

SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594
Fax 808586-2572

AGENDA

Wednesday, September 30, 2014 ★ 9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Anthony Borge
Chairperson
Oahu

Craig Takamine
Vice Chair
Hawaii

Barbara Bennett
2nd Chairperson
Kauai

Kyoko Y. Kimura
Maui

Harris Nakamoto
Oahu

Richard C. Lim
Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Introduction of Newly Appointed Board Member

III. Approval of August 20, 2014 Meeting Minutes

IV. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments promulgated by the Department of Land and Natural Resources in the sections below and attached to Exhibit 1:

1. Hawaii Administrative Rules (HAR) Title 13 Chapter 233 Section 26, Charges for Parking
2. HAR Title 13 Chapter 255 Section 16, Thrill Craft Operations: General Provisions

V. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 12 Chapter 15 Section 90, Workers' Compensation Medical Fee Schedule, and the Workers' Compensation Supplemental Medical Fee Schedule A, promulgated by the Department of Labor and Industrial Relations – See Exhibit 2
- B. Discussion and Action on Proposed Amendments promulgated by the Department of Health in the chapters below and attached to Exhibits 3 and 4:
1. HAR Title 11 Chapter 502, Asbestos-Containing Materials in Schools
 2. HAR Title 11 Chapter 504, Asbestos Abatement Certification Program
- C. Discussion and Action on Proposed Amendments to HAR Title 5 Chapter 11, Notaries Public, promulgated by the Department of the Attorney General – See Exhibit 5
- D. Discussion and Action on Proposed Amendments promulgated by the Department of Taxation in the chapters below and attached to Exhibits 6, 7 and 8
1. HAR Title 18 Chapter 231 Section 91-01 through Section 100-01, Cash Economy Enforcement; Citations
 2. HAR Title 18 Chapter 231 Section 3-10 (a), Compromises
 3. HAR Title 18 Chapter 235 Section 1.14, Substantial Gainful Business or Occupation

VI. Administrative Matters

- A. Review and Discussion of Proposed Draft Templates for State Agencies and Counties to Use when Submitting Proposed New and Amended Administrative Rules for the following:
 - 1. Small Business Impact Statement, Section 201M-2, Hawaii Revised Statutes (HRS)
 - 2. Small Business Statement after Public Hearing, Section 201M-3, HRS
- B. Review and Discussion of the Proposed Revision of the Board's internal "Standard Operating Guidelines and Procedures," regarding the Submission of Rules and Correspondence to this Board
- C. Overview of a recent Meeting held with the Hawaii State Procurement Office (SPO), and discussion of how SPO can improve upon its Procurement Process by Utilizing the Functions and Role of this Board
- D. "Final" Update from Existing Investigative Task Force regarding the Sustainability of this Board and the Possibility of Transferring this Board to another Suitable State Department
- E. Discussion and Action on the Disbandment of the "Existing" Investigative Task Force and Creation of a "New" Investigative Task Force for Fact-Finding Purposes regarding the Sustainability of this Board and the Possibility of Transferring this Board to Another Suitable State Department
- F. Review and Discussion of the Board's 2004 Outreach Program

VII. Next Meeting: Scheduled for Wednesday, October 15, 2014, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

VIII. 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.

September 30, 2014 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair <i>Home Delivered</i>	NA	Oahu	Parking Pass	X
Craig Takamine, Vice Chair	HA	Hawaii	Parking Pass	X
Barbara Bennett	HA	Kauai	Parking Pass	X
Kyoko Kimura	HA	Maui	Parking Pass	X
Harris Nakamoto	NA	Oahu	Parking Pass	X
Director's ex officio Mark Richey	NA	Oahu	NA	X
Ashley Leahey <i>Parking Permit</i>	HA	Maui	Parking Pass	No
Wayne Tanaka <i>Parking Permit</i>	NA	Oahu	Parking Pass	Yes

STAFF				
Margaret Ahn			✓	Yes
Dori Palcovich			✓	Yes

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12/15 copies of rule packages for board packets - continuous	✓
Poll board attendance	X
Prepare TAF for Director's approval - ASAP (Linda) <i>Kyoko ✓ / Craig ✓ / Barb ✓</i>	✓✓
Airline booking ASAP - Linda <i>+ Car Rental Booking</i>	✓✓✓
Draft Agenda to Chair - <i>Wk of 9/15/14</i> <i>✓ - Sent / Waiting for Approval</i>	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office <i>✓ = 9-24-14</i>	✓✓
Send Agendas to those people who requested it <i>9-24</i>	✓
Mail approved agenda to board members, M. Ahn <i>Packets</i>	✓
Mail board packets Mon, Tues or Wed., Sept. 22, 23, 24 <i>Need to do as of 9/24</i> <i>Not @ work</i>	✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

Post Meeting Checklist	

Visitors Sign-in-Sheet -- Small Business Regulatory Review Board -- September 30, 2014

	Name	Title	Organization	Email	Phone
1	SIRIPORN ROTH ROLSETH	R&S	DLIR		586-9014
2	Etienne Yoshida	R&S	DLIR		586-9018
3	Garrett Kaye	R&S	DLIR		586-9005
4	Diane Lam	DCD	DLIR		587-8794
5	Shell Gonyer	DCD	DLIR		586-9154
6	Alicia Burnham		DOTAX		587-1449
7	Jacob Herlitz		DOTAT		587-5334
8	ROYAEN T. KOITO	DCD	DLIR		586-9153
9	JEFF ECKERD	DCD PM	DOH		586-4700
10	TOM LILEIKIS	EHS	DOH		586-4700
11	<i>[Signature]</i>	Administrative Director	DLIR		587-1988
12	DORIS T. TAMMINS	DIRECTOR PLIR	DLIR		586-8850
13	Shari Wong	Deputy AG	AG		586-1100
14					
15					
16					

Exhibit 1

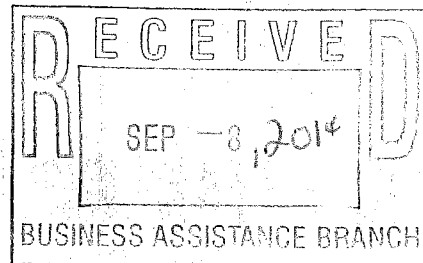
DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to Chapter 13-233
Hawaii Administrative Rules

DATE

SUMMARY

1. §13-233-26, Hawaii Administrative Rules, is amended to read as follows:



§13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in paid parking zones equal to or less than county or state rates in the county where the paid parking zone is located. [Eff 2/24/94; am and comp 4/5/08; am and comp _____] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

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

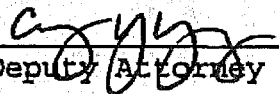
3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendments and compilation of chapter 13-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

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

Amendment to Chapter 13-256
Hawaii Administrative Rules

1. Section 13-256-16 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 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)

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

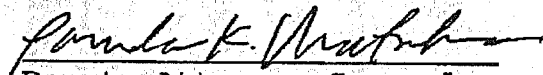
3. Additions to update source notes to reflect this amendment is not underscored.

4. The amendment to section 13-256-16, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

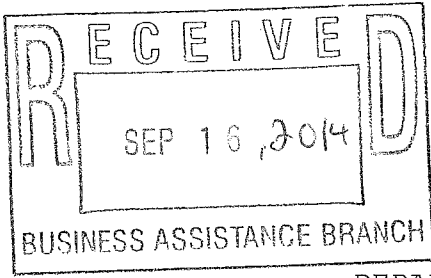
WILLIAM J. AILA, JR.
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

Exhibit 2



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Proposed Amendments to Chapter 12-15
Hawaii Administrative Rules
Workers' Compensation Medical Fee Schedule

July 14, 2014

1. Section 12-15-90, Hawaii Administrative Rules, is amended to read as follows:

"§12-15-90 Workers' compensation medical fee schedule. (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System fee schedule (Medicare Fee Schedule) applicable to Hawaii or listed in exhibit A, located at the end of this chapter and made a part of this chapter, entitled "Workers' Compensation Supplemental Medical Fee Schedule", dated [~~January 1, 2014~~] January 1, 2015. The Medicare Fee Schedule in effect on January 1, 1995 shall be applicable through June 30, 1996. Beginning July 1, 1996 and each calendar year thereafter, the Medicare Fee Schedule in effect as of January 1 of that year shall be the effective fee schedule for that calendar year.

(b) If maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule, dated [~~January 1, 2014~~] January 1, 2015, located at the end of this chapter as exhibit A, charges shall not exceed the maximum allowable fees allowed under the Workers' Compensation Supplemental Medical Fee Schedule, dated [~~January 1, 2014~~] January 1, 2015, located at the end of this chapter as exhibit A.

(c) If the charges are not listed in the Medicare Fee Schedule or in the Workers' Compensation

Supplemental Medical Fee Schedule, dated [~~January 1, 2014~~] January 1, 2015, located at the end of this chapter as exhibit A, the provider of service shall charge a fee not to exceed the lowest fee received by the provider of service for the same service rendered to private patients. Upon request by the director or the employer, a provider of service shall submit a statement to the requesting party, itemizing the lowest fee received for the same health care, services, and supplies furnished to any private patient during the one-year period preceding the date of a particular charge. Requests shall be submitted in writing within twenty calendar days of receipt of a questionable charge. The provider of service shall reply in writing within thirty-one calendar days of receipt of the request. Failure to comply with the request of the employer or the director shall be reason for the employer or the director to deny payment.

(d) Fees listed in the Medicare Fee Schedule shall be subject to the current Medicare Fee Schedule bundling and global rules if not specifically addressed in these rules. The Health Care Financing Administration Common Procedure Coding System (HCPCS) alphabet codes adopted by Medicare will not be allowed, except for injections and durable medical equipment, unless specifically adopted by the director. The director may defer to a fee listed in the Medicare HCPCS Fee Schedule when a fee is not listed in the Workers' Compensation Supplemental Medical Fee Schedule, Exhibit A.

(e) Providers of service will be allowed to add the applicable Hawaii general excise tax to their billing." [Eff 1/1/96; am 1/1/97; am 11/22/97; am 12/17/01; am 12/13/04; am 11/6/06; am 12/14/07; am 2/28/11; am 12/30/13; am] (Auth: HRS §§386-21, 386-26, 386-72) (Imp: HRS §§386-21, 386-26)

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

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

4. These amendments to Title 12, Chapter 15, Hawaii Administrative Rules, relating to the Hawaii Workers' Compensation Medical Fee Schedule 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 XXXXX xx, 2014 and filed with the Office of the Lieutenant Governor.

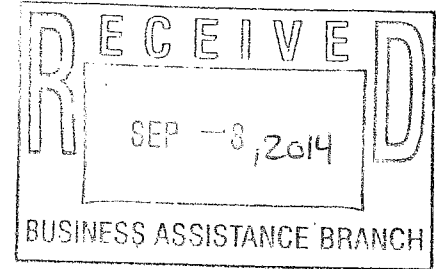
Director

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit 3

Ramseyer Format August 26, 2014



Amendments to Chapter 11-502
Hawaii Administrative Rules

1. Section 11-502-2, Hawaii Administrative Rules, is amended by amending the definition of "Elementary School" to read:

"Elementary school" means a [day or residential] school which provides elementary education to children in grades Kindergarten through 6th grade."

2. Section 11-502-2, Hawaii Administrative Rules, is amended by amending the definition of "NIST" to read:

"NIST" means the National Institute of [Science] Standards and Technology."

3. Section 11-502-2, Hawaii Administrative Rules, is amended by amending the definition of "NVLAP" to read:

"NVLAP" means the National Voluntary Laboratory Accreditation Program administered by the National Institute of [Science] Standards and Technology."

4. Section 11-502-2, Hawaii Administrative Rules, is amended by amending the definition of "Response Action" to read:

"Response action" means a method, including removal, encapsulation, enclosure, repair, and operations[,] and maintenance, that protects human health and the environment from friable [asbestos] ACBM."

5. Section 11-502-2, Hawaii Administrative Rules, is amended by amending the definition of "Secondary School" to read:

"Secondary school" means a [day or residential] school which provides secondary education except that it does not include any education provided beyond grade twelve."

6. Section 11-502-3, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-3 References. The following references contain detailed information on asbestos-related work practices that are applicable to sections 11-502-7, 11-502-9, 11-502-10, and 11-502-11:

- (1) 40 CFR Part 763 Subpart E, Appendix A, Interim Transmission Electron Microscopy Analytical Methods - Mandatory and Nonmandatory - and Mandatory Section to Determine Completion of Response Actions, October 30, 1987.
- [(2) 40 CFR Part 763, Subpart E, Appendix B, Work Practices and Engineering Controls for Small-Scale, Short duration Operations, Maintenance and Repair (O&M) Activities Involving ACM, October 30, 1987, EPA Worker Protection Rule.]
- (2) 40 CFR Part 763, Subpart E, Appendix D, Transport and Disposal of Asbestos Waste, October 30, 1987.
- (3) 40 CFR Part 763, Subpart E, Appendix E, Interim Method of the Determination of Asbestos in Bulk Insulation Samples, May 27, 1982.
- (4) 40 CFR Part 763, Subpart G, Asbestos Worker Protection, November 15, 2000. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 61)"

7. Section 11-502-4, Hawaii Administrative Rules, is amended to read as follows:

§11-502-4 Local education agency responsibilities. [(a)] Each local education agency shall:

- (1) Ensure that the activities of any persons who perform inspections, reinspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with this chapter;
- (2) Ensure that all custodial and maintenance employees are properly trained as required by this chapter and other applicable federal and/or [or] state regulations;
- (3) Ensure that workers and building occupants or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress;
- (4) Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are provided information regarding the locations of ACBM and suspected ACBM assumed to be ACM;
- (5) Ensure that warning labels are posted in accordance with section 11-502-14;
- (6) Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan, pursuant to section 11-502-12(g);
- (7) Designate a person to ensure that requirements of this chapter are properly implemented;
- (8) Ensure that the person designated under paragraph 7 receives adequate training to perform duties assigned pursuant to this chapter. Such training shall provide, as necessary, basic knowledge of:

- (A) Health effects of asbestos;
 - (B) Detection, identification, and assessment of ACM;
 - (C) Options for controlling ACBM;
 - (D) Asbestos management programs; and
 - (E) Relevant federal and state regulations concerning asbestos, including those in this chapter and those of the Occupational Safety and Health Administration, U.S. department of Labor, the U.S. [department] Department of Transportation and the EPA; and
- (9) Consider whether any conflict of interest may arise from the interrelationship among certified personnel and whether that should influence the selection of certified personnel to perform activities pursuant to this chapter. [Eff 2/15/01; am]
(Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.84)"

8. Section 11-502-5, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-5 Inspection and reinspections. (a) Any building leased or acquired that is to be used as a school building shall be inspected by a certified inspector prior to use as a school building. In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within thirty days after commencement of such use. For each area of a school building, including surfaces behind suspended ceilings or other non-permanent structures, except as excluded pursuant to section 11-502-15, each person performing an inspection shall:

- (1) Visually inspect the area to identify the locations of all suspected ACBM;
- (2) Touch all suspected ACBM to determine whether they are friable;

- (3) Identify all homogeneous areas of friable suspected ACBM and all homogeneous areas of nonfriable suspected ACBM;
- (4) Assume that some or all of the homogeneous areas are ACM, and, for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples pursuant to sections 11-502-6 and 11-502-7;
- (5) Assess, pursuant to section 11-502-8, friable material in areas where samples are collected, friable material in areas that are assumed to be ACBM, and friable ACBM identified during previous inspections; and
- (6) Record the following and submit to the person designated pursuant to section 11-502-4, a copy of such record for inclusion in the management plan within thirty days of the inspection:
 - (A) An inspection report with the date of the inspection signed by each certified person making the inspection[, the state of certification,] and the person's State of Hawaii certification number;
 - (B) An inventory of the locations of the homogeneous areas where samples were collected, size of each homogeneous area, exact location where each bulk sample was collected, dates that samples were collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where nonfriable suspected ACBM is assumed to be ACM;
 - (C) A description of the manner used to determine sampling locations, the name and signature of each certified inspector who collected the samples, the state of certification, and the person's certification number;
 - (D) A list of whether the homogeneous areas identified pursuant to subparagraph (B)

are surfacing material, thermal system insulation, or miscellaneous material;

- (E) The amount of material in each homogeneous area, listed in square, linear, or cubic feet; and
 - (F) Assessments made of friable material, the name and signature of each certified inspector making the assessment, the state of certification, and the inspector's certification number.
- (b) Reinspection shall be performed as follows:
 - (1) At least once every three years after a management plan is in effect, the local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that it leases, owns, or otherwise uses as a school building;
 - (2) Each inspection shall be made by an certified inspector; and
 - (3) For each area of a school building, each person performing a reinspection shall:
 - (A) Visually reinspect and reassess, pursuant to section 11-502-8, the condition of all friable known or assumed ACBM;
 - (B) Visually inspect material that was previously considered nonfriable ACBM and touch the material to determine whether it has become friable since the last inspection or reinspection;
 - (C) Identify any homogeneous areas with material that has become friable since the last inspection or reinspection
 - (D) For each homogeneous area of newly friable material that is already assumed to be ACBM, collect bulk samples and submit the samples for analysis in accordance with sections 11-502-6 and 11-502-7;

- (E) Assess, pursuant to section 11-502-8, the condition of the newly friable material in areas where samples are collected, and newly friable materials in areas that are assumed to be ACBM;
 - (F) Reassess, pursuant to section 11-502-8, the condition of friable known or assumed ACBM previously identified;
 - (G) Identify and assess all suspect ACBM not identified by previous inspections; and
 - (H) Record the following and submit to the person designated pursuant to section 11-502-4 a copy of such record for inclusion in the management plan within thirty days of the reinspection:
 - (i) The date of the reinspection, the name and signature of the person making the reinspection, the state of certification, the person's certification number, and any changes in the condition of known or assumed ACBM;
 - (ii) The exact locations where samples are collected during the reinspection, a description of the manner used to determine sampling locations, the name and signature of each certified inspector who collected the samples, the state of certification, and the inspector's certification number; and
 - (iii) Any assessments or reassessments made of friable material, the name and signature of the certified inspector making the assessments, the state of certification, and the inspector's certification number.
- (c) Thermal system insulation that has retained its structural integrity and that has an undamaged

protective jacket or wrap that prevents fiber release shall be treated as nonfriable and therefore is subject only to periodic surveillance and preventive measures as necessary. [Eff 2/15/01; am]
(Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.85)

[(d) Schools not previously covered under the AHERA regulation shall have their school buildings inspected and shall submit a management plan for approval to the department of health no later than six months after the adoption of this regulation.]”

9. Section 11-502-6, Hawaii Administrative Rules, is amended to read as follows:

“§11-502-6 Sampling. (a) A certified inspector shall collect, in a statistically random manner that is representative of the homogeneous area, bulk samples from each homogeneous area of friable surfacing material that is not assumed to be ACM, and shall collect the samples as follows:

- (1) At least three bulk samples shall be collected from each homogeneous area that is one thousand square feet or less, except as provided in section 11-502-7(c)(2); and
- (2) At least five bulk samples shall be collected from each homogeneous area that is greater than one thousand square feet, but less than or equal to five thousand square feet, except as provided in section 11-502-7(c)(2); and
- (3) At least seven bulk samples shall be collected from each homogeneous area that is greater than five thousand square feet, except as provided in section 11-502-7(c)(2).

(b) Thermal system insulation shall be sampled as follows:

- (1) Except as provided in paragraphs (2) through (4) and section 11-502-7(c), a certified inspector shall collect, in a randomly

distributed manner, at least three bulk samples from each homogeneous area of thermal system insulation that is not assumed to be ACM;

- (2) At least one bulk sample shall be collected from each homogeneous area of patched thermal system insulation that is not assumed to be ACM if the patched section is less than six linear or square feet;
- (3) In a manner sufficient to determine whether the material is ACM or not ACM, at least three bulk samples shall be collected from each insulated mechanical system that is not assumed to be ACM where cement or plaster is used on fittings such as tees, elbows, or valves, except as provided by section 11-502-7(c)(2); and
- (4) Bulk samples are not required to be collected from any homogeneous area where the certified inspector has determined that the thermal system insulation is fiberglass, foam glass, rubber, or other non-ACBM, and material is not multi-layered.

(c) In a manner sufficient to determine whether material is ACM or not ACM, [an] a certified inspector shall collect at least three bulk samples from each homogeneous area of friable miscellaneous material that is not assumed to be ACM.

(d) If any homogeneous area of nonfriable suspected ACBM is not assumed to be ACM, then a certified inspector shall collect, in a manner sufficient to determine whether the material is ACM, at least three bulk samples from the homogeneous area of nonfriable suspected ACBM that is not assumed to be ACM. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.86)"

10. Section 11-502-7, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-7 Analysis of samples. (a) The local education agencies shall have bulk samples, collected

pursuant to section 11-502-6 and submitted for analysis, analyzed for asbestos using laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and registered with the department of health. The local education agencies shall use laboratories which have received accreditation for PLM analysis through the National Voluntary Laboratory Accreditation Program (NVLAP) and registered with the department of health.

(b) Bulk samples shall not be composited for analysis and shall be analyzed for asbestos content by PLM using the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" found in Appendix [E] A to 40 CFR Part 763 Subpart E.

(c) A homogeneous area:

- (1) Is considered not to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of one per cent or less by point count; and
- (2) Shall be determined to contain ACM based on a finding that the results of any one sample collected from that area shows that asbestos is present in an amount greater than one per cent.

(d) The name and address of each laboratory performing an analysis, the date of analysis, the name and signature of the person performing the analysis, and the NVLAP accreditation number shall be submitted to the person designated pursuant to section 11-502-4 for inclusion into the management plan within thirty days of the analysis. [Eff 2/15/01; am]
(Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.87)"

11. Section 11-502-8, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-8 Assessment. (a) For each inspection and reinspection conducted pursuant to section 11-502-5(a) and (c) and previous inspections specified pursuant to section 11-502-15, the local education

agency shall have a certified inspector provide a written assessment of all friable known or assumed ACM in the school building. Each certified inspector providing a written assessment shall sign and date the assessment, provide the inspector's state of certification and certification number, and submit a copy of the assessment to the person designated pursuant to section 11-502-4 for inclusion in the management plan within thirty days of the assessment.

(b) The inspector shall classify and give reasons in the written assessment for classifying the ACM and suspected ACM assumed to be ACM in the school building into one of the following categories.

- (1) Damaged or significantly damaged thermal system insulation ACM;
- (2) Damaged friable surfacing ACM;
- (3) Significantly damaged friable surfacing ACM;
- (4) Damaged or significantly damaged friable miscellaneous ACM;
- (5) ACM with potential for damage;
- (6) ACM with potential for significant damage; [and] or
- (7) Any remaining friable ACM or friable suspected ACM.

(c) Assessment shall include the following considerations:

- (1) Location and the amount of the material, both in total quantity and as a percentage of the functional space;
- (2) Condition of the material, specifying:
 - (A) Type of damage or significant damage (e.g., flaking, blistering, water damage, or other signs of physical damage);
 - (B) Severity of damage (e.g., major flaking, severely torn jackets, as opposed to occasional flaking, minor tears to jackets); and
 - (C) Extent or spread of damage over large areas or large percentages of the homogeneous area;
- (3) Whether the material is accessible;

- (4) The material's potential for disturbance;
- (5) Known or suspected causes of damage or significant damage (e.g., air erosion, vandalism, vibration, water); and
- (6) Preventive measures which might eliminate the reasonable likelihood of undamaged ACM from becoming significantly damaged.

(d) The local education agency shall select a person certified to develop management plans pursuant to section 11-504-34 to review the results of each inspection, reinspection, and assessment for the school building and to conduct any other necessary activities in order to recommend in writing to the local education agency appropriate response actions. The certified person shall sign and date the recommendation, provide his or her state of certification, provide his or her certification number, and submit a copy of the recommendation to the person designated pursuant to section 11-502-4 for inclusion in the management plan. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.88)"

12. Section 11-502-9, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-9 Response actions. (a) The local education agency shall select and implement in a timely manner the appropriate response actions in this section consistent with the assessment conducted pursuant to section 11-502-8. The response actions selected shall be sufficient to protect human health and the environment. The local education agency may then select, from the response actions which protect human health and the environment, that action which is the least burdensome method. Nothing in this section shall be construed to prohibit removal of ACBM from a school building at any time, should removal be the preferred response action of the local education agency.

(b) If damaged or significantly damaged thermal system insulation ACM is present in a building, the local education agency shall:

- (1) Repair the damaged area;
- (2) Remove the damaged material if it is not feasible, due to technological factors, to repair the damage; [or] and
- (3) Maintain all thermal system insulation ACM and its covering in an intact state and undamaged condition.

(c) If damaged friable surfacing ACM or damaged friable miscellaneous ACM is present in a building, the local education agency shall select from among the following response actions: encapsulation, enclosure, removal, or repair of the damaged material. In selecting the response action from among those which meet the definitional standards of a response action as provided in section 11-502-2, the local education agency shall determine which of these response actions protects human health and the environment. For purposes of determining which of these response actions are the least burdensome, the local education agency may then consider local circumstances, including occupancy and use patterns within the school building, and its economic concerns, including short-term and long-term costs.

(d) If significantly damaged friable surfacing ACM or significantly damaged friable miscellaneous ACM is present in a building, the local education agency shall:

- (1) Immediately isolate the functional space and restrict access, unless isolation is not necessary to protect human health and the environment; and
- (2) Remove the material in the functional space; or enclose or encapsulate if these would be sufficient to protect human health and the environment.

(e) If any friable surfacing ACM, thermal system insulation ACM, or friable miscellaneous ACM that has potential for damage is present in a building, the local education agency shall at a minimum implement an

operations and maintenance program, as described in section 11-502-10.

(f) If any friable surfacing ACM, thermal system insulation ACM, or friable miscellaneous ACM that has potential for significant damage is present in a building, the local education agency shall:

- (1) Implement an operations and management program as described in section 11-502-10;
- (2) Institute preventive measures appropriate to eliminate the reasonable likelihood that the ACM or its covering will become significantly damaged, deteriorated, or delaminated;
- (3) Remove the material as soon as possible if appropriate preventive measures cannot be effectively implemented, or unless other response actions are determined to protect human health and the environment; immediately isolate the area and restrict access if necessary to avoid an imminent and substantial endangerment to human health or the environment.

(g) Response actions including removal, encapsulation, enclosure, or repair, other than small-scale, short duration repairs, shall be designed and conducted by persons certified to design and conduct response actions as required in chapter 11-504, and in accordance with chapter 11-501. All certification records must be kept by the contractors and also kept in the management plan. These records must be made available for inspection by the department of health. Small-scale, short duration response actions shall be designed and conducted by personnel who have at the minimum completed the training required by section 11-502-11. Records of all small-scale, short duration response actions must be kept in the management plan pursuant to section 11-502-13(c).

(h) The requirements of this chapter in no way supersede the worker protection and work practice requirements pursuant to 29 CFR 1926.1101 (Occupational Safety and Health Administration asbestos worker protection standards for

construction), and chapter 11-501 (Asbestos Requirements).

(i) At the conclusion of any action to remove, repair, encapsulate, or enclose ACBM or material assumed to be ACBM and before re-occupancy:

(1) After the requirements of paragraphs (2) through (7) have been completed, a person designated by the local education agency who is certified as a project monitor pursuant to section 11-504-36 shall visually inspect each functional space where the action was conducted to determine whether the action has been properly completed. This visual inspection shall determine if any ACBM dust or debris is present. The person designated to conduct the visual inspection, the date, the area inspected, the response action conducted, and the results of the visual inspection shall be written and included in the management plan with all other documents relating to this response action. If any debris or dust is found, the response action shall not be considered complete and re-cleaning and visual re-inspection shall be performed;

(2) A person designated by the local education agency who is certified as a project monitor pursuant to section 11-504-36 shall collect air samples using aggressive sampling as described in 40 CFR Part 763, Subpart E, Appendix A, as referenced in section 11-502-3, to monitor air for clearance after each removal, encapsulation, and enclosure project involving ACBM, except for projects that are of small-scale, short duration or contained non-friable ACM that did not become friable during or after the response action. Air sample results must be provided in writing to the designated person before re-occupancy. The location of where these samples were taken must be recorded and kept in the management plan;

- (3) The local education agency shall have air samples collected pursuant to this section analyzed for asbestos using laboratories registered with the department, as required in section 11-504-19, and accredited by the NVLAP to conduct such analyses using transmission electron microscopy or, under circumstances permitted in this section, laboratories enrolled in an American Industrial Hygiene Association Testing Program for phase contrast microscopy;
- (4) Except as provided in [paragraph] paragraphs(5) and (6) an action to remove, encapsulate, or enclose ACBM shall be considered complete when the average concentration of asbestos of five air samples collected within the affected functional space and analyzed by the transmission electron microscopy method in 40 CFR Part 763, Subpart E, Appendix A, as referenced in section 11-502-3, is not statistically different, as determined by the Z-test calculation found in 40 CFR Part 763, Subpart E, Appendix A, as referenced in section 11-502-3, from the average asbestos concentration of five air samples collected at the same time outside the affected functional space and analyzed in the same manner, and the average asbestos concentration of the three field blanks described in 40 CFR Part 763, Subpart E, Appendix A, is below the filter background level, as defined 40 CFR Part 763, Subpart E, Appendix A, of seventy structures per square millimeter;
- (5) An action may also be considered complete if the volume of air drawn for each of the five samples collected within the affected functional space is equal to or greater than 1,199 liters of air for a twenty-five millimeter filter or equal to or greater than 2,799 liters of air for a thirty-seven

millimeter filter, and the average concentration of asbestos as analyzed by the transmission electron microscopy method in 40 CFR Part 763, Subpart E, Appendix A, as referenced in section 11-502-3, for the five air samples does not exceed the filter background level, as defined in 40 CFR Part 763, Subpart E, Appendix A, of seventy structures per square millimeter. If the average concentration of asbestos of the five air samples within the affected functional space exceeds seventy structures per square millimeter, or if the volume of air in each of the samples is less than 1,199 liters of air for a twenty-five millimeter filter or less than 2,799 liters of air for a thirty-seven millimeter filter, the action shall be considered complete only when the requirements of paragraph (4) or (6) are met;

- (6) The local education agency may choose to analyze air monitoring samples collected for clearance purposes by phase contrast microscopy, rather than transmission electron microscopy, to confirm completion of removal, repair, encapsulation, or enclosure of ACBM that is of small-scale, short duration. The action shall be considered complete when the results of samples collected in the affected functional space and analyzed by phase contrast microscopy using the NIOSH Method 7400 entitled "Fibers" published in the NIOSH Manual of Analytical Methods, 3rd Edition, Second Supplement, August 1987, show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantification for phase contrast microscopy (0.01 fibers per cubic centimeter of air); and
- (7) To determine the amount of ACBM affected pursuant to paragraph (6), the local

education agency shall add the total square or linear footage of ACBM within the containment barriers used to isolate the functional space for the action to remove, repair, encapsulate, or enclose the ACBM. Contiguous portions of material subject to such action conducted concurrently or at approximately the same time within the same school building shall not be separated to qualify pursuant to paragraph (6). The division of a pre-existing functional space into smaller functional spaces through containments or other methods to reduce the amount of ACBM and avoid more stringent air-clearance requirements is not permitted. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.90)"

13. Section 11-502-10, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-10 Operations and maintenance. (a) The local education agency shall implement an operations, maintenance, and repair program pursuant to this section whenever any friable ACBM is present or assumed to be present in a building that it leases, owns, or otherwise uses as a school building. Any material identified as nonfriable ACBM or nonfriable assumed ACBM must be treated as friable ACBM for purposes of this section when the material is about to become friable as a result of activities performed in the school building.

(b) The protection provided by EPA at 40 CFR 763.121 for worker protection during asbestos abatement projects is extended to employees of the local education agency who perform operations, maintenance, and repair activities involving ACM and who are not covered by the OSHA asbestos construction standard at 29 CFR 1926.1101 or an asbestos worker approved by OSHA pursuant to Section 19 of the U.S. Occupational Safety and Health Act as incorporated in

HAR Chapter 12-145.1. The local education agency may consult [40 CFR Part 763, Subpart E, Appendix B, as referenced] references in section 11-502-3, if their employees are performing operations, maintenance, and repair activities that are of small-scale and short duration.

(c) Small-scale, short duration activities shall only be performed by staff that have completed the training required by section 11-502-11. Records of all small-scale, short duration activities must be kept in the management plan. These shall include:

- (1) The location of ACBM disturbance;
- (2) The amount of ACBM affected;
- (3) The person performing the activity;
- (4) The training this person has received;
- (5) The length of time required to complete the activity; and
- (6) If ACM is removed, the name and location of the storage or disposal site of the ACM.

(d) Cleaning shall be performed as follows:

- (1) unless the building has been cleaned using equivalent methods within the previous six months, all areas of a school building where friable ACBM, damaged or significantly damaged thermal system insulation ACM, or friable suspected ACBM assumed to be ACM are present shall be cleaned at least once after the completion of the inspection required by section 11-502-5(a) and before the initiation of any response action, other than operations and maintenance activities or repair, according to the following procedures:

- (A) HEPA-vacuuuming or steam-cleaning all carpets;
- (B) HEPA-vacuuuming or wet-cleaning all other floors and all other horizontal surfaces; and
- (C) Disposal of all debris, filters, mop-heads, and cloths in sealed, leak-tight containers;

HAR Chapter 12-145.1. The local education agency may consult [40 CFR Part 763, Subpart E, Appendix B, as referenced] references in section 11-502-3, if their employees are performing operations, maintenance, and repair activities that are of small-scale and short duration.

(c) Small-scale, short duration activities shall only be performed by staff that have completed the training required by section 11-502-11. Records of all small-scale, short duration activities must be kept in the management plan. These shall include:

- (1) The location of ACBM disturbance;
- (2) The amount of ACBM affected;
- (3) The person performing the activity;
- (4) The training this person has received;
- (5) The length of time required to complete the activity; and
- (6) If ACM is removed, the name and location of the storage or disposal site of the ACM.

(d) Cleaning shall be performed as follows:

- (1) unless the building has been cleaned using equivalent methods within the previous six months, all areas of a school building where friable ACBM, damaged or significantly damaged thermal system insulation ACM, or friable suspected ACBM assumed to be ACM are present shall be cleaned at least once after the completion of the inspection required by section 11-502-5(a) and before the initiation of any response action, other than operations and maintenance activities or repair, according to the following procedures:

- (A) HEPA-vacuuming or steam-cleaning all carpets;
- (B) HEPA-vacuuming or wet-cleaning all other floors and all other horizontal surfaces; and
- (C) Disposal of all debris, filters, mop-heads, and cloths in sealed, leak-tight containers;

- (2) The certified management planner shall make a written recommendation to the local education agency whether additional cleaning is needed, and if so, the methods and frequency of such cleaning.

(e) The local education agency shall ensure that the procedures described below to protect building occupants shall be followed for any operations and maintenance activities disturbing friable ACM:

- (1) Restrict entry into the area by persons other than those necessary to perform the maintenance project, either by physically isolating the area or by scheduling;
- (2) Post signs to prevent entry by unauthorized persons;
- (3) Shut off or temporarily modify the air-handling system and restrict other sources of air movement;
- (4) Use work practices or other controls, such as wet methods, protective clothing, HEPA-vacuums, mini-enclosures, glove bags, as necessary to inhibit the spread of any released fibers;
- (5) Clean all fixtures or other components in the immediate work area; and
- (6) Place the asbestos debris and other cleaning materials in a sealed, leak-tight container.

(f) The response action for any maintenance activities disturbing friable ACM, other than small-scale, short duration maintenance activities, shall be designed by persons certified to design response actions and conducted by persons certified to conduct response actions as required by sections 11-504-22, 11-504-23, and 11-504-35.

(g) The local education agency shall ensure that the procedures described below are followed in the event of a minor fiber release episode; these procedures may be conducted by persons trained pursuant to subsection 11-502-11(b):

- (1) The debris shall be thoroughly saturated using wet methods;

- (2) The area shall be cleaned, as described in subsection (d);
- (3) The asbestos debris shall be placed in a sealed, leak-tight container; and
- (4) The area of damaged ACM shall be repaired with materials such as asbestos-free spackling, plaster, cement, or insulation; sealed with latex paint or an encapsulant; or the appropriate response action required by section 11-502-9 shall be immediately implemented.

(h) The local education agency shall ensure that the procedures described below are followed in the event of a major fiber release episode:

- (1) Entry into the area shall be restricted and signs shall be posted to prevent entry into the area by persons other than those necessary to perform the response action;
- (2) The air-handling system shall be shut off or temporarily modified to prevent the distribution of fibers to other areas in the building; and
- (3) The response action for any major fiber release episode shall be designed by persons certified to design response actions and conducted by persons certified to conduct response actions as required by sections 11-504-22, 11-504-23, and 11-504-35.

(i) The local education agency shall ensure that ACM such as floor tiles are not subjected to dry stripping or dry sanding. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.91)“

14. Section 11-502-11, Hawaii Administrative Rules, is amended to read as follows:

“§11-502-11 Training and periodic surveillance.

(a) The local education agency shall ensure, prior to the implementation of the operations, maintenance, and repair provisions of the management plan; that all members of its maintenance and

custodial staff (custodians, electricians, heating and air conditioning engineers, plumbers, etc.) who may work in a building that contains ACBM receive awareness training of at least two hours, whether or not they are required to work with ACBM. New custodial and maintenance employees shall be trained within sixty days after commencement of employment. Training shall include as a minimum, but not limited to:

- (1) Information regarding asbestos and its various uses and forms;
- (2) Information on the health effects associated with asbestos exposure;
- (3) Locations of ACBM identified throughout each school building in which they work;
- (4) Recognition of damage, deterioration, and delamination of ACBM; and
- (5) Name and telephone number of the person designated to carry out general local education agency responsibilities pursuant to section 11-502-4 and the availability and location of the management plan.

(b) The local education agency shall ensure that all members of its maintenance and custodial staff who conduct any activities that will result in the disturbance of ACBM shall receive training described in subsection (a) and fourteen hours of additional training. Additional training shall include:

- (1) Descriptions of the proper methods of handling ACBM;
- (2) Information on the use of respiratory protection as contained in the EPA/NIOSH "Guide to Respiratory Protection for the Asbestos Abatement Industry," September 1986 (EPA 560/OPPTS-86-001), available from [Toxic Substances Control Agency Assistance Office (TS-799) Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Rm. E-543, Washington, DC 20460,] TSCA Hotline (202) 554-1404 (email: tsca-hotline@epa.gov), and other personal protection measures;

(3) The provisions of this section, section 11-502-10, Appendices A, [B,] C, and D to Subpart E of 40 CFR Part 763 as referenced in section 11-502-3, chapter 11-501 and its references, and OSHA regulations contained in 29 CFR 1926.1101; and

(4) Hands-on training in the use of respiratory protection, other personal protection measures, and good work practices.

(c) Local education agency maintenance and custodial staff who have attended EPA-approved asbestos training or received equivalent training for operations, maintenance, and repair and periodic surveillance activities involving asbestos shall be considered trained for the purposes of this section.

(d) At least once very six months after a management plan is in effect, the local education agency shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM. Each person performing periodic surveillance shall:

(1) Visually inspect all areas that are identified in the management plan as ACBM or assumed ACBM;

(2) Record the date of the surveillance, the person's name, and any changes in the condition of the materials;

(3) Submit to the person designated to carry out general local education agency responsibilities pursuant to section 11-502-4 a copy of such record for inclusion in the management plan; and

(4) Complete at least the two-hour asbestos awareness course prior to performing the periodic surveillance. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.92)"

15. Section 11-502-12, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-12 Management plans. (a) If a building is to be used as part of a school, the local education agency shall include the building in the management plan for the school prior to its use as a school building. The revised portions of the management plan shall be submitted to the department of health. If the local education agency begins to use a building as a school, the local education agency shall submit a management plan for the school, developed by a certified management planner, to the department of health prior to its use as a school.

(b) The local education agency shall maintain and update its management plans to keep them current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan by this chapter shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date.

(c) The management plan shall be developed by a management planner certified according to section 11-504-34 and shall include:

(1) A list of the name and address of each school building and whether the school building contains friable ACBM, nonfriable ACBM, and friable and nonfriable suspected ACBM assumed to be ACM;

(2) For each inspection conducted before December 14, 1987:

(A) The date of the inspection;

(B) A blueprint, diagram, or written description of each school building that identifies clearly each location and the approximate square or linear footage of any homogeneous or sampling area where material was sampled for ACM, and, if possible, the exact locations where bulk samples were collected, and the dates of collection;

(C) A copy of the analyses of any bulk samples, dates of analyses, and a copy

- of any other laboratory reports pertaining to the analyses;
- (D) A description of any response actions or preventive measures taken to reduce asbestos exposure, including, if possible, the names, business addresses, and license numbers of all contractors involved, start and completion dates of the work, and results of any air samples analyzed during and upon completion of the work; and
 - (E) A description of assessments required [by] to be made pursuant to section 11-502-8 of material that was identified before December 14, 1987, as friable ACBM or friable suspected ACBM assumed to be ACM, and the name and signature, the state of certification, and the certification number of each certified person making the assessments;
- (3) For each inspection and reinspection conducted pursuant to section 11-502-5:
- (A) The date of the inspection or reinspection and the name and signature, the state of certification, and the certification number of each certified inspector performing the inspection or reinspection;
 - (B) A blueprint, diagram, or written description of each school building that identifies clearly each location and approximate square or linear footage of homogeneous areas where material was sampled for ACM, the exact location where each bulk sample was collected, the date of collection, the homogeneous areas where friable suspected ACBM is assumed to be ACM, and where nonfriable suspected ACBM is assumed to be ACM;

- (C) A description of the manner used to determine sampling locations, and the name and signature of each certified inspector collecting samples, the state of certification, and the inspector's certification number;
 - (D) A copy of the analyses of any bulk samples collected and analyzed, the name and address of any laboratory that analyzed bulk samples, a statement that the laboratory meets the applicable requirements of section 11-502-7(a), the date of analysis, and the name and signature of the person performing the analysis; and
 - (E) A description of assessments required to be made pursuant to section 11-502-8 of all ACBM and suspected ACBM assumed to be ACM, and the name, signature, state of certification, and certification number of each certified person making the assessments;
- (4) The name, business address, and telephone number of the person designated pursuant to section 11-502-4 to ensure that the duties of the local education agency are carried out, and the course name, and dates and hours of training taken by that person to carry out the duties;
 - (5) The recommendations made to the local education agency regarding response actions pursuant to section 11-502-9, the name, signature, state of certification and certification number of each person making the recommendations;
 - (6) A detailed description of preventive measures and response actions to be taken, including methods to be used, for any friable ACBM, the locations where such measures and action will be taken, reasons for selecting the response action or preventive measure, and a schedule for

beginning and completing each preventive measure and response action;

- (7) With respect to the person or persons who inspected for ACBM and who will design or carry out response actions, except for operations and maintenance, with respect to the ACBM, a statement that the person is certified pursuant to chapter 11-504;
- (8) A detailed description in the form of a blueprint, diagram, or written summary of any ACBM or suspected ACBM assumed to be ACM which remains in the school once response actions are undertaken pursuant to section 11-502-9. This description shall be updated as response actions are completed;
- (9) A plan for reinspection pursuant to section 11-502-5, a plan for operations and maintenance activities pursuant to section 11-502-10, a plan for periodic surveillance pursuant to section 11-502-11, a description of the written recommendation made by the management planner regarding additional cleaning pursuant to section 11-502-10(d)(2) as part of an operations and maintenance program, and the response of the local education agency to that recommendation;
- (10) A description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, reinspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress;
- (11) A description of the planned method to notify short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos to ensure they are provided information regarding the locations of ACM as required in section 11-502-4;
- (12) An evaluation of the resources needed to complete response actions successfully and

carry out reinspection, operations and maintenance activities, periodic surveillance, and training; and

- (13) With respect to each inspector or management planner who contributed to the management plan, the name of the person and a statement that the inspector or management planner is certified pursuant to chapter 11-504-33 and 11-504-34.

(d) The local education agency may require each management plan to contain a statement signed by [an] a certified management planner that the person has prepared or assisted in the preparation of the plan or has reviewed the plan, and that the plan is in compliance with this chapter. The statement may not be signed by a person who, in addition to preparing or assisting in preparing the management plan, also implements or will implement the management plan.

(e) Upon submission of a management plan to the [governor] the department for review, the local education agency shall keep a copy of the plan in its administrative office. [The management plan shall be available in the main office of the local education agency and at a specified location on the island on which the subject property of the plan is located, without cost or restriction, for inspection by representatives of EPA and the State, the public, including teachers, other school personnel, and their representatives, and parents. The local education agency may charge a reasonable amount to make copies of management plans.]

(f) The local education agency shall maintain in its administrative office [and at a specified location on the island on which the subject property of the plan is located] a complete, updated copy of the management plan for each school under its administrative control or direction. The management plan shall be available, during normal business hours, without cost or restriction, for inspection by representatives of EPA and the State, the public, teachers, other school personnel and their representatives, and parents. The local education

agency may charge a reasonable [cost] amount to make copies of management plans.

(g) Each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. Management plans shall be available for inspection, without cost or restriction, to workers before work begins in any area of a school building. The school shall make management plans available for inspection to representatives of EPA and the State, the public, including parents, teachers, and other school personnel and their representatives within five working days after receiving a request for inspection. The school may charge a reasonable amount to make copies of the management plan.

(h) Upon submission of its management plan to the [governor] department and at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the [notification] notice. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups and a dated copy of the notice.

(i) Records required pursuant to section 11-502-13 shall be made by the local education agency and maintained as part of the management plan.

(j) Each management plan shall contain a true and correct statement, signed by the individual designated by the local education agency pursuant to section 11-502-4, which certifies that the general, local education agency responsibilities, as stipulated in section 11-502-4, have been or will be met.

[Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.93)"

16. Section 11-502-13, Hawaii Administrative Rules, is amended to read as follows:

"§11-502-13 Record keeping. (a) Records required pursuant to this section shall be maintained in a centralized location in the administrative office of both the school and the local education agency as part of the management plan. For each homogeneous area where all ACBM has been removed, the local education agency shall ensure that such records are retained for three years after the next reinspection required pursuant to section 11-502-5(b), or for an equivalent period.

(b) For each preventive measure and response action taken for friable and nonfriable ACBM and friable and nonfriable suspected ACBM assumed to be ACM, the local education agency shall provide:

- (1) A detailed written description of the measure or action, including the project design, methods used, the location where the measure or action was taken, reasons for selecting the measure or action, start and completion dates of the work, names, addresses and certifications of all contractors, workers, supervisors, project designers, and inspectors involved, their state of certification, and certification numbers, the visual inspection documentation required in section 11-502-9(i)(1), and, if ACBM is removed, the name and location of the storage or disposal site of the ACM; and
- (2) The name and signature of any person collecting any air sample required to be collected at the completion of certain response actions specified in section 11-502-9(i), the locations where samples were collected, the date of collection, the name and address of the laboratory analyzing the samples, the date of analysis, the results of the analysis, the method of analysis, the name and signature of the person performing the analysis, and a statement that the

laboratory meets the applicable requirements of section 11-502-9(i)(3).

(c) For each person required to be trained pursuant to [section] sections 11-502-11(a) and (b), the local education agency shall provide the person's name and job title, the date that training was completed by that person, the location of the training, and the number of hours of training completed.

(d) For each time that periodic surveillance pursuant to section 11-502-11(d) is performed, the local education agency shall record the name of each person performing the surveillance, the date of the surveillance, and any changes in the conditions of the materials.

(e) For each time that cleaning pursuant to section 11-502-10(d) is performed, the local education agency shall record the name of each person performing the cleaning, the date of the cleaning, the locations cleaned, and the methods used to perform the cleaning.

(f) For each time that operations and maintenance activities pursuant to section 11-502-10(e) are performed, the local education agency shall record the name of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and if ACBM is removed, the name and location of the storage or disposal site of the ACM.

(g) For each time that major asbestos activity is performed pursuant to section 11-502-10(f), the local education agency shall provide the name and signature, the state of certification, and the certification number of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and, if ACBM is removed, the name and location of the storage or disposal site of the ACM.

(h) For each fiber release episode as described in [section] sections 11-502-10(g) and (h), the local education agency shall provide the date and location

of the episode, the method of repair, preventive measures or response action taken, the name of each person performing the work, and, if ACBM is removed, the name and location of the storage or disposal site of the ACM. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.94)“

17. Section 11-502-14, Hawaii Administrative Rules, is amended to read as follows:

“§11-502-14 Warning labels. (a) The local education agency shall attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas (such as boiler rooms) at each school building. This shall include

- (1) Friable ACBM that was responded to by a means other than removal,
- (2) ACBM for which no response action was carried out.

(b) All labels shall be prominently displayed in readily visible locations and shall remain posted until the ACBM that is labeled is removed.

(c) The warning label shall read, in print which is readily visible because of large size[,] or bright color, or both, as follows: DANGER: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT. [Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.95)“

18. Section 11-502-15, Hawaii Administrative Rules, is amended to read as follows:

“§11-502-15 Exclusions. (a) The local education agency shall not be required to perform an inspection pursuant to section 11-502-5(a) in any homogeneous area of a school building where:

- (1) A certified inspector has determined that, based on sampling records, friable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987. The inspector shall sign

and date a statement to that effect with the inspector's state of certification, the certification number and, within thirty days after such determination, submit a copy of the statement to the person designated under section 11-502-4 for inclusion in the management plan. However, a certified inspector shall assess the friable ACBM pursuant to section 11-502-8;

- (2) A certified inspector has determined that, based on sampling records, nonfriable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987. The inspector shall sign and date a statement to that effect with the inspector's state of certification, certification number, and, within thirty days after such determination, submit a copy of the statement to the person designated pursuant to section 11-502-4 for inclusion in the management plan. However, [an] a certified inspector shall identify whether material that was nonfriable has become friable since that previous inspection and shall assess the newly-friable ACBM pursuant to section 11-502-8;
- (3) Based on sampling records and inspection records, [an] a certified inspector has determined that no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987, in substantial compliance with section 11-502-5(a), which for purposes of this section means in a random manner and with a sufficient number of samples to reasonably ensure that the area is not ACBM. The certified inspector shall sign and date a statement, with the inspector's state of certification, and certification number, that the homogeneous or sampling area determined not to be ACBM was sampled in substantial compliance with section 11-502-

- 5(a). Within thirty days after the inspector's determination, the local education agency shall submit a copy of the inspector's statement to the director and shall include the statement in the management plan for that school;
- (4) The department of health has determined that, based on sampling records and inspection records, no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987, in substantial compliance with section 11-502-5(a). Such determination shall be included in the management plan for that school;
- (5) A certified inspector has determined that, based on records of an inspection conducted before December 14, 1987, suspected ACBM identified in that homogeneous or sampling area is assumed to be ACM. The inspector shall sign and date a statement to that effect, with the inspector's state of certification, certification number and, within thirty days of such determination, submit a copy of the statement to the person designated pursuant to section 11-502-4 for inclusion in the management plan. However, [an] a certified inspector shall identify whether material that was nonfriable suspected ACBM assumed to be ACM has become friable since the previous inspection and shall assess the newly friable material and previously identified friable suspected ACBM assumed to be ACM pursuant to section 11-502-8;
- (6) Based on inspection, contractor, and clearance records, a certified inspector has determined that no ACBM is present in the homogeneous or sampling area where asbestos removal operations have been conducted before December 14, 1987, and shall sign and date a statement to that effect and include

the inspector's state of certification and certification number. The local education agency shall submit a copy of the statement to the director and shall include the statement in the management plan for that school; or

- (7) An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or a certified inspector signs a statement that no ACBM was specified as a building material in any construction document for the building, or, to the best of that person's knowledge, no ACBM was used as a building material in the building. The local education agency shall submit a copy of the signed statement of the architect, project engineer, or certified inspector to the director and shall include the statement in the management plan for that school.

(b) The exclusion, pursuant to subsection (a)(1) through (4), from conducting the inspection pursuant to section 11-502-5(a) shall apply only to homogeneous or sampling areas of a school building that were inspected and sampled before October 17, 1987. The local education agency shall conduct an inspection pursuant to section 11-502-5(a) of all areas inspected before October 17, 1987, that were not sampled or were not assumed to be ACM.

(c) If ACBM is subsequently found in a homogeneous or sampling area of the local education agency that had been identified as receiving an exclusion by a certified inspector pursuant to subsection (a)(3) through (5) or an architect, project engineer, or certified inspector pursuant to subsection (a)(7), the local education agency shall have one hundred eighty days following the date of identification of ACBM to comply with this chapter.

[Eff 2/15/01; am] (Auth: HRS §§321-11(26), 342P-3) (Imp: 40 CFR Part 763.99)"

19. All sections of the Hawaii Administrative Rules 11-502 are amended by adding reference to HRS §342P-3 to clarify legislative authority.

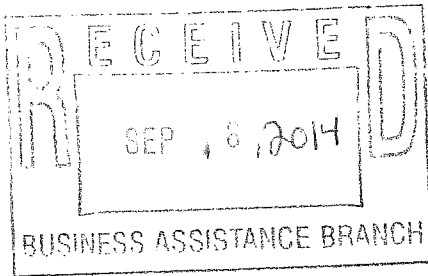
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

Director of Health

APPROVED AS TO FORM

Deputy Attorney General

Exhibit 4



Ramseyer Format August 26, 2014

Amendments to Chapter 11-504
Hawaii Administrative Rules

1. Section 11-504-1, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-1 Purpose and scope. These rules require the certification of persons or companies who perform activities at facilities for the evaluation or control of material which contains asbestos. These rules also set forth requirements for work practices and the accreditation of asbestos training[.] courses and course providers. [Eff 2/15/01; am] (Auth: HRS §342P) (Imp: 40 CFR Part 763, Appendix C)"

2. Section 11-504-2, Hawaii Administrative Rules, is amended by amending the definition of "Abatement entity" to read:

""Abatement entity" means any person acting individually having one or more employees or members involved in any abatement project."

3. Section 11-504-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Inspection" means an activity undertaken in a school building, a public and commercial building, or a facility, to determine the presence or location, or to assess the condition of, friable or non-friable ACBM or suspected ACBM, whether by visual or physical examination, or by collecting samples of such

material. This term includes reinspections of friable and non-friable known or assumed ACBM which has been previously identified. The term does not include the following:

- (1) Periodic surveillance of the type described in §11-502-11 solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM.
- (2) Inspections performed by employees or agents of Federal, State, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or
- (3) Visual inspections of the type described in §11-502-9 solely for the purpose of determining compliance of response actions."

4. Section 11-504-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes. The term includes, but is not limited to: industrial and office buildings, residential apartment buildings and condominiums of 10 or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space."

5. Section 11-504-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Response action" means a method, including removal, encapsulation, enclosure, repair, and

operations and maintenance, that protects human health and the environment from friable ACBM."

6. Section 11-504-2, Hawaii Administrative Rules, is amended by amending the definition of "TSCA" to read:

"TSCA" means the U.S. Toxic [Substance] Substances Control Act 15 U.S.C. 2601, et seq."

7. Section 11-504-3, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-3 References. The following references contain detailed information on asbestos-related regulations that are applicable to this chapter. The user is responsible for obtaining updates and revisions [of] to the following documents:

- (1) PL 99-519, Toxic [Substance] Substances Control Act, Title II, Asbestos Hazard Emergency Response Act (AHERA);
- (2) 40 CFR, Part 763, Asbestos Containing Materials in Schools, Final Rule & Notice, October 30, 1987;
- (3) 40 CFR Part 763 Appendix A to Subpart E, Interim Transmission Microscopy Analytical Methods - Mandatory and Nonmandatory - and mandatory Section to Determine Completion of Response Actions, October 30, 1987;
- (4) 40 CFR, Part 763, Asbestos Model Accreditation Plan [59 CFR 5236] (February 3, 1994);
- (5) 40 CFR, Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart A (General Provisions) and Subpart M (National Asbestos Standards);
- (6) OSHA 29 CFR 1926.58, General Construction Standard;
- (7) OSHA 29 CFR 1926.1101, Asbestos

- (8) Chapter 12-145, 12-145.1, HIOSH Construction Standards, Asbestos;
- (9) Chapter 12-206, HIOSH Health Standards, Asbestos;
- (10) Chapter 16-77, subchapter 19, DCCA Asbestos Contractors; and
- (11) Hawaii Revised Statutes, sections 321-11(26), 321-13(a)(I) and 321-15. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763)“

8. Section 11-504-4, Hawaii Administrative Rules, is amended to read as follows:

“§11-504-4 Certification requirements. No person shall engage in an abatement project as a worker, contractor/supervisor, inspector, management planner, project designer, or project monitor [or training provider], without a valid and current certification from the director. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)“

9. Section 11-504-5, Hawaii Administrative Rules, is amended to read as follows:

“§11-504-5 Interim certification. (a) Persons certified by another state or agency with an EPA-approved accreditation program on the effective date of these rules shall be certified on an interim basis for a period of six months from the effective date of these rules or until their current certification expires, whichever comes first.

(b) All interim-approved persons must apply within six months of the effective date of these rules to become certified. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)

10. Section 11-504-7, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-7 Action on application. The director shall approve or deny a completed application within one hundred eighty days after submittal. [The failure of the director to act within the one hundred eighty-day period shall be deemed an approval of the application.] [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

11. Section 11-504-9, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-9 Suspension, revocation, or modification of certification. The director may suspend, revoke, or modify any certification issued under these rules if, after according the certificate holder an opportunity for a hearing in accordance with chapter 91, HRS, the director determines that the person has not complied with applicable procedures and standards or for any reason given in section 11-504-8. At a minimum, the standards shall include:

- (1) The person has failed to meet the standards set forth in this chapter;
- (2) The person has performed work requiring certification at a job site without being in physical possession of a [copy of his or her current certificate] valid department-issued asbestos certification card which reflects possession of initial and current accreditation certificates;
- (3) The person has provided his or her own certificate or permitted the duplication of it for use by another;
- (4) The person has performed work for which certification has not been [received] obtained;
- (5) The person has obtained certification from a training provider that is not accredited to

- offer training for the particular discipline; or
- (6) The person has violated other asbestos regulations administered by the State. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

12. Section 11-504-10, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-10 Expiration of certification. Certification shall expire one year from the day on which the training course was successfully completed, pursuant to §504-54, unless certification [was] is suspended or revoked sooner. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

13. Section 11-504-12, Hawaii Administrative Rules, is amended to read as follows:

"Reciprocity. (a) Each applicant for certification who is licensed, certified, or permitted for the appropriate asbestos abatement activity, consulting service, or analytical service with an EPA-approved accreditation program in another state may petition the department on a form provided by the department to grant certification without repetition of the training requirements.

(b) The department may grant certification if the applicant has met licensing, certification, or permitting requirements in [another state] a state with an EPA-approved accreditation program and these requirements are equal to or more stringent than the requirements for certification in the State of Hawaii [Eff February 15, 2001] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

14. Section 11-504-13, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-13 Summary of requirements for abatement entities. (a) All abatement entities shall register with the department prior to performing any abatement project on facilities. Applications for registration shall be made on forms provided by the director which shall contain the following information:

- (1) Name and address of business owner;
- (2) Name of operations manager; and
- (3) Names and State certification numbers for all employees performing asbestos work.

(b) The following is a list of requirements that abatement entities shall comply with when performing abatement projects in the State of Hawaii:

- (1) Be registered with the department prior to performing any work regulated by this chapter;
- (2) Ensure that proper notification of any proposed abatement project is sent in writing to the department in accordance with sections 11-501-7 and 11-504-14;
- (3) Ensure that records of all abatement projects which it performs are maintained and retained in accordance with section 11-504-17;
- (4) Ensure that an abatement contractor/supervisor remains on-site whenever any abatement activity is being carried out as part of an abatement project;
- (5) Submit evidence to the director upon request that all abatement workers and abatement contractor/supervisors in its employment have been properly trained and certified in accordance with section 11-504-22 and 23;
- (6) Ensure that all abatement projects shall be performed as designed by a Hawaii certified project designer;
- (7) If a supplied air system is used for abatement activities, provide the director

- with access to the system for on-site inspections;
- (8) Ensure that the person who is responsible for supervising the abatement project meets the requirements set forth in section 11-504-23; and
 - (9) Ensure that all persons participating in abatement projects have completed an accredited initial training course as specified in section 11-504-52, or a refresher training course in accordance with section 11-504-53 within one year of their last accredited training course, and that their certification is current.
- [Eff 2/15/01; am] (Auth: HRS §342P-42) (Imp: 40 CFR Part 763, Appendix C; and HRS §342P-42)"

15. Section 11-504-15, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-15 Emergency abatement projects. An abatement entity shall contact the department by phone prior to beginning an emergency abatement project, and shall send to the department written notification [shall be] postmarked no more than twenty-four hours after beginning the project. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

16. Section 11-504-16, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-16 Retention of records. Each registered abatement entity shall maintain records and retain documents in accordance with section 11-504-17 of all abatement projects which it performs and shall make these records and documents available to the department upon request. The abatement entity shall

retain the records for no less than [thirty] six years after completion of the abatement project.

[Eff 2/15/01; am] (Auth: HRS §342P-41)
(Imp: 40 CFR Part 763, Appendix C)“

17. Section 11-504-17, Hawaii Administrative Rules, is amended to read as follows:

“§11-504-17 Required records. The abatement entity shall record the following information for each abatement project:

- (1) The results of bulk sampling analysis of suspect material to be disturbed that is not assumed to be asbestos-containing, including the name and certificate number of the [analytic] analytical service used;
- (2) The location and work plan of the project and estimated amount of asbestos involved in the project;
- (3) The scheduled and actual starting and completion dates. If the actual completion date differs from that originally scheduled, a statement of reasons for the difference shall be included;
- (4) Documentation of compliance with all asbestos-related regulatory requirements;
- (5) Copies of all asbestos-related correspondence with regulatory agencies concerning the project (i.e., building or demolition permits, notices of violation, etc.);
- (6) The name and address of the authorized asbestos disposal facility to which the asbestos-containing materials were taken, documentation of the amount of asbestos received for disposal, and confirmation of asbestos received for disposal, and confirmation of proper disposal;
- (7) The methodology and results of all air sampling conducted during the abatement process, the name and certificate number of

- the project monitor hired to perform such sampling, and the name and registration number of the analytical service employed to analyze such samples;
- (8) A complete list of workers, contractor/supervisors, and other employees or agents participating in the abatement project, along with a copy of their current certificate; and
 - (9) Descriptions, including dates and times, of unplanned exposures to asbestos and work-site accidents. [Eff 2/15/01; am]
(Auth: HRS §342P-42) (Imp: 40 CFR Part 763, Appendix C)"

18. Section 11-504-18, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-18 Documents to be retained on-site. The following documents shall be retained on-site for the duration of the abatement project:

- (1) A current copy of Hawaii Administrative Rules chapters 501 through 504;
- (2) Documentation of the adequacy of compressed air systems and respiratory protection systems including a list of compatible components and specifications of the types and maximum number of respirators that may be used with the system;
- (3) Copies of the procedures for the use of the decontamination enclosure system or any other procedures which have been established to prevent contamination of areas outside the work area;
- (4) Copies of procedures to be followed during medical emergencies, including phone numbers of the nearest hospital or other emergency facility, which shall be posted by the nearest telephone;

- (5) Copies of certificates held by all abatement workers and abatement contractor/supervisors actively engaged in the abatement project;
- (6) Certification of the project designer who wrote procedures for the job;
- (7) [Copies of bulk sampling results, including inspector and laboratory names for all suspect material to be disturbed that is not assumed to be asbestos-containing] Copies of bulk sampling results, which shall include inspector, laboratory and analyst names, for all suspect material to be disturbed that is not assumed to be asbestos containing; and
- (8) [Records] Results of all air sampling as required in HIOSH section [12-145-5] 12-145-1. [Eff 2/15/01; am] (Auth: HRS §342P-42) (Imp: 40 CFR Part 763, Appendix C)"

19. Section 11-504-19, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-19 Summary of requirements for laboratories and analysts. (a) All laboratories [or] and analysts [, or both] must annually register with the department in order to provide analysis [on] of samples from regulated facilities. All applications for registration shall be made on forms provided by the department which shall contain the following information:

- (1) Name and address of business owner;
- (2) Name and address of the laboratory;
- (3) Results of most recent quarterly test by AIHA;
- (4) Names of all analysts employed in the laboratory;

(b) All analysts performing asbestos analysis on samples from regulated facilities shall have completed the NIOSH 582 course in asbestos analysis or its equivalent.

(c) Bulk sample analysis requires participation in a laboratory testing program, and air sample

analysis requires participation in either a laboratory testing program or an individual analyst testing program. All members of a participating laboratory shall participate in the testing rounds and records of the results shall be kept by the laboratory.

(d) Bulk samples shall be analyzed by polarized light microscopy (PLM) in accordance with ["Interim method for the determination of asbestos in bulk insulation samples", found in 40 CFR Part 763, Appendix E to Subpart E.] Method for the Determination of Asbestos in Bulk Building Materials" EPA 600/R-93/116 (1993). The laboratory [or analyst] shall be accredited by The National Voluntary Laboratory Accreditation Program (NVLAP), administered by NIST. [in one of the following programs:

- (1) The National Voluntary Laboratory Accreditation Program (NVLAP), administered by NIST; or (2) The Bulk Asbestos Quality Assurance (BAQA) program administered by AIHA.]

(e) Air clearance samples analyzed by transmission electron microscopy (TEM) shall be analyzed in accordance with "Interim transmission electron microscopy analytical methods". [, found in 40 CFR Part 763 Appendix A to Subpart E.] The laboratory [or analyst] shall be accredited with NVLAP.

(f) Air samples analyzed by phase contrast microscopy (PCM) shall be performed by laboratories [or analysts that use] using the NIOSH method 7400 [7400 method] and participate in one of the following programs:

- (1) The laboratory Proficiency Analytical Testing (PAT) program, administered by AIHA; or
- (2) The Asbestos Analytical Testing (AAT) program, administered by AIHA and registered in the Asbestos Analysts Registry (AAR).

(g) Any changes in personnel or status with AIHA or NIST shall require written notification to the department that is received or postmarked within

thirty days. [Eff 2/15/01; am] (Auth: HRS §342P-42) (Imp: 40 CFR Part 763, Appendix C)"

20. Section 11-504-22, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-22 Worker[s]. (a) A worker may provide services that include the following:

- (1) Perform abatement [work] projects as designed by a certified project designer; and
- (2) Perform small-scale, short duration or emergency abatement activities.

(b) The minimum requirements necessary for certification as a worker include:

- (1) Is at least eighteen years of age; and
- (2) Has successfully completed an accredited four-day, initial training course in accordance with section 11-504-52(a) [or] and any associated refresher course in accordance with section 11-504-53.

[Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(1))"

21. Section 11-504-23, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-23 Contractor/Supervisor[s]. (a) A contractor/supervisor may provide services that include the following:

- (1) Perform abatement [work] projects as described for workers in accordance with 11-504-22(a);
- (2) Ensure proper work practices are followed; and
- (3) Ensure that the abatement project is performed in accordance with the specification of the certified project designer.

(b) The minimum requirements necessary for certification as a contractor/supervisor include:

- (1) Is at least eighteen years of age; and
- (2) Fulfills one of the following sets of requirements:

(A) Has six months of experience working within containment and has either successfully completed a five-day, initial contractor/supervisor training course in accordance with 11-504-52(b) [or] and a refresher course in accordance with 11-504-53. The abatement entity shall submit evidence of these requirements to the department, including a summary of past contracts and abatement projects completed; or

(B) Three years of experience in general construction and either successful completion of an accredited contractor/supervisor training course in accordance with subsection 11-504-52(b) [or] and any associated refresher training course in accordance with section 11-504-53. The asbestos abatement entity shall submit evidence of this training and experience to the department, including a summary of past contracts and abatement projects completed. [Eff 2/15/01; am]
(Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(2))"

22. Section 11-504-33, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-33 Inspector. (a) A person certified as an inspector may provide services that include the following:

- (1) Collect bulk samples from suspect asbestos-containing material;

(2) Evaluate the condition of asbestos-containing materials in buildings;

(3) Inspect buildings for the presence of asbestos-containing materials;

(4) Formulate plans for bulk sampling strategies; and

(5) Determine whether suspect asbestos-containing materials are friable or non-friable.

(b) The minimum requirements necessary for certification as an inspector are:

(1) [Possession] Completion of at least two years of full-time college education from an accredited college or university, successful completion of an inspector initial training course, and any associated annual refresher courses accredited by the department; or

(2) Possession of a high school diploma or General Equivalency Diploma, two years of experience in engineering or industrial hygiene, successful completion of an inspector initial training course, and any associated annual refresher training courses accredited by the department; or

(3) Possession of a high school diploma or General Equivalency Diploma, one year of experience in abatement activities, successful completion of an inspector initial training course, and any associated annual refresher courses accredited by the department. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(3) and (1)(E)(1))"

23. Section 11-504-34, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-34 Management planner. (a) A person certified as a management planner may provide services that include the following:

(1) Utilize information gathered by certified inspectors to assess the potential hazards of asbestos-containing materials;

- (2) Develop abatement response actions, management plans, or operation and maintenance plans;
 - (3) Select and recommend abatement actions to mitigate the health hazards posed by asbestos-containing materials in facilities; and
 - (4) Provide advice to clients on the selection and use of personal protective equipment.
- (b) The minimum requirements necessary for certification as a management planner are:
- (1) Possession of a bachelor's degree in project planning, management, environmental sciences, engineering, architecture, industrial hygiene, occupational health, or a related scientific field; six months of experience in abatement activities, successful completion of an inspector and management planner initial training course, and any associated annual refresher courses accredited by the department; or
 - (2) Possession of an associates degree in project planning, management, environmental sciences, engineering, construction, architecture, industrial hygiene, occupational health, or a related scientific field, one year of experience in abatement activities, successful completion of an inspector and management planner initial training course, and any associated annual refresher courses accredited by the department; or
 - (3) Possession of a high school diploma or General Equivalency Diploma, three years of experience in engineering or industrial hygiene, one year of experience in abatement activities, successful completion of an inspector and management planner initial training course, and any associated annual refresher courses accredited by the department. [Eff 2/15/01; am]

(Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(4) and (1)(E)(2))"

24. Section 11-504-35, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-35. Project designer. (a) A person certified as a project designer may provide services that include the following:

- (1) Provide the design, preparation, and evaluation of abatement projects or abatement activity project specifications;
- (2) Prepare bidding documents, architectural drawings, and schematic representation of material locations; and
- (3) Determine how the abatement should be conducted.

(b) The minimum requirements necessary for certification as a project designer are:

- (1) Status as either an American Board of Industrial Hygiene Certified Industrial Hygienist, a licensed Professional Engineer, or licensed Architect, six months of experience in abatement projects, successful completion of an accredited project designer initial training course, and any associated annual refresher courses accredited by the department; or
- (2) Possession of a bachelor's degree from an accredited four-year college or university, one year of experience in abatement projects, successful completion of a project designer initial course, and any associated annual refresher courses accredited by the department; or
- (3) Possession of an associates degree in project planning, management, environmental sciences, engineering, construction, architecture, industrial hygiene, occupational health, or a related scientific field, three years of experience in

abatement projects, the successful completion of a project designer initial training course, and any associated annual refresher courses accredited by the department; or

- (4) Possession of a high school diploma or General Equivalency Diploma, four years of experience in engineering or industrial hygiene; one year of experience in abatement projects, successful completion of a project designer initial training course, and any associated annual refresher courses accredited by the department. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(5) and (1)(E)(3))"

25. Section 11-504-36, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-36 Project monitor. Project monitors are required pursuant to section 11-502-9 but are not required for all abatement projects. (a) A person certified as a project monitor may provide services that include the following:

- (1) [Recommend to the building owner abatement options to mitigate the health hazard posed by the asbestos-containing materials in buildings;] Collect air samples for the purpose of area and clearance monitoring at abatement project sites provided that the monitor is not an employee of the abatement entity performing the abatement, unless the project is conducted solely by in-house employees;
- (2) [Collect air samples for the purpose of area and clearance monitoring at abatement project sites provided that the monitor is not an employee of the abatement entity performing the abatement, unless the project is conducted solely by in-house employees;]

Oversee abatement projects carried out by abatement entities;

- (3) [Provide advice to the building owner on selection and use of personal protective equipment;] Perform visual inspections of completed abatement projects to determine if the project meets completion requirements;
and

- (4) [Oversee abatement projects carried out by abatement entities;] Serve as a building owner representative to ensure that abatement is completed according to specification and in compliance with all relevant statutes and regulations.

- [(5) Perform visual inspections of completed abatement projects to determine if the project meets completion requirements; and

- (6) Serve as a building owner representative to ensure that abatement is done correctly.]

(b) The minimum requirements necessary for certification as a project monitor are:

- (1) Possession of a bachelor's degree from an accredited four-year college or university, documented participation in a minimum of three abatement projects inside an asbestos containment area, successful completion of a project monitor initial training course, and any associated annual refresher courses accredited by the department; or

- (2) [Possession] Completion of two years of full-time college education from an accredited college or university, one year of experience in engineering or industrial hygiene, documented participation in a minimum of three abatement projects inside an asbestos containment area, successful completion of a project monitor initial training course, and any associated annual refresher courses accredited by the department; or

- (3) Possession of a high school diploma or General Equivalency Diploma, three years of

experience in engineering or industrial hygiene, documented participation in a minimum of three abatement projects inside an asbestos containment area, successful completion of a project monitor initial training course, and any associated annual refresher course accredited by the department. [Eff 2/15/01; am]
(Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(B)(6))"

26. Section 11-504-42, Hawaii Administrative Rules, is repealed.

"§11-504-42 Reserved. [Interim accreditation.

(a) Training courses which are accredited, licensed, certified, permitted or approved by a state other than Hawaii which has EPA approval on the effective date of these rules shall be accredited on an interim basis, according to the following guidelines, for a period of six months or until their current accreditation expires, whichever is sooner, at which time they shall meet all current requirements. Complete accreditation shall be granted following an audit of the course(s) and if they are found to be in compliance with this subchapter.

(b) New applicants shall be granted interim accreditation upon submission of all required materials for a period of six months, during which the department shall audit their training course(s) and determine whether the course(s) meets the requirement of this subchapter. [Eff 2/15/01] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(3))]"

27. Section 11-504-43, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-43 Application for training course accreditation. (a) The applicant for accreditation of an asbestos training course must submit the

following information in writing to the department in compliance with the instructions on the application form:

- (1) The name, address, and phone number of the firm or person to be presenting the course;
- (2) The type of course or courses for which accreditation is being requested and a list of any other states that currently approve the training course for which the applicant is seeking accreditation;
- (3) A detailed outline of the course curriculum including the amount of time allotted to each topic;
- (4) The name and qualifications of the person developing the instruction program for each topic or a statement that the training materials have been purchased from the EPA and have been updated to meet current requirements;
- (5) The names of the course instructors and documentation to demonstrate that they are [adequately] qualified pursuant to §11-504-57 and experienced in the areas they are to teach;
- (6) A description of the instruction program for each topic, including teaching methods to be used and copies of written materials to be distributed;
- (7) A description of the amount and type of equipment to be used for demonstrations and "hands-on" practice exercises, such as respirators, negative air units, water spray devices, protective clothing, and construction materials;
- (8) The instructor-to-student ratio for "hands-on" practice exercises and demonstrations;
- (9) Documentation that the number of instructors, the amount of equipment, and the facilities are adequate to provide the students with proper training;

- (10) Documentation that the training course shall give a written, multiple choice examination at the conclusion of the course;
- (11) [Documentation that the minimum grade of seventy per cent correct must be obtained for a student to successfully complete the course] A detailed statement about the development of the examination used in the course;
- (12) [Documentation that students who attend and successfully complete the course shall be issued numbered certificates indicating the name of the training provider, student, and the course completed, the dates of the course and the examination, and a statement indicating that the student passed the written exam] Documentation that the minimum grade of seventy per cent correct must be obtained for a student to successfully complete the course;
- (13) [Documentation that the department shall be provided, in writing, the names and examination scores of all course participants at the completion of the course; and] Documentation that students who attend and successfully complete the course shall be issued numbered certificates indicating the name of the training provider, student, and the course completed, the dates of the course and the examination, and a statement indicating that the student passed the written exam;
- (14) [An agreement to inform the department in writing at least thirty days in advance of the start of any asbestos training course to be conducted by the applicant, and permission for representatives of the department to attend any asbestos training course and take the examination without advance notice or cost to the department.] Documentation that the department shall be provided, in writing, the names and

examination scores of all course participants at the completion of the course; and

- (15) An example of the numbered certificates issued to the students who attend the course and pass the examination;
- (16) An agreement to inform the department in writing at least fourteen days in advance of the start of any asbestos training course to be conducted by the applicant, and permission for representatives of the department to attend any asbestos training course and take the examination without advance notice or cost to the department.

(b) Within thirty working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within thirty working days after receiving the amended application that includes any additional information requested by the department, the department shall approve or deny the application. If the department requests further information from an applicant, and does not receive that information within thirty days, the application shall be considered abandoned and certification shall be denied. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(3))"

28. Section 11-504-45, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-45 Complete accreditation. (a) Final accreditation shall be granted for a period of [two years] twelve months after the department has determined that the applicant's asbestos training course meets the requirements of these rules. Accreditation may involve an audit conducted by the department, which can include attending the training course and/or reviewing records kept by the training provider.

(b) Any [significant] change in an accredited course as described in §11-504-43 must be reported to and approved by the department prior to presenting the changed course. Course changes must be received by the director thirty days prior to the changed course being offered.

(c) The department maintains the right to attend any training course, regardless of accreditation status, without advance notice.

[(d) Failure by the department to act on an application for complete accreditation shall be deemed an approval of the application.] [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(3))"

29. Section 11-504-48, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-48 Expiration of accreditation. [(a) Interim accreditation shall expire six months from the first day of the month stated on the letter of interim accreditation.

(b) Complete accreditation shall expire two years from the first day of the month stated on the certificate of accreditation.] Complete accreditation shall expire twelve months from the day stated on the certificate of accreditation. [Eff 2/15/01; am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)"

30. Section 11-504-49, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-49 Renewal of accreditation. [(a)] To renew an accreditation of an asbestos training course, the applicant shall resubmit the information required in section 11-504-43 without reference to any previously submitted material. A visitation is not required to renew accreditation. Renewal of

accreditation shall be issued based on a renewal application deemed complete by the director.
[Eff 2/15/01; am] (Auth: HRS §342P-41)
(Imp: 40 CFR Part 763, Appendix C)

[(b) In any case in which the responsible person of a training course with complete accreditation has filed an application in proper form for renewal, not less than sixty days prior to expiration of its existing complete accreditation, such existing complete accreditation shall not expire until final action on the application has been taken by the department. [Eff 2/15/01] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)]"

31. Section 11-504-50, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-50 Reciprocity. (a) Each applicant for accreditation of an asbestos training course which is accredited, licensed, certified, permitted, or approved by a state other than Hawaii [which has EPA approval] with an EPA-approved accreditation program may petition the director to grant complete accreditation without a visitation of the in-progress training course by the department. The department shall evaluate the requirements for accreditation, approval, permitting, certification, or licensure of the approving authority and shall grant accreditation without a visitation if the department determines that the requirements of the authority are equal to or greater than the requirements for accreditation in the State.

(b) If the asbestos training course seeking complete accreditation is not accredited, licensed, certified, permitted, or approved by another state with an EPA-approved accreditation program or by EPA [a federal agency], then an audit of the course by a department representative during the interim accreditation period will be performed. [Eff 2/15/01;

am] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(H))”

32. Section 11-504-51, Hawaii Administrative Rules, is repealed:

“§11-504-51 Reserved. [Retroactive accreditation. Training courses that have taken place prior to accreditation by the department may be accredited retroactively by the department, provided that all accreditation requirements, except the visitation, are met by the course and the candidate instructor. [Eff 2/15/01] (Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C)]”

33. Section 11-504-52, Hawaii Administrative Rules, is amended to read as follows:

“§11-504-52 Initial course contents and requirements. (a) The initial training course for abatement workers shall consist of a four-day course that shall include lectures, demonstrations, fourteen hours of hands-on training, individual respirator fit testing, course review, and one or more written examinations. The fourteen hours of hands-on training shall permit students to have actual experience performing tasks associated with asbestos abatement. [The instructor-to-student ratio shall be no less than 1 to 25 during the hands-on portion of the course.] There shall be at least one instructor per 25 students for the duration of the course. The department recommends the use of audiovisual materials to complement lectures where appropriate. The training course shall adequately address the following topics:

- (1) Physical characteristics of asbestos including the identification of asbestos and its aerodynamic characteristics, typical uses, physical appearance, and a summary of abatement control options;

- (2) Potential health effects related to asbestos exposure including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, the synergistic effect between cigarette smoking and asbestos exposure, the latency period for asbestos-related diseases, and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;
- (3) Employee personal protective equipment including the classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter the fit of the respirator (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment;
- (4) State-of-the-art work practices including proper work practices for abatement activities with descriptions of proper construction, maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair of ACM; emergency

procedures for sudden releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices;

- (5) Personal hygiene including entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing in the work area; and potential exposure, such as family exposure;
- (6) Additional safety hazards that may be encountered during the abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips and falls, and confined spaces;
- (7) Medical monitoring including OSHA and EPA Worker Protection Rule requirements for physical examinations, including pulmonary function tests, chest x-rays, medical history for each employee, and any other tests specified by the physician;
- (8) Air monitoring including procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it;
- (9) Relevant federal, state and local regulatory requirements, procedures, and standards with particular attention directed [at] to relevant EPA, OSHA, and state rules concerning abatement workers;
- (10) Establishment of respiratory protection programs; and
- (11) A review of key aspects of the training course.

(b) The initial training course for contractors/Supervisors shall consist of a five-day course that shall include lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator fit testing, course review, and one or more

written examinations. The fourteen hours of hands-on training shall permit students to have actual experience performing tasks associated with asbestos abatement. [The instructor-to-student ratio shall be no less than 1 to 25 during the hands-on portion of the course.] There shall be at least one instructor per 25 students for the duration of the course. The department recommends the use of audiovisual materials to complement lectures, where appropriate. The program shall adequately address the following topics:

- (1) The physical characteristics of asbestos and asbestos-containing materials including the identification of asbestos and its aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of abatement control options;
- (2) Potential health effects related to asbestos exposure including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, the latency period for diseases, and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;
- (3) Employee personal protective equipment including the classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter the fit of the respirator (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-

- disposable clothing; and rules covering personal protective equipment;
- (4) State-of-the-art work practices including proper work practices for abatement activities with descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair of ACM; emergency procedures for unplanned releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices. Discussion of new abatement-related techniques and methodologies may be included;
 - (5) Personal hygiene including entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing in the work area; and potential exposures, such as family exposure;
 - (6) Additional safety hazards that may be encountered during the abatement activities and how to deal with them including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces;
 - (7) Medical monitoring including OSHA and EPA Worker Protection Rule requirements for physical exams and HIOSH requirements for a pulmonary function test, chest X-rays and a medical history for each employee;

- (8) Air monitoring including procedures to determine airborne concentrations of asbestos fibers, including descriptions of aggressive air sampling, sampling equipment and methods, reasons for air monitoring, types of samples, and interpretation of results, specifically from analyses performed by [polarized light,] phase-contrast [,] and electron microscopy analysis;
- (9) Relevant federal, state, and local regulatory requirements including the following procedures and standards:
 - (A) Requirements of TSCA Title II;
 - (B) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
 - (C) HIOSH Asbestos Construction, General Industry and respiratory protection Standards (chapter [12-145] 12-145.1 and [12-206] 12-64.1);
 - (D) Chapters 501 and 502 - Hawaii Administrative Rules;
 - (E) 40 CFR, Part 763, Asbestos Hazard Emergency Response Act (AHERA);
 - (F) Applicable state and local rules, and differences between federal and state requirements, where they apply, and the effects on public and non-public schools or public or commercial buildings;
- (10) Respiratory protection programs and medical monitoring programs;
- (11) Insurance and liability issues including contractor's issues, worker's compensation coverage and exclusions, third-party liabilities and defenses, insurance coverage and exclusions;
- (12) Record keeping for asbestos abatement projects including records required by

federal, state, and local rules, and records recommended for legal and insurance purposes;

- (13) Supervisory techniques for asbestos abatement activities, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices;
- (14) Contract specifications including discussion of key elements that are included in contract specifications; and
- (15) A review of key aspects of the training course.

(c) The initial training course for inspectors shall consist of a three-day course that shall include lectures, demonstrations, four hours of hands-on training, individual respirator fit testing, course review, and a written examination. The four hours of hands-on training shall permit students to have actual experience performing tasks associated with asbestos inspection as defined in §11-504-2. [The instructor-to-student ratio shall be no less than 1 to 25 during the hands-on portion of the course.] There shall be at least one instructor per 25 students for the duration of the course. The department recommends the use of audiovisual materials to complement lectures, where appropriate. The inspector training course shall adequately address the following topics:

- (1) Background information on asbestos including the identification of asbestos, with examples and discussion of the uses and locations of asbestos in buildings; and the physical appearance of asbestos;
- (2) Potential health effects related to asbestos exposure including the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period for asbestos-related diseases; a discussion of the relationship of asbestos exposure to

asbestosis, lung cancer, mesothelioma, and cancers of other organs;

- (3) Functions, qualifications, and role of inspectors and management planners, including discussions of prior experience; discussions of the functions of a certified asbestos inspector as compared to those of a certified management planner; discussion of inspection process including inventory of ACM and physical assessment;
- (4) Legal liabilities and defenses including responsibilities of the inspector and management planner; a discussion of comprehensive general liability policies, claims-made, and occurrence policies, environmental and pollution liability policy clauses; state liability insurance requirements; bonding and the relationship of insurance availability to bond availability;
- (5) Understanding building systems including the interrelationship between building systems, with an overview of common building physical plan layouts; heat, ventilation, and air conditioning system types, physical organization, and where asbestos is found on heat, ventilation, and air conditioning components; building mechanical systems, their types and organization, and where to look for asbestos on such systems; inspecting electrical systems, including appropriate safety precautions; and reading blueprints and as-built drawings;
- (6) Public, employee, and building occupant relations, including notifying employee organizations about the inspection; signs to warn building occupants; tact in dealing with occupants and the press; scheduling of inspections to minimize disruption; and education of building occupants about actions being taken;

- (7) Pre-inspection planning and review of previous inspection records including scheduling the inspection and obtaining access; building record review; identification of probable homogeneous areas from blueprints or as-built drawings; consultation with maintenance or building personnel; review of previous inspection, sampling, and abatement records of a building; and the role of the inspector in exclusions for previously performed inspections;
- (8) Inspecting for friable and non-friable asbestos-containing material and assessing the condition of friable asbestos-containing material including procedures to follow in conducting visual inspections for friable and non-friable asbestos-containing material; types of building materials that may contain asbestos; touching materials to determine friability; open return air plenums and their importance in heat, ventilation, and air conditioning systems; assessing damage, significant damage, potential damage, and potential significant damage; amount of suspected asbestos-containing material, both in total quantity and as a percentage of the total area; type of damage; accessibility; asbestos-containing material's potential for disturbance; known or suspected causes of damage or significant damage; and deterioration as assessment factors;
- (9) Bulk sampling and documentation of asbestos [in schools] including detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials" (EPA 560/5-85-030a October 1985); techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials; sampling of non-friable materials; techniques for bulk sampling; sampling

equipment the inspector should use; patching or repair of damage done in sampling; an inspector's repair kit; discussion of polarized light microscopy; choosing an NVLAP-accredited laboratory to analyze bulk samples; and quality control and quality assurance procedures;

- (10) Inspectors' respiratory protection and personal protective equipment including the classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures for respirators; methods for field testing of the facepiece-to-face seal (positive and negative pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respirator fit (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing; and use, storage, and handling of non-disposable clothing;
- (11) Record keeping and writing the inspection report including labeling of samples and keying sample identification to sampling location; recommendations on sample labeling; detailing of asbestos-containing material inventory; photographs of selected sampling areas and examples of asbestos-containing material condition; information required for inclusion in the management plan by TSCA Title II section 203(i)(1);
- (12) Regulatory review including:
 - (A) Requirements of TSCA [title] Title II;
 - (B) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subparts A (General Provisions) and M (National Emission Standards for Asbestos);

- (C) HIOSH Asbestos Construction, General Industry and respiratory protection Standards (chapters 12-145 and 12-206);
 - (D) Chapter 501 (Asbestos Emission Standards) and 502 (Asbestos-Containing Materials in Schools) of Title 11;
 - (E) Asbestos Hazard Emergency Response Act (AHERA) 40 CFR Part 763; and
 - (F) Applicable state and local rules, and differences between federal and state requirements, where they apply, and the effects on public and non-public schools or public or commercial buildings;
- (13) A field trip including a walk-through inspection; on-site discussion about information gathering and the determination of sampling locations; on-site practice in physical assessment; and classroom discussion of field exercise; and
- (14) A review of key aspects of the training course.

(d) The initial training course for management planners shall consist of the three-day inspector training course outlined in paragraph (c) and a two-day management planner training course. [Successful completion of an accredited inspector course] Possession of current and valid accredited inspector training certificate shall be a prerequisite for admission to the management planner training course. The two-day training program shall include lectures, demonstrations, course review, and one or more written examinations. The department recommends the use of audiovisual materials to complement lectures, where appropriate. The asbestos management planner training course shall adequately address the following topics:

- (1) Course overview including the role and responsibilities of a management planner; operations and maintenance programs; setting work priorities; and protection of building occupants;

- (2) Evaluation and interpretation of survey results including review of TSCA Title II requirements for inspection and management plans for school building as given in section 203(i)(1) of TSCA Title II; interpretation of field data and laboratory results; and a comparison between field inspectors' data sheet with laboratory results and site survey;
- (3) Hazard assessment including amplification of the difference between physical assessment and hazard assessment; the role of the management planner in hazard assessment; an explanation of significant damage, damage, potential damage, and potential significant damage; the use of a description code or decision tree for assessment of asbestos-containing material; assessment of friable asbestos-containing material; the relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment;
- (4) Legal implications including liability; insurance issues specific to planners; liabilities associated with interim control measures, in-house maintenance, repair, and removal; use of results from previously performed inspections;
- (5) Evaluation and selection of control options including an overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method; response actions described via a decision tree or other appropriate method; work practices for each response action; staging and prioritizing of work in both vacant and occupied buildings; and the need for containment barriers and decontamination in response actions;

- (6) Role of other professionals including the use of industrial hygienists, engineers, and architects in developing technical specifications for response actions; any requirements that may exist for architect sign-off of plans; and the team approach to design of high-quality job specifications;
- (7) Developing an operations and maintenance plan including the purpose of the plan; a discussion of applicable EPA guidance documents; what actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and HEPA vacuuming; reducing disturbance of asbestos-containing materials; scheduling operation and maintenance for off-hours; rescheduling or canceling renovation in areas with asbestos-containing material; boiler room maintenance; disposal of asbestos-containing material; in-house procedures for asbestos-containing materials-bridging and penetrating encapsulants; pipe fittings; metal sleeves; polyvinyl chloride, canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool, and insulating cement; discussion of employee protection programs and staff training; and a case study in developing an operation and maintenance plan including the development, implementation process, and problems that have been experienced;
- (8) Regulatory review including:
 - (A) Requirements of TSCA title II;
 - (B) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
 - (C) HIOSH Asbestos Construction, General Industry and respiratory protection Standards (chapters [12-145] 12-145.1 and [12-206] 12-64.1);

- (D) Chapter 501 (Asbestos Emission Standards) and 502 (Asbestos-Containing Materials in Schools) of Title 11;
 - (E) Asbestos Hazard Emergency Response Act (AHERA) 40 CFR Part 763; and
 - (F) Applicable state and local rules, and differences between federal and state requirements, where they apply, and the effects on public and non-public schools or public or commercial buildings;
- (9) Record-keeping for the management planner including the use of a field inspector's data sheet along with laboratory results; ongoing record-keeping as a means to track asbestos disturbance; and procedures for record-keeping;
 - (10) Assembling and submitting the management plan including plan requirements in TSCA Title II section 203(i)(1); and the management plan as a planning tool;
 - (11) Financing abatement actions including economic analysis and cost estimates; development of cost estimates; present costs of abatement versus future operations and maintenance costs; and [Asbestos School Hazard Abatement Act grants and loans; and]
 - (12) A review of key aspects of the training course.

[d](e) The initial training course for abatement project designers shall consist of a three-day course that shall include lectures, demonstrations, field trip, course review, and one or more written examinations. The department recommends the use of audiovisual material to complement lectures where appropriate. The three-day abatement project designer training course shall adequately address the following topics:

- (1) Background information on asbestos including identification of asbestos; examples and discussion of the uses and locations of

- asbestos in buildings; and the physical appearance of asbestos;
- (2) Potential health effects related to asbestos exposure including the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period of asbestos-related diseases; and a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancers of other organs;
 - (3) An overview of abatement construction projects including use of abatement as a portion of a renovation project; and OSHA requirements for notification of other abatement entities on a multi-employer site, pursuant to [chapter 12-145] 12-145.1;
 - (4) Safety system design specifications including design, construction and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; proper techniques for initial cleaning; use of negative pressure exhaust ventilation equipment; use of HEPA vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; and use of glove bags and a demonstration of glove bag use;
 - (5) Visit to an abatement site or other suitable building site, including on-site discussions of abatement design and building walk-through inspection. The visit shall include a discussion of the rationale for the concept of functional spaces during the walk-through;

- (6) Employee personal protective equipment including the classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter the fit of the respirator (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and rules covering personal protective equipment pursuant to HIOSH 12-206;
- (7) Additional safety hazards including those encountered during abatement activities and how to deal with them, especially electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards;
- (8) Fiber aerodynamics and control including aerodynamic characteristics of asbestos fibers; the importance of proper containment barriers; the settling time for asbestos fibers; wet methods in abatement; aggressive air monitoring following abatement; and aggressive air movement and negative pressure exhaust ventilation as a clean up method;
- (9) Designing abatement solutions including discussions of removal, enclosure, and encapsulation methods; and asbestos waste disposal;
- (10) Final clearance process including a discussion of the need for a written sampling rationale for aggressive final air clearance; requirements of a complete visual inspection; and the relationship of the visual inspection to final air clearance;

- (11) Budgeting and cost estimation [including] for the development of a cost estimate; present costs of abatement versus future costs, including periodic surveillance and operations and maintenance; and setting priorities for abatement jobs to reduce cost;
- (12) Writing abatement specifications including preparation of and need for a written project design; means and methods specifications versus performance specifications; the design of abatement in occupied buildings; modification of guide specifications to a particular building; worker and building occupant health and medical considerations; replacement of asbestos-containing materials with non-asbestos substitutes; clearance of work area after abatement; and air monitoring for clearance, if required;
- (13) Preparing abatement drawings including the significance and need for as-built drawings; the use of as-built drawings as base drawings; the use of inspection photographs and on-site reports; methods of preparing abatement drawings; diagramming containment barriers; relationship of drawings to design specifications; and particular problems related to abatement drawings;
- (14) Contract preparation and administration;
- (15) Legal liabilities and defenses including insurance considerations; bonding; hold-harmless clauses; use of abatement entities' liability insurance; and claims-made versus occurrence policies;
- (16) Replacement of asbestos with asbestos-free substitutes;
- (17) The role of other consultants including the development of technical specification sections by industrial hygienists or engineers; and the multi-disciplinary team approach to abatement design;

- (18) Occupied buildings including special design procedures required in occupied buildings; education of occupants; extra monitoring recommendations; staging of work to minimize occupant exposure; and scheduling of renovation to minimize exposure;
- (19) Relevant federal, state, and local regulatory requirements, procedures, and standards, including but not limited to:
 - (A) Requirements of TSCA [title] Title II;
 - (B) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
 - (C) Chapters 12-145, 12-149 and 12-206, HIOSH Asbestos Construction, HIOSH Hazard Communication, and General Industry and Respiratory Protection Standards;
 - (D) Hawaii Administrative Rules Chapter 501 (Asbestos Emission Standards) and 502 (Asbestos-Containing Materials in Schools) of Title 11;
 - (E) 40 CFR, Part 763, Asbestos Hazard Emergency Response Act (AHERA); and
 - (F) Applicable state and local rules, and differences between federal and state requirements, where they apply, and the effects on public and non-public schools or public or commercial buildings; and
- (20) A review of key aspects of the training course.

(f) The initial training course for project monitors shall consist of a five-day or two-day training course that shall include lectures, demonstrations, at least six hours of hands-on training, course review, and at least one written, multiple choice examination. [The instructor-to-student ratio shall be no less than 1 to 25 during the hands-on portion of the course.] There shall be at

least one instructor per 25 students for the duration of the course. The department recommends the use of audiovisual materials to complement lectures, where appropriate. The two-day course [shall] can only be taken by persons who hold current management planner or contractor/supervisor certification, and shall address topics that are not presented in the inspector, management planner or contractor/supervisor courses. The project monitor training course shall adequately address the following topics:

- (1) Roles and responsibilities of the project monitor including definition and responsibilities of the project monitor; regulatory and specification compliance monitoring; air monitoring; conducting visual inspections; and final clearance monitoring;
- (2) Characteristics of asbestos and asbestos-containing materials including the typical uses of asbestos; physical appearance of asbestos; review of asbestos abatement and control techniques; presentation of the health effects of asbestos exposure, including routes of exposure, dose-response relationships and latency periods for asbestos-related diseases; and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancers of other organs;
- (3) Federal and state asbestos requirements including:
 - (A) Requirements of TSCA [title] Title II;
 - (B) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
 - (C) Chapters 12-145 and 12-206, HIOSH Asbestos Construction, General Industry and Respiratory Protection Standards;
 - (D) Chapters 501 and 502;

- (E) 40 CFR Part 763, Asbestos Hazard Emergency Response Act (AHERA); and
 - (F) Applicable state and local rules, and differences between federal and state requirements, where they apply, and the effects on public and non-public schools or public or commercial buildings;
- (4) Understanding building construction and building systems including building construction basics; building physical plan layout; building systems (heat, ventilation, and air conditioning system, electrical, etc.); layout and organization, where asbestos is likely to be found on building systems; and renovations and the effect of asbestos abatement on building systems;
 - (5) Asbestos abatement contracts, specifications, and drawings including basic provisions of the contract; relationships between principal parties; establishing chain of command; types of specifications, including means and methods, performance, and proprietary and nonproprietary; reading and interpreting records and abatement drawings; discussion of change orders; and common enforcement responsibilities and authority of a project monitor;
 - (6) Response actions and abatement practices including pre-work inspections; pre-work considerations such as pre-cleaning of the work area, removal of furniture, fixtures, and equipment; shutdown and modification of building systems; construction and maintenance of containment barriers; proper demarcation of work areas; work area entry and exit, hygiene practices; determining the effectiveness of air filtration equipment; techniques for minimizing fiber release such as wet methods and continuous cleaning; abatement methods other than removal; abatement area clean up procedures; waste

- transport and disposal procedures; and contingency planning for emergency response;
- (7) Asbestos abatement equipment including typical equipment found on an abatement project such as air filtration devices, vacuum systems, and negative pressure differential monitoring; HEPA filtration units, theory of filtration, design and construction of HEPA filtration units, qualitative and quantitative performance of HEPA filtration units, sizing the ventilation requirements, location of HEPA filtration units, qualitative and quantitative tests of containment barrier integrity; best available technology;
 - (8) Personal protective equipment including proper selection of respiratory protection; classes and characteristics of respirator types, limitations of respirators; proper use of other safety equipment, protective clothing selection, use, and proper handling, hard and bump hats, safety shoes; breathing air systems, high pressure versus low pressure, testing for Grade D air, determining proper backup air volumes;
 - (9) Air monitoring strategies including sampling equipment, sampling pumps (low versus high volume), flow regulating devices (critical and limiting orifices), use of fibrous aerosol monitors on abatement projects; sampling media, types of filters, types of cassettes, filter orientation, storage and shipment of filters; calibration techniques, primary calibration standards, secondary calibration standards, temperature and pressure effects, frequency of calibration, record-keeping and field work documentation, calculations; air sample analysis, techniques available and limitations of AHERA on their use, transmission electron microscopy (background to sample preparation and analysis, air sample conditions which

prohibit analysis, EPA's recommended technique for analysis of final air clearance samples), phase contrast microscopy (background to sample preparation, and the AHERA limits on the use of phase contrast microscopy), what each technique measures; analytical methodologies, AHERA TEM protocol, NIOSH 7400, OSHA reference method (non clearance), EPA recommendation for clearance (TEM); sampling strategies for clearance monitoring, types of air samples (personal breathing zone versus fixed-station area) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring), number of samples to be collected, minimum and maximum air volumes, clearance monitoring (post-visual inspection) (number of samples required, selection of sampling locations, period of sampling, aggressive sampling, interpretations of sampling results, calculations), quality assurance; and special sampling problems, crawl spaces, acceptable samples for laboratory analysis, sampling in occupied buildings (barrier monitoring);

- (10) Safety and health issues other than asbestos including confined-space entry, electrical hazards, fire and explosion concerns, ladders and scaffolding, heat stress, air contaminants other than asbestos, fall hazards, and hazardous materials on abatement projects;
- (11) Conducting visual inspections including inspections during abatement, visual inspections using the ASTM E1368 document; conducting inspections for completeness of removal; discussion of "how clean is clean?";
- (12) Legal responsibilities and liabilities of project monitors including specification

- enforcement capabilities; regulatory enforcement; licensing; powers delegated to project monitors through contract documents;
- (13) Record-keeping and report writing including developing project logs and daily logs (what should be included, who sees them); final report preparation; record-keeping under federal regulations; and
- (14) Workshops (six hours spread over [three days] the duration of the course) including contracts, specifications, and drawings. The workshop requirement may be fulfilled by [the issuance of] issuing, to each participant, a set of contracts, specifications, and drawings and then [being asked to answer] asking the participants to answer questions and make recommendations to a project architect, engineer, or to the building owner based on given conditions and these documents; [Air] air monitoring strategies and asbestos abatement equipment: This workshop could consist of simulated abatement sites for which sampling strategies would have to be developed (i.e., occupied buildings, industrial situations). Through demonstrations and exhibition, the project monitor may also be able to gain a better understanding of the function of various pieces of equipment used on abatement projects (air filtration units, water filtration units, negative pressure monitoring devices, sampling pump calibration devices, etc.); Conducting visual inspections: This workshop could consist, ideally, of an interactive video in which a participant is "taken through" a work area and asked to make notes of what is seen. A series of questions will be asked which are designed to stimulate a person's recall of the area. This workshop could consist of a series of two or three videos with different site conditions and different

degrees of cleanliness. [Eff 2/15/01;
am] (Auth: HRS §342P-41) (Imp:
40 CFR Part 763, Appendix C(1)(B))"

34. Section 11-504-53, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-53 Refresher course contents and requirements. (a) Refresher training courses shall be [specific to] separate, distinct, and specific for each discipline and cannot be combined. [each] Each shall be not less than eight hours in length with the exception of the training course for inspectors. Refresher courses for inspectors shall be not less than four hours in length. Management planners shall attend the inspector refresher course, plus an additional four-hour course for management planners.

(b) For each discipline, the refresher training course shall review and discuss changes in federal and state rules, developments in state-of-the-art procedures, a review of key aspects of the initial training course including the health effects of asbestos exposure, and a written, multiple choice examination.

(c) Successful completion of a refresher training course, and application to the department extends certification for one year from the date of course completion.

(d) Individuals whose certifications have expired within the previous twelve month period may attend a refresher course rather than retake the initial course. This grace period extends the certification for another twelve months from the date of expiration of the certification, but the person with the expired certification shall not perform work within that discipline during the grace period.

[Eff 2/15/01; am] (Auth: HRS §342P-41)
(Imp: 40 CFR Part 763, Appendix C(1)(D))"

35. Section 11-504-54, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-54 Examinations. (a) All persons who enroll in a training course shall be required to pass a closed book examination in written, multiple choice form with a minimum grade of seventy per cent correct in order to successfully complete the course. The examination shall be administered by the training provider. Each examination shall adequately cover the topics included in the training course for that discipline. Persons who pass the examination shall receive a [document] course completion certificate indicating that they have completed the course and passed the written exam in that specific discipline. A person receiving less than seventy percent correct on an exam may take not more than two similar written, multiple choice exams without retaking the course.

(b) The following are the requirements of examinations in each course:

- (1) Abatement workers - fifty multiple choice questions.
- (2) Contractors/supervisors - one hundred multiple choice questions;
- (3) Inspectors - fifty multiple choice questions;
- (4) Management planners - fifty multiple choice questions;
- (5) Project designers - one hundred multiple choice questions; and
- (6) Project monitors - one hundred multiple choice questions.

(c) Notwithstanding subsections (a) and (b), instructors may make the following accommodations for students in a worker training course only who have a language barrier or other problem taking the examination. The instructor may give the exam on a one-on-one basis, away from other students. The instructor may read the questions to the student, and then read each of the multiple choice answers. After the student chooses a response, the instructor may point to the choice that the student picked. At no

time shall the instructor indicate the correct answer, coach or attempt to influence the student's choice. The training provider shall notify the department whenever they will be providing this service, to allow a representative of the department the chance to observe the exam. [Eff 2/15/01; am]
(Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(C))"

36. Section 11-504-55, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-55 Course Certificates. The training provider shall issue certificates to students who successfully pass the examination at the end of an initial or refresher training course. The certificate shall include the following information:

- (1) A unique, identifying number for each student;
- (2) The name, address, and phone number of the training provider;
- (3) The student's name and last four digits of their social security number;
- (4) The name of the course for which that student has received certification;
- (5) The date(s) of the course and the examination;
- (6) The expiration date of the certificate, limited to one year from the date of the examination; and
- (7) A statement specifying that the training course meets all requirements of the Asbestos Model Accreditation Plan and that the training provider is accredited to provide training within the State of Hawaii.
- (8) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II.

[Eff 2/15/01; am] (Auth: HRS
§342P-41) (Imp: 40 CFR Part 763, Appendix
C(1)(C))"

37. Section 11-504-56, Hawaii Administrative
Rules, is amended to read as follows:

"§11-504-56 Record-keeping requirements for
training providers. (a) All providers of accredited
asbestos training courses must comply with the
following minimum record-keeping requirements:

- (1) A training provider must retain copies of
all instructional materials used in the
delivery of the classroom training such as
student manuals, instructor notebooks, and
handouts;
- (2) A training provider must retain copies of
all instructors' resumes, and the documents
approving each instructor pursuant to §11-
504-57, including any changes in
instructors, issued by the department.
Records must accurately identify the
instructors that taught each particular
course for each date that a course is
offered;
- (3) A training provider must document that each
person who receives a certificate for an
initial or refresher training course has
achieved a passing score on the examination.
These records must clearly indicate the date
upon which the exam was administered, the
training course and discipline for which the
exam was given, the name of the person who
proctored the exam, a copy of the exam, and
the name and test score of each person
taking the exam. The topic and dates of the
training course must correspond to those
listed on the person's certificate;
- (4) The training provider shall maintain records
that document the names of all persons who
have been awarded certificates, their

certificate numbers, the disciplines for which certification was conferred, training and expiration dates, and the training location. Records will be kept in a manner that allows verification by telephone of the required information;

(5) [Training] Prior to course admission, training providers must verify current certification of the students in a refresher course, or expiration of their certification within the last twelve month period. Students should present their valid or expired certificate from the training provider, or the department-issued certification. Training providers offering the initial management planner training course must verify that the student holds a valid inspector certification at the time of course admission; and

- (6) (A) The training provider shall maintain all required records for a minimum of three years; and
- (B) The training provider shall allow reasonable access to all of the records required by the Model Accreditation Plan, and any other records required by the department for the accreditation of asbestos training providers and courses, to both EPA and the department, on request.

(b) If a training provider ceases to conduct training, the training provider shall notify the department and allow the department to make copies of the training providers asbestos training records.

[Eff 2/15/01; am] (Auth: HRS §342P-41)
(Imp: 40 CFR Part 763, Appendix C(1)(F))"

38. Section 11-504-57, Hawaii Administrative Rules, is amended to read as follows:

"§11-504-57 Instructor qualifications for training courses. (a) Each training course shall be taught by a department-approved instructor. Approval shall be based upon a review of the [instructors] instructor's academic credentials and/or field experience in asbestos abatement. The training provider must notify the department in advance whenever it changes course instructors.

(b) At a minimum, the instructor shall:

(1) Have one year of experience performing the functions for the class being taught, and hold current certification in that discipline; or

(2) Have six months of teaching experience and have held certification in the discipline being taught. [Eff 2/15/01; am]

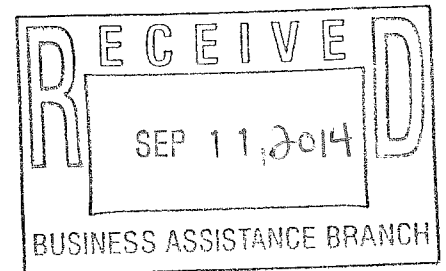
(Auth: HRS §342P-41) (Imp: 40 CFR Part 763, Appendix C(1)(E)(4))"

Exhibit 5

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11
Hawaii Administrative Rules

1. Chapter 5-11, Hawaii Administrative Rules
entitled "Notaries Public" is amended and compiled to
read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 11

NOTARIES PUBLIC

Subchapter 1 General Provisions

- §5-11-1 Purpose
- §5-11-2 Commission required to act as a notary public
- §5-11-3 Conduct
- §5-11-4 Powers
- §5-11-5 Official seal
- §5-11-6 Official signature
- §5-11-7 Acceptable forms of identification of signers
- §5-11-8 Acknowledgments; jurats
- §5-11-9 Record book; suspension for failure to deposit
- §5-11-10 Notification and filing of names, addresses, and changes; failure to notify
- §5-11-11 Display of commission; hours of business
- §5-11-12 Term of commission
- §5-11-13 Forfeited commission
- §5-11-14 Suspended commission
- §5-11-15 Revoked commission
- §5-11-16 Resignation of commission
- §5-11-17 Surrender of notary public commission certificate, seal, and record book; failure to comply
- §5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book

Subchapter 2 Applications

- §5-11-21 Application for notary public commission
- §5-11-22 Action on application
- §5-11-23 Application for renewal of notary public commission

Subchapter 3 Examinations

- §5-11-32 Examination
§5-11-33 Examination subject matter

Subchapter 4 Disciplinary Sanctions

- §5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions

Subchapter 5 Fees and Administrative Fines

- §5-11-46 Fees and administrative fines

Subchapter 6 Practice and Procedure

- §5-11-51 Administrative practice and procedure
§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action
§5-11-53 Demand for a hearing
§5-11-54 Proceedings upon demand for a hearing
§5-11-55 Exceptions

SUBCHAPTER 1

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes, as amended, to the end that the provision thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, or advertise or represent oneself as a notary public, without a current commission previously obtained from the attorney general. [Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-3 Conduct. Every notary public shall perform notary public duties in accordance with chapter 456, HRS, this chapter, and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these may be amended. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-7)

§5-11-4 Powers. Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19)

§5-11-5 Official seal. (a) A notary public shall obtain and keep an official seal of one type, either an engraved seal or a rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii."

(b) The notary public shall authenticate all of the notary public's official acts, attestations, certifications, and instruments with the notary public's official seal.

(c) The official seal of every notary public shall be affixed by either an engraved seal or a rubber stamp facsimile seal which shall be circular, not over two inches in diameter, with a serrated or milled edge border and shall include the required wording and information specified in subsection (a).

(d) The notary public shall surrender the notary public's seal to the attorney general within ninety days of resignation, removal from office, or the expiration of a term of office without renewal. Failure to comply with this requirement may result in a fine not more than \$200. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3)

§5-11-6 Official signature. (a) A notary public shall sign on every notarial certificate, at

the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-3)

§5-11-7 Acceptable forms of identification of signers. No acknowledgment, jurat, or other instrument shall be taken, unless the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature. [Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-15)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public. The certificate shall include the printed name of the notary public, the official stamp or seal of the notary public, identification of the jurisdiction in which the notarial act is performed, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document. [Eff _____] (Auth: HRS §§28-10.3, 456-8) (Imp: HRS §456-15)

§5-11-9 Record book[.]; suspension for failure to deposit. (a) A notary public shall record all of the notary public's transactions, as prescribed in chapter 456, HRS.

(b) The record book shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the record book shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each record book the notary public's name, business address, commission number, and commission expiration date, the book number, and the beginning and ending dates of the notarial acts recorded in that book.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each record book.

(f) The notary public shall deposit the notary public's record book with the attorney general within ninety days of the end date of the notary public's commission. Failure to comply with this requirement shall, after notice to the notary and opportunity to be heard, cause the notary's commission to be suspended until the attorney general receives the notary record books for the prior commission term. In addition, the failure to deposit notary record books may result in a fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-15, 456-16)

§5-11-10 Notification and filing of names, addresses, and changes[.]; failure to notify. (a)

Each notary public shall file the notary public's name, employer, residence and business addresses and telephone numbers, and occupation with the attorney general, and shall notify the attorney general of any change, in writing, within thirty days of the change.

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change, and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and new addresses of the notary public's residence, if there is a change in the notary public's residence

address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change.

(d) Failure to provide written timely notification to the attorney general of any change shall subject the notary to a \$25 administrative fine. Failure to provide written timely notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary to a \$50 administrative fine. [Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-11 Display of commission; hours of business. (a) A sign, no smaller than three inches by five inches, bearing the words "notary public" shall be conspicuously displayed within the premises of the place of business where the notary public is employed.

(b) A notary public shall provide notarial services to the public during all normal business hours of operation where the notary public is employed.

(c) This section shall not apply to notaries in government service. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-12 Term of commission. The term of office of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of office, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-13 Forfeited commission. (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's

commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission.

[Eff] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-1)

§5-11-14 Suspended commission. No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited.

[Eff] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-1)

§5-11-15 Revoked commission. A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff]
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-16 Resignation of commission. (a) A notary public may resign the notary public's commission, and shall:

- (1) Surrender the notary public's commission certificate, seal, and notarial record books as provided in section 5-11-17(a); and
- (2) Cease conducting all notarial services.

(b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.

(c) A person may obtain a new commission by applying as a new applicant should the person desire to engage in any notarial services.

[Eff] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-1)

§5-11-17 Surrender of notary public commission certificate, seal, and record book[.]; failure to comply. (a) Within ninety days of resignation, removal from office, or the expiration of a term of office without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate to the attorney general for the purpose of destruction;
- (2) Surrender the notary public's seal to the attorney general for the purpose of defacement; and
- (3) Deposit the notary public's record book with the attorney general.

(b) Upon the death of the notary public, the notary public's employer or personal representative shall within ninety days fulfill the requirements of subsection (a).

(c) Failure to comply with [subsection] paragraph (a)(2) may result in a fine not more than \$200. Failure to comply with [subsection] paragraph (a)(3) may result in a fine not less than \$50 nor more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. Complete compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission.

[Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-3, 456-7, 456-16)

§5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book. Within ten days after loss, misplacement, or theft of the notary public's official seal or notarial record book or both, a notary public shall deliver written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the

attorney general. Failure to comply with this section shall result in a \$25 administrative fine. [Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3, 456-16)

SUBCHAPTER 2

APPLICATIONS

§5-11-21 Application for notary public commission. (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
 - (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
 - (3) A letter of justification from the applicant's employer, or if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.
- (b) The application may require the applicant to provide the following:
- (1) The applicant's legal name;
 - (2) Verification that the applicant is at least eighteen years of age;
 - (3) The applicant's current residence, business, and mailing addresses;
 - (4) The date and place of any conviction of a penal crime;
 - (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United

States; and

- (6) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.

(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State. [Eff]
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

§5-11-22 Action on application. (a) Unless otherwise provided by law, the attorney general shall take the following actions within one year after the filing of a complete application for a commission:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the decision regarding the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general.

[Eff _____] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §§28-10.8, 91-13.5, 456-8)

§5-11-23 Application for renewal of notary public commission. (a) Each notary public shall be responsible for timely renewing the notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general before or on the notary public's current date of expiration of commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited.

(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State. [Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

SUBCHAPTER 3

EXAMINATIONS

§5-11-32 Examination. (a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney general. The minimum passing score is eighty percent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary examination on the scheduled examination date [three consecutive times] without advance notice as follows to the attorney general to reschedule the examination

shall require that the applicant submit a new application for a notary public commission with updated supporting letters[.] and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than 48 hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than 48 hours before the examination.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a re-examination without submitting a new application, provided that the applicant requests, pays the examination fee, and [takes the re-examination] reschedules a re-examination within [thirty] fourteen calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to [take] request, pay for, and reschedule a re-examination within the [thirty] fourteen calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission. [Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-7, 456-8)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notary public duties, and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1, 456-7)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. (a) In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, deny, or condition, a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and to seek fines or to otherwise discipline a notary public for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;
- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (9) Procuring a commission through fraud, misrepresentation, or deceit;

- (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
- (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;
- (13) Violating any condition or limitation upon which a conditional or temporary commission was issued;
- (14) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
- (15) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a notary public commission to be unfit or an improper person to hold a commission;
- (16) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
- (17) Criminal conviction, whether by nolo contendere or otherwise, of a crime related to the qualifications, functions, or duties of a notary public, or involving theft, fraud, dishonesty, or false statement;
- (18) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in another jurisdiction within thirty days of the disciplinary decision; and
- (19) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general.
[Eff _____] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

SUBCHAPTER 5

FEES AND ADMINISTRATIVE FINES

§5-11-46 Fees[.] and administrative fines. (a)
[The] Notwithstanding any law to the contrary, the
attorney general shall charge and collect the
following fees and administrative fines, which shall
be nonrefundable:

- (1) Application for commission of notary public
commission, [~~\$10;~~] \$20;
- (2) Application for renewal of notary
commission, [~~\$10;~~] \$20;
- (3) Application for restoration of forfeited
commission, \$10;
- (4) Application for reinstatement of suspended
commission, \$10;
- (5) Issuance of notary public commission, [~~\$40;~~]
\$100;
- (6) Renewal of notary public commission, [~~\$40;~~]
\$100;
- (7) Each examination, \$10;
- [(8)] Restoration of forfeited commission, \$60;
- (9) Commission name change, \$10
- (10) Change in judicial circuit, \$10;
- 11] (8) Administrative fee to process and
catalogue notary record books, \$10;
- (9) Restoration of forfeited commission, \$80; †
- (10) Change in name, employer, residential, or
business address, telephone number, or
judicial circuit, \$10;
- (11) Failure to timely notify attorney general of
change of any item specified in paragraph
(10), \$25 per occurrence;
- (12) Failure to timely notify attorney general of
change of address that results in mailing of
renewal forms to incorrect address, \$50;
- (13) Failure to timely notify attorney general of
loss, misplacement, or theft of the notary
public's official seal or record book;
- (14) Notary public manual, \$3 if the manual is
picked up at the notary public office or
[~~\$3.85~~]\$5.00 if the manual is to be mailed;
- [(12)] (15) Certification of each notarial
transaction from a notary public's record
book in the disposition of the attorney
general, \$5 per notarial transaction; [and]
- [(13)] (16) Copying, per printed page, 25 cents;
- (17) Replacement commission certificate, \$10;
- (18) Request to reschedule examination more than

- 48 hours before the examination, \$15;
- (19) Request to reschedule examination less than 48 hours before the examination, \$20;
- (20) Failure to appear at the examination without request or notification to reschedule examination received prior to the time of the examination, \$25;
- (21) Failure to pick-up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
and

(b) All fees prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.
[Eff 5/5/08; am and comp] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-9)

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.
The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general.
[Eff] (Auth: HRS §§28-10.8, 456-8)
(Imp: HRS §456-1)

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action. In the event an application for commission or renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff] (Auth: HRS §§456-1) (Imp: HRS §456-1)

§5-11-53 Demand for a hearing. Any person whose

application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff]
(Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §456-1)

§5-11-54 Proceedings upon demand for a hearing.
If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1.
[Eff] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §§91-13.1, 456-1)

§5-11-55 Exceptions. If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an exception to that requirement if the attorney general determines such action to be in the best interest of the State." [Eff] (Auth HRS §§28-10.8, 456-6) (Imp: HRS §456-1)

DEPARTMENT OF THE ATTORNEY GENERAL

Repeal of the Rules of the
Department of the Attorney General
Relating to Notaries Public and
Adoption of Chapter 5-11, Hawaii Administrative Rules
April 17, 2008

SUMMARY

1. Rules of the Department of the Attorney General, Relating to Notaries Public, adopted on August 10, 1959 and October 14, 1964, are repealed.
2. Chapter 5-11, Hawaii Administrative Rules, entitled "Notaries Public" is adopted.

Iman#222894

DEPARTMENT OF THE ATTORNEY GENERAL

Chapter 5-11, Hawaii Administrative Rules, on the Summary Page dated April 17, 2008, was adopted on April 17, 2008, following a public hearing held on April 14, 2008, after public notice was given in the The Garden Isle on February 29, 2008, in the Honolulu Star Bulletin, The Maui News, and West Hawaii Today on March 2, 2008, and in The Hawaii Tribune-Herald on March 9, 2008.

The adoption of chapter 5-11 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Attorney General

APPROVED:

Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

Exhibit 6

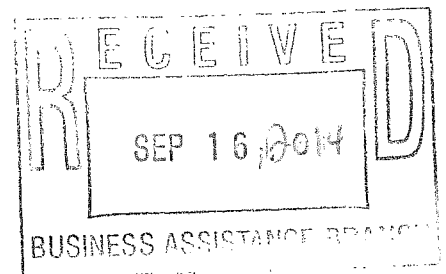
DEPARTMENT OF TAXATION

Adoption of Chapter 18-231
Hawaii Administrative Rules

_____, 2014

SUMMARY

1. Sections 18-231-91-01 through 18-231-100-01 are added.



HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231

ADMINISTRATION OF TAXES;
CASH ECONOMY ENFORCEMENT; CITATIONS

§18-231-91-01	Procedures; scope and purpose
§18-231-91-02	Definitions
§18-231-91-03	Cease and desist citation; requirements
§18-231-91-04	Issuance of a cease and desist citation
§18-231-91-05	Response to cease and desist citation
§18-231-91-06	Venue
§18-231-91-07	Docket
§18-231-91-08	Hearings; request for and scheduling
§18-231-91-09	Presiding officer of hearings; duties and powers; substitute presiding officers
§18-231-91-10	Disqualification of presiding officers
§18-231-91-11	Communications with presiding officers
§18-231-91-12	Computation of time
§18-231-91-13	Filing of documents; amendment; dismissal; retention
§18-231-91-14	Filed documents available for public inspection; exceptions
§18-231-91-15	Appearances before the department
§18-231-91-16	Substitution of parties
§18-231-91-17	Consolidation
§18-231-91-18	Intervention
§18-231-91-19	Prehearing conferences; exchange of exhibits; briefs
§18-231-91-20	Motions
§18-231-91-21	Evidence
§18-231-91-22	Continuances or extensions of time
§18-231-91-23	Service of decisions
§18-231-91-24	Correction of transcript
§18-231-91-25	Enforcement and stay
§18-231-92-01	[Reserved]
§18-231-93-01	[Reserved]
§18-231-94-01	Fine for failure to produce license

§18-231-95-01	Fine for failure to keep adequate books and records
§18-231-96-01	Fine for failure to record transaction
§18-231-97-01	[Reserved]
§18-231-98-01	Fine for tax avoidance price fixing
§18-231-99-01	[Reserved]
§18-231-100-01	Fine for interference with a tax official

CASH ECONOMY ENFORCEMENT; CITATIONS PROCEDURES

1. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-01 to read as follows:

"§18-231-91-01 Procedures; scope and purpose. (a)

Sections 18-231-91-01 to 18-231-100-01, implement section 231-91, HRS through section 231-100, HRS, relating to Cash Economy Enforcement; Citations, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) A cease and desist citation pursuant to section 231-91, HRS, may include a monetary fine for any infraction under title 14, HRS, including but not limited to the following monetary fines:

- (1) Failure to produce license upon demand, section 231-94, HRS;
- (2) Failure to keep adequate books and records, section 231-95, HRS;
- (3) Failure to record transaction, section 231-96, HRS;
- (4) [Reserved];
- (5) Tax avoidance price fixing, section 231-98, HRS;
- (6) Possession of currency for tax avoidance purposes, section 231-99, HRS;
- (7) Interference with a tax official, section 231-100, HRS;

(c) The administrative rules contained herein govern the practice and procedure in all cease and desist citations issued by the special enforcement section, including the imposition of any monetary fines, and any subsequent rights of review.

(d) An agency appeal of a cease and desist citation under section 231-91(e), 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.

(e) The administrative rules contained in sections 18-231-91-01 through 18-231-91-100-01 shall be construed to secure the just and speedy determination of every cease and desist citation issued.

(f) Should any section, paragraph, sentence, clause, phrase, or application of this subchapter be declared unconstitutional or invalid for any reason, the remainder of any other application of said chapter shall not be affected thereby. [Eff] (Auth: HRS §231-3(9))
(Imp: HRS §231-91)

2. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-02 to read as follows:

"§18-231-91-02 Definitions. As used in sections 18-231-91-01 through 18-231-100-01:

"Agency appeal" means an appeal of a cease and desist citation to the director or the director's designee pursuant to section 231-91(e), 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 cease and desist citation 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)) (Imp: HRS §231-91)

3. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-03 to read as follows:

"§18-231-91-03 Cease and desist citation; requirements. (a) A cease and desist citation must be issued on the forms prescribed by the department.

(b) A cease and desist citation shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The location of where the offense is about to occur, is occurring, or has occurred. If the location is a vehicle, the vehicle must be specifically identified, including its location at the time of the infraction;
- (3) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the cease and desist citation, including (if applicable) any allegation that the person is a cash-based business as defined in section 231-93, HRS;
- (4) A signature of the special enforcement section employee or other Department employee authorized to issue the citation. By signing the cease and desist citation, 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 special enforcement section employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," 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;
- (7) Information regarding respondent's appeal rights, including the requirement that the citation must be returned to the special enforcement section

within thirty days from the date of the citation, 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." [Eff] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

4. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-04 to read as follows:

"§18-231-91-04 Issuance of a cease and desist citation. (a) A cease and desist citation is both a notice of violation and an offer to settle an administrative case involving any violation of title 14, HRS, or any of the administrative rules adopted thereunder and may include a monetary fine where permitted under the applicable statutes and rules.

(b) Any duly authorized employee of the department who is assigned to the special enforcement section may issue a cease and desist citation to a person if there is reason to believe the person has violated, is violating, or is about to violate any provision of title 14, HRS, or any administrative rule adopted thereunder.

(c) A cease and desist citation 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) Service by 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 of process as shown in the records of the department of commerce and consumer affairs; or
- (3) 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, the cease and desist citation may be served by publication at least once in each of two successive weeks in a newspaper of general circulation.

(d) The date on which the citation is served on the respondent shall constitute the date of issuance. 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)) (Imp: HRS §231-91)

5. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-05 to read as follows:

"§18-231-91-05 Response to cease and desist citation.

(a) A respondent must respond to a cease and desist citation within thirty days from the date of its issuance:

(1) By paying to the special enforcement section the stated amount of the monetary fine, which shall constitute acknowledgement 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) By appealing the citation by making a written request to the special enforcement section for a contested case hearing in accordance with these rules and Chapter 91, HRS, including but not limited to section 18-231-91-09. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the cease and desist citation within thirty days from the date the citation is issued:

(1) The failure is an acknowledgement 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 18-231-91-26(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)) (Imp: HRS §231-91)

6. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-06 to read as follows:

"§18-231-91-06 Venue. Venue of the hearing of an agency appeal is proper in the taxation district in which the alleged violation is said to have occurred, is occurring, or is about to occur, 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 such intent at least five days before the hearing." [Eff] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

7. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-07 to read as follows:

"§18-231-91-07 Docket. The director or the director's representative shall maintain a docket of all agency appeals and each agency appeal shall be assigned a number." [Eff] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

8. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-08 to read as follows:

"§18-231-91-08 Hearing; request for and scheduling.
(a) Upon receipt of an agency appeal request, the special enforcement section shall notify the director of the appeal and the director or the director's designee shall schedule a hearing.
(b) A written request for an agency appeal shall contain a concise statement of the basic facts, the issues contested, and the relief the respondent is requesting. The department may prepare departmental forms that may be substituted for any written request for an agency appeal which may be required for any authorized proceedings pursuant to law or rules.
(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), 231-7) (Imp: HRS §§91-9, 91-9.5, 231-91)

9. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-09 to read as follows:

"§18-231-91-09 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 recommendations 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 calendar 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 the evidence presented at any hearing if requested for purposes of rehearing or court review. The

party making the request shall be responsible for the fees for the transcript. If a verbatim record is taken, any other party may request a certified transcript of the proceedings 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)) (Imp: HRS §§91-9, 231-91)

10. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-10 to read as follows:

"§18-231-91-10 Disqualification of presiding officer.

(a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a substantial 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 in 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)) (Imp: HRS §§91-9, 231-91)

11. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-11 to read as follows:

"§18-231-91-11 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)) (Imp: HRS §§91-9, 231-91)

12. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-12 to read as follows:

"§18-231-91-12 Computation of time. In computing any time period under these rules, 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. 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 actually

received by the recipient." [Eff] (Auth: HRS
§§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

13. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-13 to read as follows:

"§18-231-91-13 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 or at the hearing shall be deemed to be 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. 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;
- (2) Service by certified mail, restricted delivery, sent to the party's last known business or residence address or the address of party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (3) If service by certified mail is not made because of refusal to accept service or because it has not been possible to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry, the papers may be served by publication at least once in each of two successive weeks in a newspaper of general circulation.

(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)) (Imp: HRS §§91-9, 231-91)

14. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-14 to read as follows:

"§18-231-91-14 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 an 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)) (Imp: HRS §§91-9, 231-91)

15. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-15 to read as follows:

"§18-231-91-15 Appearances in agency appeal. (a) An individual may appear in the individual's own behalf; a general partner may represent a partnership; and a bona fide officer or employee of an entity may represent the entity in any hearing.

(b) A person may be represented by an attorney or attorneys-at-law qualified to practice before the supreme court of Hawaii in any hearing under these rules.

(c) A person shall not be represented in any hearing except as stated in subsections (a) and (b).

(d) Any person appearing at a hearing in a representative capacity on behalf of a respondent shall submit a notice of appearance and a power of attorney at least seven days prior to the date of the hearing." [Eff

] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

16. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-16 to read as follows:

"§18-231-91-16 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)) (Imp: HRS §§91-9, 231-91)

17. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-17 to read as follows:

"§18-231-91-17 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 that involve substantially the same parties, or issues that are the same or closely related, 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 business of the department and to the ends of justice." [Eff] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

18. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-18 to read as follows:

"§18-231-91-18 Intervention. Applications to intervene in a proceeding shall comply with sections 18-231-91-14 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." [Eff :] (Auth:
HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

19. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-19 to read as follows:

"§18-231-91-19 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)) (Imp: HRS §§91-9, 231-91)

20. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-20 to read as follows:

"§18-231-91-20 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 or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memorandum, if any.

(b) The moving party shall serve a copy of all motions on all other parties at least fourteen calendar days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-231-91-14(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven calendar days prior to the hearing. Service shall be in

accordance with the rules of service of papers under section 18-231-91-14(g).

(d) Failure to serve or file a memorandum in opposition to a motion 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)) (Imp: HRS §§91-9, 231-91)

21. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-21 to read as follows:

"§18-231-91-21 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission of 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 cease and desist citation, any applicable reports, or other written statements submitted by either party.

(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 counsel 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. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-231-91-14, 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. Upon agreement of the parties, 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)) (Imp: HRS §§91-10, 231-91)

22. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-22 to read as follows:

"§18-231-91-22 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 the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, 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)) (Imp: HRS §§91-9, 231-91)

23. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-23 to read as follows:

"§18-231-91-23 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)) (Imp: HRS §§91-12, 231-91)

24. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-24 to read as follows:

"§18-231-91-24 Correction of transcript. Motions to correct the transcript shall be made within five days after the receipt of the transcript and shall be acted upon by the presiding officer." [Eff] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

25. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-91-25 to read as follows:

"§18-231-91-25 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 §231-3(9)) (Imp: HRS §231-91)

26. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-92-01 to read as follows:

"§18-231-92-01 [Reserved]"

27. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-93-01 to read as follows:

"§18-231-93-01 [Reserved]"

28. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-94-01 to read as follows:

"§18-231-94-01 Fine for failure to produce license."

(a) A person required to be licensed or permitted under title 14, HRS (whether or not so licensed or permitted), and who fails to produce the license or permit upon demand by the special enforcement section shall be fined as follows:

- (1) For a first offense, a fine of \$250;
- (2) For second and subsequent offenses, a fine of \$500; provided that if the person is a cash-based business, the fine shall be \$1,000.

(b) A person may produce the original of the license or permit, a copy of the license or permit, a print out from the department showing that such person holds a license or permit, a completed application to the department for a license or permit along with proof of payment of any applicable license or permit fees, or a general excise tax return not older than one year along with evidence of payment of any taxes shown on such return, provided that a return that shows no taxes owing shall not be acceptable.

(c) Only one citation for a violation of this section may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation.

(d) For purposes of this section, a person who sells at a swap meet, flea market, garage sale, farmers market, open market, trade show, or similar event shall be deemed to be engaging in business if the person sells goods and/or services of any kind in the State at more than three separate events in any taxable year, regardless of the location or amount of the sales activity, unless such person can demonstrate to the department's satisfaction that all sales occurring at one or more of such events were casual sales as defined under section 237-1, HRS. Each day that a person sells at a swap meet, flea market, garage

sale, farmers market, open market or similar event shall be considered as a separate event.

(e) It is an absolute defense to this section if the person produces a license or permit number on file with the department and the department confirms that the person is associated with that number and the number is valid for the purpose of that person's activities." [Eff]
(Auth: HRS §231-3(9)) (Imp: HRS §231-94)

29. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-95-01 to read as follows:

"§18-231-95-01 Fine for failure to keep adequate books and records. (a) A person required to keep adequate books and records but who fails to produce such books and records upon demand by the special enforcement section shall be fined as follows:

- (1) For the first offense, a fine of \$500;
- (2) For second and subsequent offenses, a fine of \$1,000; provided that if the person is a cash-based business, the fine shall be \$2,000.

(b) A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.

(c) The special enforcement section shall demand the production of books and records in writing that shall state:

- (1) That if the person was unable to produce the books and records while the special enforcement section officer was present, the person must make an appointment with the special enforcement section officer to deliver the books and records to that officer or another officer of the special enforcement section at a state tax office within fourteen days; and
- (2) What period of books and records the person must produce.

(d) Where a person's business records are not in his or her possession due to transient business location, the special enforcement section will allow the person to produce the books and records at a state tax office. A person may agree to produce books and records outside a state tax office, or agree to produce books and records in

a period of time shorter than fourteen days, at his or her discretion and upon agreement with a special enforcement section officer.

(e) Only one citation may be issued to the person in any thirty day period for any demand of any period of books and records. Following the expiration of the thirty day period, a citation may be issued for failure to produce the same books and records demanded in connection with any previous citation, or for failure to produce books and records for a different period. Every citation issued under this section shall be considered as a separate violation." [Eff] (Auth: HRS §231-3(9)) (Imp: HRS §231-95)

30. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-96-01 to read as follows:

"§18-231-96-01 Fine for failure to record transaction. (a) A person who conducts taxable business transactions in cash and who fails to offer a receipt or other record of the transaction and who fails to maintain a contemporaneously generated record of all business transactions conducted each day, shall be fined as follows:

- (1) For a first offense, a fine of \$500;
- (2) For second and subsequent offenses, a fine of \$1,000; provided that if the person is a cash-based business, the fine shall be \$2,000.

(b) For purposes of this section, a transaction is a business transaction if the activity of the person would require the person to hold a license or permit in accordance with any provision of title 14, HRS, or the rules adopted thereunder.

(c) For purposes of this section, the following methods will satisfy the requirements of this section:

- (1) Cash register receipt (either by a manually operated register or by an electronic register), provided that the cash register tabulates and maintains records of total daily sales;
- (2) Point of sale, scanner, or other computerized method, provided that the system tabulates and maintains records of total daily sales;
- (3) Pre-numbered receipt book with at least an original and copy, provided that the receipts are used in numerical order, the receipt numbers are

not reused, and at least one copy of all receipts is retained; or

- (4) Contemporaneous log maintained by the person setting forth a general description of the goods and/or services sold, as well as the total gross proceeds of each transaction, as well as a statement advising the customer of the right to obtain a receipt. For purposes of this subsection, a prominently displayed sign in the immediate vicinity of where the goods and/or services are paid for noting that a receipt will be given upon request shall suffice to satisfy such notice requirement, provided that such sign is clearly legible and visible.

(d) If the person is otherwise in compliance with title 14, HRS, at the time a fine for violation of section 231-96, HRS, is issued, the fine shall be commensurate with the violation as follows:

- (1) For the first fine issued for a first offense under subsection (a) (1), the fine, or a portion thereof, may be waived at the discretion of the special enforcement section employee or other authorized department employee who issued the citation; and

- (2) For second and subsequent fines under subsection (a) (2), such fines shall not be waived.

(e) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(f) For purposes of this section, a transaction is deemed to have occurred at the time that a customer pays for the goods and/or services and the person accepts the payment, notwithstanding any rights of return or refund that the customer may have.

(g) Only one citation may be issued to the person per day. Every citation issued under this section shall be considered as a separate violation." [Eff]
(Auth: HRS §231-3(9)) (Imp: HRS §231-96)

31. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-97-01 to read as follows:

"§18-231-97-01 [Reserved]"

32. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-238-98-01 to read as follows:

"§18-231-98-01 Fine for tax avoidance price fixing.

(a) A person who sells, offers to sell, or otherwise conducts business offering a lower price to complete the transaction when paid for in cash than by any other payment means shall be fined \$2,000; provided that if the person is a cash-based business, the fine shall be \$3,000.

(b) It shall not be an offense under this section if the person can establish a legitimate business purpose for such differentiation. For example, a legitimate business purpose exists if some fee or cost that is associated with the alternative means of payment (including, but not limited to, credit or debit card merchant fees) is not present when payment is made in cash, provided that the discount offered does not exceed the amount of such fee or cost.

(c) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(d) Only one citation may be issued to the person in any thirty day period, and only one citation may be issued per incidence of sale or offer in violation of this section. Every citation issued under this section shall be considered as a separate violation." [Eff]
(Auth: HRS §231-3(9)) (Imp: HRS §231-98)

33. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-99-01 to read as follows:

"§18-231-99-01 [Reserved]"

34. Chapter 231-18, Hawaii Administrative Rules, is amended by adding a new section 18-231-100-01 to read as follows:

"§18-231-100-01 Fine for interference with a tax official. (a) A person who intentionally interferes with, hinders, obstructs, prevents, or impedes any investigator, auditor, collector, or other employee of the department

from obtaining license information, books, records, articles, or items of business transacted, or other information or property rightfully entitled to the department shall be subject to a fine of \$2,000.

(b) No citation shall issue for any conduct that is constitutionally protected.

(c) In any proceeding under this section, it shall be an absolute defense that the person acted with good cause. For purposes of this section, good cause shall mean a situation where:

- (1) The person's intent was to comply with the law;
- (2) The person acted in a reasonable manner; and
- (3) There was a significant mitigating factor such as, but not limited to, the person not knowing he or she was interfering with, hindering, obstructing, preventing, or impeding the investigator, auditor, collector or other employee of the department.

(d) A citation may be issued to the person for each incident that constitutes intentionally interfering with, hindering, obstructing, preventing, or impeding of any investigator, auditor, collector, or other employee of the department which prevents such investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property to which the department was rightfully entitled. Every citation issued under this section shall be considered as a separate violation." [Eff]
(Auth: HRS §231-3(9)) (Imp: HRS §231-100)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to Chapter 18-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

Director
Department of Taxation

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit 7

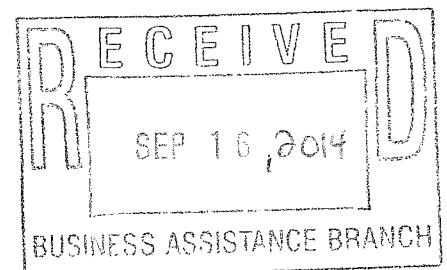
DEPARTMENT OF TAXATION

Adoption of Chapter 18-231
Hawaii Administrative Rules

_____, 2014

SUMMARY

1. Section 18-231-3-10(a) is amended.



HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231

ADMINISTRATION OF TAXES; COMPROMISES

§18-231-3-10(a) Compromises

1. Section 18-231-3-10, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) In general.

- (1) Authority. Pursuant to section 231-3(10), HRS, the director of the department of taxation may compromise any tax liability or interest or penalty thereon, arising under any tax law, the administration of which is within the scope of the department's duties, subject to approval of the governor.
- (2) Basis for compromise. An offer to compromise a tax liability may be considered only if ~~[there is doubt as to the liability, doubt as to collectability, or both. No liability shall be compromised if the liability is established by a valid judgment or is certain, and there is no doubt as to the State's ability to collect the tax.]~~ :
 - (A) There is doubt as to liability;
 - (B) There is doubt as to collectability; or
 - (C) The compromise promotes effective tax administration.

No liability shall be compromised if the liability is established by a valid judgment or is certain, and there is no doubt as to the State's ability to collect the tax."

[Eff] (Auth: HRS §231-3(9)) (Imp:
HRS §231-3(10))

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to Chapter 18-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

Director
Department of Taxation

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit 8

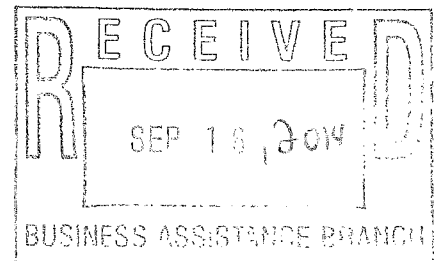
DEPARTMENT OF TAXATION

Adoption of Chapter 18-235
Hawaii Administrative Rules

_____, 2014

SUMMARY

1. Section 18-235-1.14 is amended.



HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW; SUBSTANTIAL GAINFUL BUSINESS OR
OCCUPATION, DEFINED

§18-235-1.14 "Substantial gainful business or
occupation", defined

1. Section 18-235-1.14, Hawaii Administrative
Rules, is amended to read as follows:

**"§18-235-1.14 "Substantial gainful business or
occupation", defined.** (a) As used in this chapter,
"substantial gainful business or occupation" means a
business or occupation that is both substantial and
gainful. It is substantial if it involves significant
physical or mental activity even if the individual
works on a part-time basis, does less work, is paid
less, or has fewer responsibilities than when the
individual worked prior to the disability. The
business or occupation is gainful if it is done for
monetary consideration or profit.

~~[(b) It shall be presumed that an individual
whose earned income is greater than \$30,000 for the
taxable year is engaged in a substantial gainful
business or occupation.]~~

~~Example 1: Taxpayer retires from
employment on disability that is total and
permanent. After retirement, Taxpayer
accepts another job and Taxpayer's earned
income is greater than \$30,000 for the
taxable year. Taxpayer is engaged in a~~

~~substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year.~~

~~Example 2: Taxpayer retires as a teacher on disability that is total and permanent. Taxpayer begins babysitting children and selling items. Taxpayer's earned income from these two businesses is greater than \$30,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year.~~

~~(c) In the case of husband and wife filing a return jointly and only one of the spouses is disabled, only the disabled spouse's earned income is measured.~~

~~Example 1: A and B file a joint income tax return. Only A is disabled. A's earned income is less than \$25,000 for the taxable year. B's earned income is greater than \$30,000 for the taxable year. For purposes of determining whether an individual is engaged in a "substantial gainful business or occupation," only the disabled spouse's earned income is measured when a joint tax return is filed. A is not engaged in a substantial gainful business or occupation because A's earned income is less than \$30,000 for the taxable year.~~

~~(d) For purposes of this section, earned income includes wages, salaries, tips, business interest income, other employment compensation, and net earnings from self employment for the taxable year. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.~~

~~Example 1: Taxpayer retires on disability that is total and permanent and receives an insurance settlement. Taxpayer does not engage in any other employment. The insurance settlement is invested and Taxpayer receives \$35,000 in interest, dividends, and capital gains during the taxable year. Taxpayer is not engaged in a substantial gainful business or occupation because earned income does not include interest, dividends, and capital gains.~~

~~(c) The presumption with respect to the \$30,000 earned income limitation set forth in subsection (b) is applicable to all totally and permanently disabled persons, including the following:~~

- ~~(1) A person who lost or is born without both feet at or before the ankle;~~
- ~~(2) A person who lost or is born without both hands at or above the wrist;~~
- ~~(3) A person who lost or is born without one hand and one foot;~~
- ~~(4) A person who has an injury or defect resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm; or~~
- ~~(5) A person who has an injury or defect resulting in incurable imbecility or mental illness.~~

~~Example 1: Taxpayer retires on disability that is total and permanent because Taxpayer loses both feet at the ankles in an accident. After retirement, Taxpayer accepts another job and Taxpayer's earned income from that job is greater than \$30,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year.]~~

(b) The determination of whether a taxpayer is able to engage in a substantial gainful business or occupation shall be certified as prescribed under section 18-235-1.12." [Eff] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to Chapter 18-235, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

Director
Department of Taxation

APPROVED AS TO FORM:

Deputy Attorney General