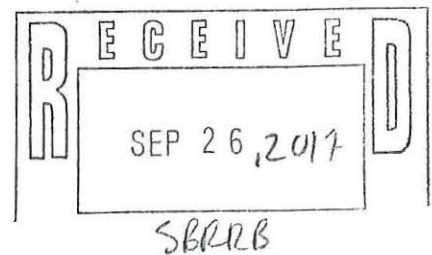
DEPARTMENT OF TAXATION

Amendments to Chapter 18-237  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

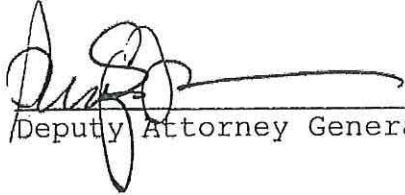
SUMMARY

1. New §18-237-34-13 is added



**§18-237-34-13 Persons with a material interest in a tax return.** Persons with a material interest in a tax return or return information of a taxpayer include persons whose tax liability is based on the gross income, deductions, exemptions, or tax liability reported by the taxpayer, including but not limited to persons who make sales at wholesale under section 237-4, HRS, claim the subcontractor's deduction under section 237-13(3), HRS, and divide gross income under section 237-18, HRS; provided that the department will only disclose return information of a taxpayer if the person with a material interest is under audit or examination by the department and the department determines that the return information is directly relevant to the tax liability of the person under audit or examination. If a disclosure is made pursuant to this section, the department shall maintain the confidentiality of information that is not directly relevant by taking appropriate action, including redacting confidential information. [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-34)

APPROVED AS TO FORM:

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

DATE: 8/22/17

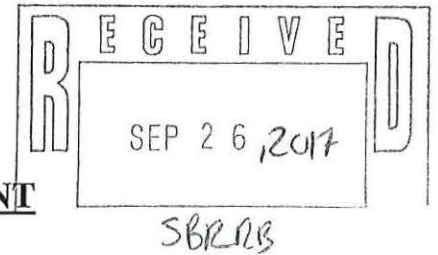
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DEPARTMENT OF TAXATION; Standard format addition of new §18-237-34-13 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

## **IV. New Business**

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 237D, **Transient Accommodations Tax**, Section 4-01, **Certificate of Registration**, and Section 4-02, **Display of the Registration Certificate**, Repeal of Sections 4-03 through 4-07, and Proposed New Sections 4-08 to 4-35, promulgated by DoTax

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



**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-237D

**Chapter Name:** Transient Accommodations Tax

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** September 26, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 237D, Hawaii Administrative Rules (HAR), by amending sections 18-237D-4-01 and 18-237D-4-02, repealing sections 18-237D-4-03 through 18-237D-4-07, and adding new sections 18-237D-4-08 through 18-237D-4-35, HAR.

The proposed rules implement Act 204, Session Laws of Hawaii (SLH) 2015, which requires that operators of transient accommodations designate an on-island local contact and display that contact's name, phone number and email address inside the unit, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that a unit's Transient Accommodations Tax ("TAT") license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link. These rules provide the procedures by which the Department will enforce these requirements.

Act 204 gives the Department the authority to issue citations and fines to operators of transient accommodations and operators of websites or publications who violate these requirements. Because an appeal of such a citation would be considered a "contested case" under chapter 91, Hawaii Revised Statutes, the Department cannot begin enforcing this law and issuing citations until procedures for such an appeal are published by rule. These proposed rules provide such appeal procedures.

The proposed rules will be made available for inspection on the Department's website after the Governor gives approval to hold a public hearing.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

**1. Description of the small businesses that will be required to comply with the proposed rules, and how they may be adversely affected.**

Any small business operating one or more transient accommodations will be required to comply with the proposed rules. The proposed rules should not adversely affect any business and should instead provide some clarity with respect to how the Department will enforce the requirements created by Act 204, SLH 2015.

Act 204, SLH 2015, also places display requirements on the operators of websites that advertise transient accommodations, which would affect any small business operating such a website. However, the Department is currently researching whether and to what extent these provisions are enforceable under federal and constitutional law. The proposed rules therefore do not address website operators.

**2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance:**

The proposed rules do not increase any costs, fees or fines. Act 204, SLH 2015, creates fines for failure to display transient accommodations tax registrations at the units themselves and in any online advertisements. The proposed rules describe how the Department will enforce such fines, including issuing written warnings in lieu of fines.

**a. Amount of the current fee or fine and the last time it was increased.**

The fine for failure to display the local contact information and TAT license number is newly established by Act 204 to be not less than: (1) \$500 per day for a first violation; (2) \$1000 per day for a second violation; and (3) \$5000 per day for third and subsequent violations. The fines have never been increased.

While the law gives the Department the discretion to issue fines in any amount it

chooses, under the proposed rules, the Department has stated that fines for first, second and third violations will be no more than \$500 per day, \$1000 per day, and \$5000 per day, respectively. Fines for subsequent violations can be higher but the proposed rules require the Department to describe the reason for the higher fine in writing.

**b. Amount of the proposed fee or fine and the percentage increase.**

Not applicable.

**c. Reason for new or increased fee or fine.**

The fines are established by law, but the Department believes the Legislature's intent was to encourage the display of local contact information and TAT license numbers as a consumer protection initiative.

**d. Criteria or methodology used to determine the amount of the fee or fine.**

The Department does not know what criteria or methodology the Legislature used in arriving at this fee structure.

**3. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used:**

The proposed rules will benefit the Department by adding clarity to the procedures for enforcing Act 204, SLH 2015. The amount the Department expects to collect from fines is indeterminate. The proposed rules provide for the issuance of written warnings in lieu of fines with an opportunity to cure violations before a fine is issued, and therefore the Department hopes to issue as few fines as possible.

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

The proposed rules do not offer any differing methods specific to small business.

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

Act 204, SLH 2015, provides a mandatory minimum fine structure, so the Department's options for less restrictive alternatives are limited. However, the Department believes the written warning provisions in the proposed rules represent an effort at reducing the restrictiveness of the law.

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

The Department did not consider alternative methods of compliance for small business.

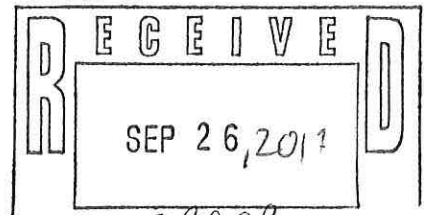
**7. How the agency involved small business in the development of the proposed rules:**

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.





DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,  
Hawaii Administrative Rules

1. Section 18-237D-4-01, Hawaii Administrative Rules, is amended to read as follows:

**"§18-237D-4-01 Certificate of registration.**

~~[(a) In general. Each operator or plan manager, before engaging or continuing in the activity of furnishing transient accommodations or in business as a resort time share vacation plan within the State, shall register the name and address of each place of business within the State subject to this chapter with the director.]~~

[The] (a) Each operator or plan manager shall indicate, on its application for registration, the type of ~~[ownership on the registration.]~~ entity it is. If the transient accommodation is ~~[jointly owned or furnished]~~ operated by a ~~[husband and wife,]~~ married couple or civil union partners, the ~~[husband and wife]~~ married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

~~[(b) The operator or plan manager shall pay a one time registration fee of \$5 if the operator or plan manager has one to five transient accommodation units, \$15 if the operator or plan manager has six or more transient accommodation units, and \$15 for each resort time share vacation plan within the State.]~~

~~The fee shall be paid to any of the taxation district offices where the transient accommodations are located.]~~ (b) There shall be no additional ~~[charge]~~ registration fees due if the operator or plan manager ~~[later]~~ subsequent to its initial registration adds more units to ~~[the operator's or plan manager's]~~ its registration ~~[in accordance with section 18-237D-4-05],~~ nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

~~[(e) Upon written request by an operator or plan manager, the department shall cancel a registration certificate. The]~~ (c) Any cancellation of a registration shall be without any refund of the registration fee paid.

~~[(d) Subsections (a) to (c) are illustrated as follows:]~~

**Example 1:**

Hotel Corporation, engaged in ~~[the activity of]~~ furnishing transient accommodations in Hawaii, owns and operates a hotel ~~[on the island of Oahu].~~ The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the ~~[Oahu taxation district office. Hotel Corporation shall]~~ department and shall pay a one-time fee of \$15 for the registration.

~~[Example 2:]~~

~~The facts are the same as in Example 1, except that Hotel Corporation also owns and operates hotels on the islands of Maui, Hawaii, and Kauai. Hotel Corporation shall register by providing its name and address and the business name and address of each hotel with the taxation district office on Oahu, Maui, Hawaii, or Kauai.~~

~~Hotel Corporation shall pay a one time fee of \$15 for the registration.]~~

**Example [3:] 2:**

Mr. Peters owns a single apartment unit ~~[on Kauai that is used in the activity of furnishing]~~ he furnishes as a transient [accommodations.] accommodation. Mr. Peters shall register with the ~~[Kauai taxation district office]~~ department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

~~[Example 4:]~~

~~The facts are the same as in Example 3, except that Mr. Peters also owns five apartment units in another apartment building on Kauai. Those five units are also used in the activity of furnishing transient accommodations. Mr. Peters shall register the business name (if any) and addresses of these five apartment units and the other apartment unit in Example 3 with the Kauai taxation district office and pay a one time fee of \$15 for the registration.~~

**Example 5:**

~~Ms. Cary owns two apartment units on Kauai, four on Maui, and six on Oahu. All of the units are used in the activity of furnishing transient accommodations. Ms. Cary shall register by providing her name and address, and the names and addresses of the two apartment units on Kauai, the four units on Maui, and the six units on Oahu with the taxation district office on Oahu, Maui, or Kauai. Ms. Cary shall pay a one time fee of \$15 for the registration.]~~

**Example [6:] 3:**

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of [50] fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for [50] fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the [50] fifty condominium apartments. Although Property Corporation must file [50] fifty annual tax returns, payment of taxes on the [50] fifty units may be made with a single check enclosed in the same envelope with the [50] fifty returns.

**Example [7:] 4:**

The individual owners of Tropical Condominium Apartments (consisting of [100] one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building [~~situated~~

~~on Oahu~~] from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the [~~Oahu taxation district office.~~] department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the [~~100 unit~~] one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation. [~~See also section 18-237D-1-03.~~]

**[~~Example 8:~~**

~~Paradise Hotel operates a hotel on the island of Oahu, the first taxation district. Five of the rooms are rented for periods of less than 180 consecutive days. Paradise does not do business on any of the neighbor islands. Paradise must register with the first taxation district office by giving its name and address and the name and address of its place of business and pay a onetime fee of \$5.]~~

**Example [~~9:]~~ 5:**

ABC, Inc. operates several facilities [~~which furnish transient accommodations~~]. On Oahu, ABC

operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a ~~[50-unit]~~ fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than ~~[180]~~ one hundred eighty consecutive days and other units for periods of over ~~[180]~~ one hundred eighty consecutive days. ABC also operates a hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with ~~[one of the taxation districts in which its transient accommodations are located. To register, ABC is required to]~~ the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are ~~[being used to furnish]~~ transient accommodations. Regarding the ~~[50-unit]~~ fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for ~~[a]~~ consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

**Example 6:**

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is

operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later.

~~[(c) Time for registration. The operator or plan manager shall register as required by this section prior to commencing the activity of furnishing transient accommodations or in business as a resort time share vacation plan.]~~ [Eff 11/25/88; am 7/18/94; am 6/3/05; am ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

2. Section 18-237D-4-02, Hawaii Administrative Rules, is amended to read as follows:

**"§18-237D-4-02 Display of the registration certificate.** (a) ~~[In general.]~~ Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice ~~[as set forth in subsection (b)]~~ stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

~~[(b) Alternative method of display for more than one transient accommodation or in business as a resort time share vacation plan. Where the operator or plan manager operates more than one transient accommodation or more than one resort time share vacation plan, the director shall issue one certificate of registration. The operator or plan manager may post a notice in each room, apartment, suite, or the like either notifying the tenant or occupant where the certificate may be inspected or referring the tenant or occupant to the department.~~

~~(c) Subsections (a) and (b) are illustrated as follows:~~

**Example:**

~~Hawaii, Inc. owns a 400 unit condominium apartment that is used to furnish transient accommodations in Waikiki. To register, Hawaii, Inc. must list all of the units and pay a \$15 fee. A master certificate shall be issued. Hawaii, Inc. is not required to post a copy of the certificate in each of the 400 units but may post a notice in each unit stating that the apartment unit has been properly registered as a transient accommodation and either that a true copy of the certificate may be inspected or examined at the resident manager's office or that an inquiry may be made at the department.~~

~~(d) Penalty for failure to register. Any person who engages or continues in the business of furnishing transient accommodations without registering in conformity with this chapter or any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both."]~~

(b) For purposes of this section, "front desk" means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

**Example 1:**

Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium building's front desk. Mr. Peters is in compliance with section 18-237D-4-02.



**Example 2:**

ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

**Example 3:**

Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters' address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

**Example 4:**

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration for each of the fifty different apartments may be

inspected at Property Corporation's Kahului office, including the office's address. All fifty of the building's apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building's front desk." [Eff 11/25/88; am 7/18/94; am 6/3/05; am ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

3. Section 18-237D-4-03, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-03 — Nontransferability of certificate of registration. — The certificate of registration shall not be transferable. — The certificate shall be valid only for the operator or plan manager in whose name the certificate has been issued and for the transaction of business only at the place designated."]~~ [Eff 11/25/88; am 6/3/05; R ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

4. Section 18-237D-4-04, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-04 — Cancellation of registration by operator or plan manager ceasing to do business; change of ownership. — Any operator or plan manager which goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity or in business as a resort time share vacation plan for which a certificate of registration is issued or which transfers ownership of all of its transient accommodation or resort time share vacation plan shall notify the taxation district office in which the operator or plan manager is registered by canceling the registration on a form prescribed by the department not more than ten days after the transfer of ownership or the activity has ceased."]~~ [Eff

11/25/88; am 6/3/05; R ] (Auth: HRS  
§§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

5. Section 18-237D-4-05, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-05 Registration of the acquisition, sale, transfer, assignment, or gift of a transient accommodation. (a) An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall notify the taxation district office in which the operator is registered by filing a form prescribed by the department not more than ten days after the transaction.~~

~~(b) A buyer, transferee, assignee, or recipient of a gift of a transient accommodation shall register as an operator of the transient accommodation as set forth in section 18-237D-4-01." ] [Eff 11/25/88; R  
] (Auth: HRS §§231-3(9), 237D-16(b))  
(Imp: HRS §237D-4)~~

6. Section 18-237D-4-06, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-06 Registration upon reorganization; partnership formation. Any operator of a transient accommodation which reorganizes its corporate structure or forms a partnership shall notify the taxation district office in which the operator is registered of the change by canceling the registration on a form prescribed by the department not more than ten days thereafter. The operator shall file a new certificate of registration in accordance with the change in structure." ] [Eff 11/25/88; R  
] (Auth: HRS §§231-3(9), 237D-16(b))  
(Imp: HRS §237D-4)~~

7. Section 18-237D-4-07, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-07 Corporate name change. Any operator of a transient accommodation which changes its corporate name shall notify the taxation district office in which the transient accommodation is registered of the change not more than ten days after the change of name. Upon notification, the change of name shall be noted in the records of the taxation district office. A new certificate of registration shall not be issued."] [Eff 11/25/88; R ]~~  
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

8. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**§18-237D-4-08 Display of local contact information.** Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

**Example 1:**

Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms. Flora is not in compliance with section 18-237D-4-08 because the local contact information is not

displayed at the same property as the transient accommodation unit.

**Example 2:**

Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because information for the local contacts are not conspicuously displayed." [Eff 11/25/88; am 7/18/94; am 6/3/05; am ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

9. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-09 Procedures; scope and purpose.**

(a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS

(including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff ]  
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

10. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-10 Definitions. As used in sections 18-237D-4-09 through 18-237D-4-35:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is

principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff ] (Auth: HRS §§231-3(9), 237D-16(b))  
(Imp: HRS §237D-4)

11. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**§18-237D-4-11 Fine for failure to display. (a)**

A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

**Example 1:**

ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building's front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of



these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent

violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation." [Eff ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

12. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-12 Written warning for first violation under section 237D-4(d), HRS. (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).**

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and

(5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

(1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;

(2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or

(3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry.

Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning

was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

**Example 1:**

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-12." [Eff

] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

13. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-13 Citation for failure to display requirements. (a) A citation for failure to display**

must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;
- (5) If applicable, the amount of the monetary fine imposed against the respondent;

- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," "service by certified mail," "service by publication," or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

**Example 1:**

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC

for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

**Example 2:**

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

**Example 3:**

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB," a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display Operator LLC's registration identification number. The department reviews its records and

sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

**Example 4:**

Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

**Example 5:**

On July 1, while inspecting a transient accommodation unit operated by Surfswax Rentals LLC, the department discovers Surfswax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surfswax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surfswax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surfswax Rentals LLC a citation. The department shall issue Surfswax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously display the information required by section 237D-4(b), HRS.



**Example 6:**

Assume the same facts as Example 5, except that on July 15, the department goes to TAbroker.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

**Example 7:**

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is offering to rent out the cottage on her property for \$200 per night. The department may issue a

warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation." [Eff ]  
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

14. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-14 Issuance of a citation for failure to display.** (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is

not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or confidential information shall be disclosed in the publication.

(d) If the citation is served by publication under subsection (c)(3), the date of service of the citation is the last date of publication in the second successive week." [Eff ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

15. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-15 Response to citation for failure to display.** (a) A respondent must respond to a citation for failure to display within thirty days from the date of service by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-18. Written

requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation was served:

(1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and

(2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-237D-4-35(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability." [Eff \_\_\_\_\_] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

16. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-16 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing." [Eff \_\_\_\_\_] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

17. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-17 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony, exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda." [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

18. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-18 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws." [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

19. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers. (a)**

The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated

objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

(1) The fees and costs for the transcript;

(2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and

(3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings." [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

20. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-20 Disqualification of presiding officers.** (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

(1) Has a financial interest, as defined by section 84-3, HRS, in a business or other

- undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
  - (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
  - (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding." [Eff ]  
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

21. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-21 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer



regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication." [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

22. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked." [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

23. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-23 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in

interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required,

the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents." [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

24. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-24 Filed documents available for public inspection; exceptions.** (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours." [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

25. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-25 Appearances in agency appeal.** (a) An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or



consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

28. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-28 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information." [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

29. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of

proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities."  
[Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

30. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237D-4-30 Motions.** (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure

to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion."  
[Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

31. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-31 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be



afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time."  
[Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

32. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-32 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done

after the expiration of a specified period where the failure to act is reasonably shown to be excusable." [Eff ]  
(Auth: HRS §§91-2, 231-3(9), 237D-16(b))  
(Imp: HRS §§91-2, 237D-4)

33. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-33 Service of decisions. All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS." [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

34. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-34 Correction of transcript. Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer." [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

35. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-35 Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due

and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed." [Eff

    ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

36. Material to be repealed is bracketed and stricken. New material is underscored.

37. These amendments to Chapter 18-237D, Hawaii Administrative Rules, are provided in Ramseyer format for reference only.

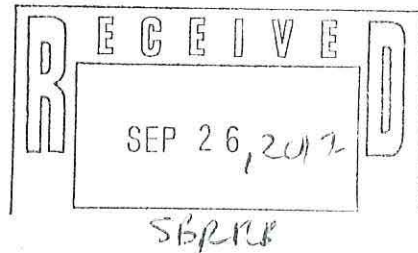
DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §§18-237D-4-01 and 18-237#-4-02 are amended.
3. §§18-237D-4-03, 18-237D-4-04, 18-237D-4-05, 18-237D-4-06, and 18-237D-4-07 are repealed.
4. §§18-237D-4-08, 18-237D-4-09, 18-237D-4-10, 18-237D-4-11, 18-237D-4-12, 18-237D-4-13, 18-237D-4-14, 18-237D-4-15, 18-237D-4-16, 18-237D-4-17, 18-237D-4-18, 18-237D-4-19, 18-237D-4-20, 18-237D-4-21, 18-237D-4-22, 18-237D-4-23, 18-237D-4-24, 18-237D-4-25, 18-237D-4-26, 18-237D-4-27, 18-237D-4-28, 18-237D-4-29, 18-237D-4-30, 18-237D-4-31, 18-237D-4-32, 18-237D-4-33, 18-237D-4-34, and 18-237D-4-35 are added.



**§18-237D-4-01 Certificate of registration. (a)**

Each operator or plan manager shall indicate, on its application for registration, the type of entity it is. If the transient accommodation is operated by a married couple or civil union partners, the married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

(b) There shall be no additional registration fees due if the operator or plan manager subsequent to its initial registration adds more units to its registration, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

(c) Any cancellation of a registration shall be without any refund of the registration fee paid.

**Example 1:**

Hotel Corporation, engaged in furnishing transient accommodations in Hawaii, owns and operates a hotel. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the department and shall pay a one-time fee of \$15 for the registration.

**Example 2:**

Mr. Peters owns a single apartment unit he furnishes as a transient accommodation. Mr. Peters shall register with the department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

**Example 3:**

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the fifty condominium apartments. Although Property Corporation must file fifty annual tax returns, payment of taxes on the fifty units may be made with a single check enclosed in the same envelope with the fifty returns.

**Example 4:**

The individual owners of Tropical Condominium Apartments (consisting of one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation.

**Example 5:**

ABC, Inc. operates several facilities. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than one hundred eighty consecutive days and other units for periods of over one hundred eighty consecutive days. ABC also operates a

hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are transient accommodations. Regarding the fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

**Example 6:**

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later. [Eff 11/25/88; am 7/18/94; am 6/3/05; am ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)



**§18-237D-4-02 Display of the registration certificate.** (a) Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

(b) For purposes of this section, "front desk" means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

**Example 1:**

Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium building's front desk. Mr. Peters is in compliance with section 18-237D-4-02.

**Example 2:**

ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

**Example 3:**

Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters' address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

**Example 4:**

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration for each of the fifty different apartments may be inspected at Property Corporation's Kahului office, including the office's address. All fifty of the building's apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building's front desk. [Eff 11/25/88; am 7/18/94; am 6/3/05; am ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-03 Repealed. [R

]

§18-237D-4-04 Repealed. [R ]

§18-237D-4-05 Repealed. [R ]

§18-237D-4-06 Repealed. [R ]

§18-237D-4-07, Repealed. [R ]

**§18-237D-4-08 Display of local contact information.** Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

**Example 1:**

Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms. Flora is not in compliance with section 18-237D-4-08 because the local contact information is not displayed at the same property as the transient accommodation unit.

**Example 2:**

Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because



information for the local contacts are not  
conspicuously displayed. [Eff 11/25/88; am  
7/18/94; am 6/3/05; am ] (Auth: HRS  
SS231-3(9), 237D-16(b)) (Imp: HRS S237D-4)

**§18-237D-4-09 Procedures; scope and purpose.**

(a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff ]  
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

**§18-237D-4-10 Definitions.** As used in sections 18-237D-4-09 through 18-237D-4-35:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff  
] (Auth: HRS §§231-3(9), 237D-16(b))  
(Imp: HRS §237D-4)

**§18-237D-4-11 Fine for failure to display. (a)**

A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

**Example 1:**

ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building's front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient

accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation. [Eff  
] (Auth: HRS §§231-3(9), 237D-16(b))  
(Imp: HRS §237D-4)

**§18-237D-4-12 Written warning for first violation under section 237D-4(d), HRS.** (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and
- (5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by



the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

**Example 1:**

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-12. [Eff ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

**§18-237D-4-13 Citation for failure to display; requirements.** (a) A citation for failure to display must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;

- (5) If applicable, the amount of the monetary fine imposed against the respondent;
- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," "service by certified mail," "service by publication," or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

**Example 1:**

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department

reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

**Example 2:**

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

**Example 3:**

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB," a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display

Operator LLC's registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

**Example 4:**

Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

**Example 5:**

On July 1, while inspecting a transient accommodation unit operated by Surf Wax Rentals LLC, the department discovers Surf Wax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surf Wax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surf Wax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surf Wax Rentals LLC a citation. The department shall issue Surf Wax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously

display the information required by section 237D-4(b), HRS.

**Example 6:**

Assume the same facts as Example 5, except that on July 15, the department goes to TABroker.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

**Example 7:**

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is

offering to rent out the cottage on her property for \$200 per night. The department may issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation. [Eff ]  
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS \$237D-4)

**§18-237D-4-14 Issuance of a citation for failure to display.** (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or







**§18-237D-4-16 Venue.** Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing. [Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

**18-237D-4-17 Docket.** The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony, exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**18-237D-4-18 Hearing; request for and scheduling.** (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws. [Eff  
] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

**18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers. (a)**

The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly

skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

- (1) The fees and costs for the transcript;
- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings. [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

**§18-237D-4-20 Disqualification of presiding officers.** (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding. [Eff ]  
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)



**§18-237D-4-21 Communications with the director or presiding officers.** (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

§18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked. [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-23 Filing of documents; amendment; dismissal; retention.** (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission



**§18-237D-4-24 Filed documents available for public inspection; exceptions.** (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours.

[Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-25 Appearances in agency appeal. (a)**

An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a power of attorney. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-26 Substitution of parties.** Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion. [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)



**§18-237D-4-27 Consolidation; separate hearings.**

(a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-28 Intervention.** Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information. [Eff ]  
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs.** (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-30 Motions.** (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion.

[Eff ] (Auth: HRS §§91-2, 231-3(9),  
237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-31 Evidence.** (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

[Eff ] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

**§18-237D-4-32 Continuances or extensions of time.** Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-2, 237D-4)

**§18-237D-4-33 Service of decisions.** All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)



§18-237D-4-34 **Correction of transcript.** Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

**§18-237D-4-35 Enforcement and stay.** (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed. [Eff  
] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: 8/22/17

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DEPARTMENT OF TAXATION; Standard format amendment of sections 18-237D-4-01 and 18-237D-4-02, repeal of sections 18-237D-4-03 through 18-237D-4-07, and addition of new sections 18-237D-4-08 through 18-237D-4-35 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

## **IV. New Business**

**D. Discussion and Action on Proposed New HAR  
Title 12, Chapter 44.1, Testing, Certifying, and  
Credentialing Individuals Who Perform  
Maintenance and Testing of Portable Fire  
Extinguishers, Fire Protection Systems, and Fire  
Alarm Systems, promulgated by Hawaii State Fire  
Council / Department of Labor and Industrial  
Relations**

SBRRB Pre-Public Hearing Impact Statement

Department Agency:

Hawaii State Fire Council

Administrative Rule Title and Chapter:

Title 12, Chapter 44.1

Chapter Name:

Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems

Contact Person/Title:

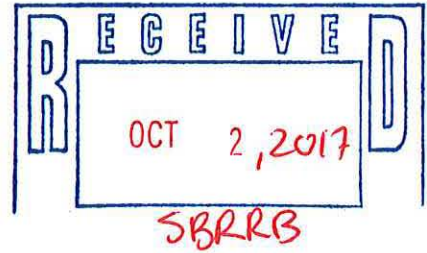
Ed Suzuki

Phone Number:

808-723-7169

E-mail Address: esuzuki@honolulu.gov

Date: November 2017



- A. Title 12, Chapter 44.1 is a new administrative rule, authorized by Hawaii Revised Statutes Chapter 132-16(c)(3), that formalizes a statewide certification process for individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems and fire alarm systems. Historically, the Honolulu Fire Department (HFD) tested fire protection system technicians who -maintained and tested portable fire extinguishers, water-based fire extinguishing systems, and non-water fire extinguishing systems. The process has become antiquated as the HFD does not have the resources to update the certification program. Consequently, the Hawaii State Fire Council (SFC) revised the process while still allowing the counties to administer and enforce -the program. This administrative rule will standardize the process by requiring a certification of training -provided by a third party vendor.

The statewide program will be administered by the county fire departments and will also include the -maintenance and testing of fire alarm systems and private fire hydrants, in addition to portable fire extinguishers, water-based fire extinguishing systems, and other fire extinguishing systems, formally classified as non-water based fire extinguishing systems.

- B. Yes, an electronic copy may be found at <http://labor.hawaii.gov/sfc> or a written copy will be available for review at each county's fire department headquarters from 0745-1530, Monday through Friday.
- I. New
- II. Yes
- III. No
- IV. No
- IV.1. The administrative rule will directly affect businesses responsible for maintenance and testing of portable fire extinguishers, water-based fire extinguishing systems, other fire extinguishing systems, fire alarm systems, and private fire hydrants by requiring certificates of training for each individual who will be maintaining, and testing these systems and appliances The impact will be through costs associated with:

1. Obtaining certificates of training through a third party vendor to maintain, and test fire protection systems as highlighted in the paragraph above.
2. Fees collected in obtaining statewide certificate of fitness (COF) to conduct maintenance and testing of fire protection systems will not change from the fee schedule adopted in 2002 by the HFD. (Note: Fire alarm systems and private fire hydrant are new fees)

IV.2. The anticipated costs with obtaining certificates of fitness and certificates of training are as follows:

#### Certificates of Fitness

- \*Fire Alarm Systems - \$100
- Portable Fire Extinguishers - \$100
- Water-Based Fire extinguishing Systems - \$100
- Other Fire extinguishing Systems - \$100 (Previously Non-Water Based Fire Extinguishing Systems)
- \*Private Fire Hydrants - \$100
- Renewal - \$100/3 years/COF

\* - Newly created categories

#### Certificates of Training

##### **NICET**

- Certificates of training can range from \$165 for Level I in Inspection and Testing of Water-Based Systems to \$525 for Level II. Level III will cost \$440.
- Travel costs to Oahu to take the exams (\$200 = air + ground transportation). (Affects Kauai)

##### **ICC**

- Online examinations range from \$50 to \$225 at Pearson Vue in Honolulu or via mail

#### Code Books

- Businesses would be investing in nationally recognized code books and this may not necessarily be an added expense. There are also free online versions of the NFPA standards. However, the associated costs with purchasing current code books to prepare for examination range from \$106 per NFPA code book to \$1475 for the entire collection of NFPA published codes and standards.

We do not anticipate any increases to a business through indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional service, or revenue loss.

IV.2.a. The HFD presently charges a fee of \$100 each for portable fire extinguisher water and non-water based fire extinguishing system licenses, along with same \$100 renewal fee. In 2002 there was a fee increase from \$25 to \$100.

IV.2.b. Fire alarm systems - \$100 (100% increase)

Portable fire extinguishers - \$100 (no increase)

Water-based fire extinguishing Systems - \$100 (no increase)

Other fire extinguishing Systems - \$100 (no increase)

Private fire hydrants - \$100 (100% increase)

Renewal - \$100 for 3 years per each COF (no increase)

There was no increase in fees (for existing categories) from the 2002 City and County adopted Fire Code fee schedule.

- IV.2.c. The fees are -to cover costs for the administration of the program, including but not limited to, review and validation of applications, maintaining a record system, and other related costs. There are two new categories that will charge the same fee as established ones. These were added to cover fire protection systems not covered in the earlier program.
- IV.2.d. Fee schedule is the same as existing Honolulu maintenance, and testing license program with no fee increases.
- IV.3. The estimated revenue generated from the collection of fees is anticipated to be \$4000/year. (Active licensees divided by three times \$100). The fees collected may be deposited into each county's general fund or fire prevention bureau's operating budget for educational programs, contingent on the county approval processes.
- IV.4. Existing license holders will be allowed to continue conducting maintenance, and testing until their licenses expire. Awareness of the new rules and fees were solicited over two years ago by notifying companies with existing licensed individuals with an open comment period. The feedback included a much needed progress in having qualified and competent technicians to perform the work. Some fire protection companies have already required their employees to attain the third party certification, while others expressed concern over the added cost to the individual and the business. Apprentices will be allowed to work together with license holders to gain experience before becoming third party certified, but the license holder is the authorized person to satisfactorily pass the fire protection system or appliance.
- IV.5. The third party testing process is to ensure competency in the work performed by fire protection system technicians and support a more uniform maintenance program for these systems and appliances. These are life safety systems that need to be reliably maintained to protect building occupants and for emergency use by fire department personnel. There are no practical means to reduce the cost of a vendor providing certification of training, evaluations of skills and verification of work experience. The State and counties are unable to maintain a testing and certification program with the resources they presently possess.
- IV.6. In some cases, testing will be available on each island to reduce cost associated with interisland travel. Fee collection and certification distribution may be done at any county fire headquarters every three years to lessen the impact in maintaining certificates of fitness. Industry codebooks may be readily obtained through websites. In some cases, they may be free to access online.

IV.7. Over two years ago, the SFC contacted each vendor through emails informing them of the changes to the inspection, maintenance, and testing program. By word of mouth, others in the industry requested to be placed on the mailing list. Their comments and questions were solicited through emails and reviewed. Telephone calls were also fielded to address the comments and questions. Some portions of the administrative rules were amended to address their concerns. The questions and comments were posted on the SFC website for all interested parties to review. The vendors are updated periodically as milestones are met, keeping them apprised of the progress of the administrative rule.

IV.7.a. Yes, the administrative rules were amended to clarify sections that were unclear. In some cases, the concept of a statewide certification process was new and needed clarification in understanding the process. Individuals were also unclear on what certifications would be acceptable. Consequently, a matrix was created to help understand the requirements. In one case, an individual had a concern on why there were only test sites on Oahu. Investigation by the SFC found one test provider would possibly provide an alternate means to take the test while another would not make accommodations as there was concern of the proprietary test questions and low numbers of test takers on the neighbor islands.

IV.8. The proposed rules are in line with other states. These rules are as stringent as Alaska, Georgia, and Texas in mandating a NICET Level II in fire alarm systems, portable fire extinguishers, water-based fire extinguishing systems, and commercial cooking fire suppression systems. The requirements reflect the minimum requirements other states enforce.

	Fire Alarms	Fire Extinguishers	Water Based	Special Hazards	Hydrants
Alaska	NC	NC	NC	NC	N/A
Georgia					
New	N/A	\$100	\$100	\$100	N/A
Renewal	N/A	\$50	\$50	\$50	N/A
Hawaii					
New	\$100	\$100	\$100	\$100	\$100
Renewal	\$100	\$100	\$100	\$100	\$100
Texas					
New	\$120	\$70	\$100	N/A	N/A
Renewal	\$200	\$50	\$200	N/A	N/A

\*Alaska is on a three year renewal cycle and do not charge fees

\*Georgia is on an annual renewal cycle

\*Texas is on a two year renewal cycle

IV.8.a. A survey of fire protection technicians displayed a varied background of training and knowledge of the fire code in maintaining these systems. The proposed rule will standardize the training



and certification qualifications of individual performing, maintenance, and testing of fire protection systems and appliances.

- IV.8.b. The HRS §132-16.c.(3) states, "Establish, in conformance with the adopted state fire code and nationally recognized standards, statewide qualifications and procedures, to be administered by the county fire departments, for testing, certifying, and credentialing individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems, and fire alarm systems; provided that the county fire departments may establish and charge reasonable certification fees ." The statute authorizes the establishment of qualifications for licensed individuals. Inspection, maintenance, and testing requirements for each fire protection system and appliance will be addressed in the state fire code.
- IV.8.c. The administrative rule proposal aligns with the State law to create a statewide testing, certification and credentialing process for administering the program by the counties in conformance with the adopted state fire code. (See IV.8.b. above) Presently, only Honolulu certifies these individuals.
- IV.8.d. The fees collected will remain the same as the existing program. However, individuals who conduct maintenance and testing of fire alarm systems, and private fire hydrants would incur a new fee.

The State and counties are not able to establish and maintain a state-wide training and certification program. Therefore, the additional costs incurred are due to a third party certification process to meet or exceed current industry standards. The costs cannot be deferred as third party vendors are involved and the existing Hawaii system is antiquated. The fees collected may be deposited into each county's general fund or fire prevention bureau's operating budget for educational programs, contingent on the county adoption process.

- IV.8.e. The biggest effect is the third party testing, which in some cases may involve travel to Oahu. Fees and code books would remain the same.

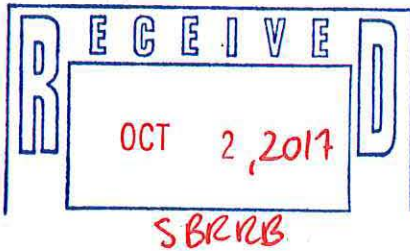
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Adoption of Chapter 12-44.1  
Hawaii Administrative Rules

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SUMMARY

Chapter 12-44.1, Hawaii Administrative Rules, entitled "Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems," is adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 44.1

STATE FIRE COUNCIL

TESTING, CERTIFYING, AND CREDENTIALING INDIVIDUALS WHO  
PERFORM MAINTENANCE AND TESTING OF PORTABLE FIRE  
EXTINGUISHERS, FIRE PROTECTION SYSTEMS, AND  
FIRE ALARM SYSTEMS

Subchapter 1 Rules of General Applicability

- \$12-44.1-1 Definitions
- \$12-44.1-2 General provisions
- \$12-44.1-3 Application for certificate of fitness
- \$12-44.1-4 Violations
- \$12-44.1-5 Appeals

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

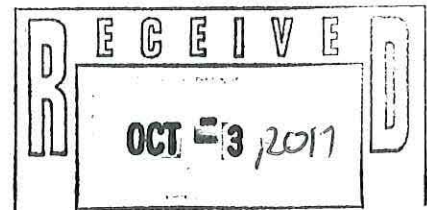
Adoption of Chapter 12-44.1  
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SUMMARY

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44.1-1



HAWAII ADMINISTRATIVE RULES

TITLE 12

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CHAPTER 44.1

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\$12-44.1-1	Definitions
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\$12-44.1-3	Application for certificate of fitness
\$12-44.1-4	Violations
\$12-44.1-5	Appeals

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

\$12-44.1-1 Definitions. The following definitions shall apply to this chapter.

"Certificate of fitness" means a credential issued by the county fire department to any person for the purpose of granting permission to such person to conduct or engage in any operation or act for which certification to perform maintenance and testing of portable fire extinguishers, fire protection systems and fire alarm systems is required.

"Fire alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

"Fire protection system" means any fire alarm device or system, or fire extinguishing device or system, or any combination thereof, that is designed and installed for detecting, controlling, or extinguishing a fire or otherwise alerting occupants or the fire department or both that a fire has occurred.

"Other fire extinguishing system" means any fixed fire extinguishing system which uses an extinguishing agent other than water. They may include dry chemical, foam, halogen-type (including nonhalogenated), carbon dioxide, and special hazard systems.

"Portable fire extinguisher" means a portable device, carried or on wheels and manually operable, containing an extinguishing agent that can be expelled under pressure for suppressing or extinguishing fire.

"Private fire hydrant" means a valved connection on a water supply system having one or more outlets that is used to supply hose and fire department pumpers with water and is located on private property.

"State fire council" means a governing body comprised of the four county fire chiefs or their authorized representatives, which is administratively attached to the Hawaii department of labor and industrial relations.

"Water-based fire extinguishing system" means any class I, II, and III and combined standpipe system, automatic sprinkler system, or automatic water spray fixed system utilizing water as an extinguishing agent. [Eff \_\_\_\_\_] (Auth: HRS §132-16)(Imp: HRS §132-16; SLH 2014, Act 165)

Commented [SE1]: Put into county fire code

§12-44.1-2 General provisions.

(a) Certificates of fitness may only be issued to a person eighteen years of age or older.

(b) Certificates of fitness are nonrefundable and nontransferable.

(c) Certificates of fitness are valid for three years.

(d) The holder of a certificate of fitness may only perform maintenance and testing on the type or types of extinguishers or systems for which the certificate of fitness was issued.

[Eff ] (Auth: HRS §132-16) (Imp: HRS §132-16; SLH 2014, Act 165)

§12.44.1-3 Application for certificate of fitness. (a) An application for a certificate of fitness to maintain and test portable fire extinguishers, fire protection systems, and fire alarm systems shall be submitted to the a county fire department along with copies of the following supporting documents:

- (1) Applicant's driver's license;
- (2) Third party certifications; and
- (3) Other applicable training or certificates.

(b) A person submitting documentation to the county fire department must have current certificate of training from a certifying organization approved by the SFC, which can be found on the State Fire Council website.

(c) The county fire departments shall issue certificates of fitness to persons who are qualified to maintain and test portable fire extinguishers, fire protection systems, and fire alarm systems

(d) The county fire departments shall collect applicable fees.

(e) The fee for each certificate of fitness is payable by check or money order to the county fire department and is nonrefundable. Cash will

not be accepted. [Eff ]  
(Auth: HRS §132-16) (Imp: HRS §132-16; SLH 2014,  
Act 165)

§12-44.1-4 Violations. (a) The county fire department may deny, revoke, or suspend the certificate of fitness for up to one year if, it finds the holder of the certificate of fitness:

- (1) Violated any portion of the state fire code in maintaining and testing portable fire extinguishers, fire protection systems, and fire alarms systems;
- (3) Falsified any record required to be maintained by the state fire code;
- (4) Falsely obtained or attempted to obtain a certificate of fitness; or
- (5) Engaged in testing and maintaining a portable fire extinguisher, fire protection system and/or fire alarm system for which a permit is required under this chapter during the suspension, revocation, or expiration of any certificate of fitness.

(b) No new certificate of fitness shall be issued to a person for a period of up to one year from the date of the certificate of fitness revocation during which time the person shall cease all operations as a maintainer and tester of portable fire extinguishers, fire protection systems, and fire alarm systems. [Eff ] (Auth: HRS §132-16) (Imp: HRS §132-16; SLH 2014, Act 165)

#### APPEALS

§12-44.1-5 Appeal of a certificate of fitness application denial or suspension must be in writing and filed with the county fire chief from which the denial or suspension was issued within twenty days after the date of mailing of the denial or suspension.



The fire chief of the county from which the denial or suspension was issued may for good cause shown extend the period within which to file the appeal if a request for extension of time to file an appeal is received in writing setting forth the reasons for the request. The request for extension of time to file an appeal shall be filed with county fire chief from which the denial or suspension was issued within the twenty days to file an appeal. Deposit of an appeal or request for extension of time in the mail, addressed to the county fire chief from which the denial or suspension was issued, with a postmark dated within the twenty days shall be deemed a timely filing. A hearing shall be held in accordance with chapter 91, Hawaii Revised Statutes. Computation of time shall be in accordance with section 1-29, Hawaii Revised Statutes. [Eff ] (Auth: RCH \$4-105; HRS \$91-2) (Imp: HRS \$91-9)

## **V. Administrative Matters**

- A. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Redesigning the Board's Website, to include Short- and Long-Term Goals, Content and Features, in accordance with Section 92-2.5 (b), HRS

**§92-2.5 Permitted interactions of members.** (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

### **Law Journals and Reviews**

Hawai'i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

### **Case Notes**

Even assuming that written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals constituted a permitted interaction under subsection (a), the memoranda violated the mandate under subsection (b) that no permitted interaction be used to circumvent the spirit or requirements of the sunshine law to make a decision or to deliberate toward a decision upon board business. The "express premise" of the sunshine law is that opening up the government process to public scrutiny is the only viable and reasonable way to protect the public. 130 H. 228, 307 P.3d 1174 (2013).

Written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals did not fall within the permitted interaction described in subsection (a) because the memoranda: (1) were distributed among all of the members of the Maui county council rather than among only two members of the board; and (2) sought a commitment to vote by asking for "favorable consideration" of the proposals contained within them and thus, violated the sunshine law. 130 H. 228, 307 P.3d 1174 (2013).

Although subsection (a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

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## **V. Administrative Matters**

- B. Update on the Proposed Small Business Office by the Department of Accounting and General Services Regarding Act 42, SLH 2017, **Relating to Procurement**

*No Handouts*

## **V. Administrative Matters**

- C. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

*No Handouts*