Small Business Regulatory Review Board Meeting

December 9, 2021

10:00 a.m.

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov
Tel: 808 586-2419

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Mark Ritchie for Director, DBEDT
Voting Ex Officio

AGENDA
Thursday, December 9, 2021 ★ 10:00 a.m.

As authorized under the Governor's November 29, 2021 Emergency Proclamation Related to COVID-19, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream or telephonically; to join the meeting go to:

https://zoom.us/j/3082191379 or

Dial 1-669-900-6833 with Meeting ID 883 5814 0200

Copies of the Board Packet will be available on-line for review at: https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

When the Chairperson asks for **public testimony** during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering * and **9** on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing * and then **6** on your keypad.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Wednesday, December 8, 2021.

Copies of the Board Packet will be available on-line for review at: https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

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

I. Call to Order

II. Approval of October 21, 2021 Meeting Minutes

III. New Business – Before Public Hearing

A. Discussion and Action on Proposed New Rules for Title 3 Department of Budget and Fiscal Services, Subtitle 6 Liquor Commission, **Rules of the Liquor Commission of the City and County of Honolulu, State of Hawaii**, as follows, promulgated by the Liquor Commission, City & County of Honolulu – Discussion Leader – Jonathan Shick

a. Part I. Chapter 80.1, **General Provisions**
b. Part II. Chapter 81.1, **Liquor Commissions**
c. Part III. Chapter 82.1, **Licenses and Permits, General Provisions**
d. Part IV. Chapter 83.1, **Procedure for Obtaining License**
e. Part V. Chapter 84.1, **Duties of and Supervision Over Licensee**
f. Part VI. Chapter 85.1, **Revocation of License**
g. Part VII. Chapter 86.1, **General Violations and Prosecutions**

IV. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of Hawaii Administrative Rules (HAR) Title 17 Chapter 891.1 and Adoption of Chapter 891.2, **Registration of Family Child Care Homes**, promulgated by Department of Human Services (DHS) - Discussion Leader – Mary Albitz

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, **Licensing of Group Day Care Centers and Group Child Care Homes**, promulgated by DHS – Discussion Leader – Mary Albitz

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, **Licensing of Infant and Toddler Child Care Centers**, promulgated by DHS – Discussion Leader – Mary Albitz

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, **Licensing of Before and After School Child Care Facilities**, promulgated by DHS – Discussion Leader – Mary Albitz

V. Administrative Matters

A. Discussion and Action on the Board's Investigative Taskforce's Resulting Findings and Recommendations on the Board's Proposed Phase II Website, in accordance with Section 92-2.5(b)(1)(B), Hawaii Revised Statutes (HRS)

B. Discussion and Action on the Board's Draft *2021 Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS

C. Discussion and Update on Chapter 92, HRS and Act 220, Session Laws of Hawaii 2021 regarding in-person meeting locations where members of the public can observe the remote meeting or testify in person

D. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2022 Hawaii State Legislative Session

VI. Next Meeting: Thursday, January 20, 2022 at 10:00 a.m.

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of October 21, 2021 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - DRAFT
October 21, 2021

I. CALL TO ORDER: Chair Cundiff called the meeting to order at 10:07 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:
- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- William Lydgate
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:
- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- James (Kimo) Lee

STAFF: DBEDT
Dori Palcovich
Jet'aime Ariola

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF September 16, 2021 MINUTES

Mr. Ritchie made a motion to accept the September 16, 2021 meeting minutes, as amended. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Water Pollution Control, promulgated by Department of Health (DOH), as follows:

a. Appendix B, Multi-Sector General Permit (MSGP)
b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
c. Appendix F, Authorizing Discharges of Hydrotesting Water
d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
e. Appendix K, Small Municipal Separate Storm Sewer Systems

Discussion leader and Vice Chair Albitz stated that this proposal represents appendices under Chapter 55 which covers NPDES General Permits. No major small business impact appears to exist as the 170 agencies that have these general permits are government agencies; she added that most small businesses are sheltered organizations and able to receive an exemption.

Mr. Darryl Lum, Engineering Section Supervisor at DOH's Clean Water Branch, explained that the purpose of the NPDES general permits is to control requirements of those agencies that may potentially be causing pollutants in state waters. In February 2021, an early outreach process to all the stakeholders and various organizations was conducted.

In August 2021, a Zoom public hearing was held with a total of 20 persons participating. While no one provided testimony at the hearing, three sets of specific comments totaling 20 were received by DOH, all of which were from government agencies regarding the general permit. No other comments were received from small businesses or from the public.

Fifteen of the 20 comments were in support of Appendix B and 5 were in support of Appendix K. Only one of the comments represented a change in the original proposed rules; this change will increase the deadline in submitting a document for the Appendix B general permit from 90 days to 180 days.

Both Chair Cundiff and Vice Chair Albitz commented on the comprehensive summary from the public hearing and feedback from of the public.

Vice Chair Albitz motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Rodighiero explained that the rule amendments regulate the number of entities in the waters of Kahalu'u Bay on the Big Island. Eight limited permits are to be created on a shift basis – four permits allowed in the morning and four in the afternoon. The public hearing had several attendees with 20 testifying and 48 providing written comments.

Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR), noted that Ms. Rodighiero explained the public hearing well and confirmed that DOBOR was allowing for either 4 full-time or 8 half-time permits. Based on comments at the public hearing, the language in the rules will be amended and proposed to include "non-motorized" vessels to cover all forms of surfing.

Ms. Rodighiero motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Rodighiero explained that the proposed amendments are to clarify terms and duration of licenses and also to update how fees are processed; i.e., an electronic process.

Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, confirmed that the rule changes were mostly for streamlining the conducting of business with a potential cost savings due to less time managing the insurance processing. The public hearing was held in August 2021; no one attended, and no testimony was received. As a result, no changes were made to the rules after the public hearing.

Ms. Park noted that based on past rule changes at the Insurance Division, it is quite common to not receive testimonies or attendance at the public hearings. For this particular rule amendment, only one inquiry came in.

Ms. Rodighiero motioned to move the proposed amendments to the Governor for adoption. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to Rules and Regulations of the Liquor Control Commission of the County of Kauai, promulgated by the Department of Liquor Control – County of Kauai

Discussion leader Mr. Lydgate explained that the proposed pre-public hearing rule changes will bring the rules up-to-date.

Director Leo Sandoval from the County of Kauai - Department of Liquor Control confirmed that the existing rules are quite antiquated and had not kept up with current technology. Thus, digital notarizing and processing on-line applications are now included in the rules. Due to these updates, there will be a financial impact to small business; for example, under Section 2.12(b)(4), an increase in direct wine shipments by wineries is being imposed to $180 from $48 annually. However, this fee increase is expected to be passed onto the direct shippers, which are mostly from the mainland.

Under Section 4.8.5, a new $45 processing fee will be assessed for changes to existing trade names; however, this does not happen very often and is considered a modest fee. Other proposed fee increases are not expected to be passed onto small businesses; for example, a $10 cost for safety classes will be imposed onto employees.

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In regard to stakeholder outreach, Director Sandoval indicated that he personally reached out to the licensees and has posted the entire proposed changes on the Kauai Department of Liquor Control's website. In addition, town hall meetings are held with an open invitation to all those that might be impacted by the proposed changes.

Mr. Lydgate stated that the new, increased fees appear reasonable. Chair Cundiff added that the summary provided by Director Sandoval was appreciated because it was very thorough and concise.

Mr. Lydgate motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to the Board of Water Supply and Regulations Chapter I, Water and Water System Requirements for Developments, Section 1-102 Water System Facilities Charges; and Chapter II, Water Service to Consumers, Section 2-202 Installation of Water Service, promulgated by the Board of Water Supply (BWS), City and County of Honolulu

Discussion leader and Second Vice Chair Shick explained that the rule changes mostly represent a change in the water fees that will help balance out the demand usage and associated fees.

Mr. Ernie Lau, Manager and Chief Engineer for the Honolulu BWS, which is 100 percent self-sufficient, introduced Mr. David Ebersold, Program Manager at CDM Smith and Consultant for BWS, who conducted a presentation on BWSs' water system facility charges.

The presentation is a follow-up to BWS's Water Master Plan, which was presented to this Board a few years ago. The Plan looked ahead 30 years by evaluating the entire water system, identifying necessary improvements and balancing the needs with costs of providing water to customers. The one area that was not discussed at that time was the water system facilities charge, which over the next 30 years, BWS will need to invest in over 800 infrastructure projects island-wide costing more than $5.3 billion.

Mr. Ebersold explained that BWS's system is quite complex and made up of a tremendous amount of infrastructure in order for water from the water forces to get to the individual service connections; there are 170,000 service connections servicing 145 million gallons of water per day to 1 million people.

The water system facilities charge is a one-time charge based on water capacity. It applies to all new development requiring water from BWS's system with additional capacity needed for existing water service. However, this one-time charge excludes development that has already been paid for and where the water systems have already been installed. Reasons the water system facilities charges are being updated include changes in water patterns and growth needs as well as increased costs. The estimated water system facilities charges shortfall is about $30 million per year.

BWS's six-year capital improvement program includes new pipeline pumps, reservoirs and water treatment systems. The proposed charge is based on a fixture unit which measures the amount of water that a water-user uses. For non-residential development (i.e., small businesses, commercial facilities, industrial, hotels, parks and schools), the charge is currently $620.85 for 50-fixture unless or less. If there are more than 50 fixture units then each fixture unit is charged only $220.29.

The proposed water system facilities charge for non-residential development is a uniform charge per fixture unit of $370.74. If a small business, which typically is not a big water user, does not have many fixture units, that would result in a huge benefit due to a reduction in the overall fixture charge. For larger water users, such as a medium-sized shopping centers with 250-fixture units, that cost would be more.

Agriculture customers, which are an important group, currently pay 60 percent of their full cost of water service in recognition of the important economic food security value that agriculture provides; this is strongly supported by stakeholders. Therefore, the intent is to keep the same premise and structure for the water system facilities charges so that agriculture customers would remain paying only 60 percent of the actual costs.

Mr. Lau explained that BWS's stakeholder advisory group, which consists of approximately two dozen leaders in the community from all sectors and areas of the island including chambers of commerce and hotel and real estate industries, are all active participants in this group; they have been meeting for five years and has been providing BWS with valuable input. Additional stakeholders such as developers, farmers, and the farming community were also involved in discussions. Elected officials at the county level are currently being contacted for input on the proposal and thirty neighborhood boards will be approached for input and feedback as outreach is still being performed.

The farming community has asked for a delay in water increases for one year; this will be taken up with BWS Board of Directors. It is recognized that the farming community is currently struggling, and it is BWS's intent to help them in any way it can. Mr. Lydgate expressed that the proposed improvements are very much needed, especially in the Honolulu area where it is very critical and where there is a benefit to this investment as well.

Chair Cundiff commended BWS for its outreach efforts while including stakeholder comments in the process as this tends to be extremely advantageous prior to the rules becoming adopted; it also shows that BWS is taking its responsibility seriously. While many of the changes have an effect beyond small business it appears BWS has been provided good solid feedback from various levels of the community. Overall, although supplying a good water system is not easy, BWS is performing very well and very effectively.

Second Vice Chair Shick motioned to move the proposed amendments to public hearing. Mr. Lydgate seconded the motion, and the Board members unanimously agreed.

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C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 73, Barbers, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Rodighiero explained that the proposed rule changes represent medical clearances for all barber and cosmetologist licensees, which total approximately 11,000. However, during the COVID-19 epidemic and in order to help ease the financial pressure, this medical clearance was removed, although the DCCA boards still have discretion to make any exceptions or requests for medical clearance, if needed.

Ms. Jenny Yam, Executive Officer at DCCA's Professional and Vocational Licensing Division, clarified that this proposal is not a permanent requirement for licensure. The only time when this rule provision would take effect is if and when DOH declares an emergency or an epidemic.

Ms. Yam explained that when the COVID-19 crisis began in March 2020, the State of Hawaii was deemed in an emergency whereby the Governor issued a statewide stay-at-home mandate. This emergency was carried over until May 2020 when the state allowed barbershops and beauty salons to reopen.

Subsequently, the statute for medical clearance and the respective rules were suspended by the Governor's 8th to the 21st emergency proclamations, the latter of which expired August 6, 2021. The Governor has since approved emergency rules to be adopted to repeal this mandate for 120 days so that DCCA can go through the regular rule-review process for the "official" repeal.

Ms. Yam further explained that this rule proposal is in front of this Board for consideration of any potential small business impact. However, during the entire time and up until August 6th, there were no concerns or questions from the public or from small business. Also, when the State Boards officially met and reviewed the repeal proposals, there were again no concerns or questions from the public or small business.

Ms. Rodighiero motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 78 Cosmetology, promulgated by DCCA

See discussion above in Section IV. C.

Ms. Rodighiero motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

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E. Discussion and Action on Proposed New Administrative Rules Title 23, Chapter 5, Establishment and Administration of Right-of-Way Widths and Setback lines for Planned Street and Transit Improvements, promulgated by Department of Transportation Services – City and County of Honolulu

Discussion leader and Second Vice Chair Shick explained that this proposal is mainly administrative in nature and explains how the rules, which relate to set-back lines and right-of-way widths for planned street and transit improvements, are adopted.

Ms. Dreanalee Kalili from the Department of Transportation Services explained that the existing rules were adopted in 1986 and describe which properties are affected by set-backs along both major and minor streets in the City and County of Honolulu. However, currently the only way that a set-back can be modified is through the rule-making process. Thus, in an effort to stream-line the procedure, an administrative process is being established so that rule-making requirements are not needed each time a change in the set-back line requirement occurs.

In preparing the small business impact statement, Ms. Kalili noted that a direct impact to small business was not found as the changes would potentially impact any property owner that is a small business. In any case, in the interest of caution and transparency, the rules are before this Board to ensure that a potential impact to small business was not inadvertently missed.

Second Vice Chair Shick motioned to move the proposal to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

F. Discussion and Action on Proposed New HAR Title 4, Chapter 161.1 Hemp Production, promulgated by Department of Agriculture (DoAg)

Discussion leader Mr. Lydgate explained that the proposed pre-public rule changes reflect processes and procedures of growing industrial hemp in Hawaii along with related fees and penalties for violations.

Mr. Leonard Obaldo, Acting Director at DoAg's Quality Assurance Division, explained that the proposed new rules were mandated by Act 14, Session Laws of Hawaii 2020, which terminated the existing two-year hemp pilot program and legalized the commercial hemp production under the USDA Domestic Hemp Production Program. Essentially, this Program allows hemp growers in Hawaii to be licensed without any fee requirements. Prior to this, Hawaii's DoAg had executed the hemp pilot program which has more than 50 licensed hemp growers.

Although the proposed new rules allow for no application or license fees, imposed duties on the part of DoAg to assist in enforcing restrictions provided no additional financial resources for the added duties. As a result, the rules propose a $50 per hour inspection fee, which is considered reasonable and imposed by other DoAg divisions for other types of inspections. There is also a violation fee, up to $10,000, depending on the alleged violation.

Mr. Obaldo added that outreach to existing hemp growers would be performed to determine any impact to the small businesses.

Mr. Lydgate motioned to move the proposed amendments to public hearing and that DoAg's Quality Assurance Division reach out directly to Hawaii hemp licensees prior to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

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

Chair Cundiff briefly noted that the Phase II taskforce met for the second time in a Zoom call. The taskforce is now awaiting a financial proposal from NIC sometime this month. Once received, the taskforce will comb through it and eventually come back to the Board with a presentation.

VI. NEXT MEETING - Thursday, November 18, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Vice Chair made a motion to adjourn the meeting and Mr. Lydgate seconded the motion; the meeting adjourned at 11:19 p.m.

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III. New Business – Before Public Hearing

A. Discussion and Action on Proposed New Rules for Title 3 Department of Budget and Fiscal Services, Subtitle 6 Liquor Commission, **Rules of the Liquor Commission of the City and County of Honolulu, State of Hawaii** promulgated by the Liquor Commission, City & County of Honolulu

a. Part I. Chapter 80.1, **General Provisions**
b. Part II. Chapter 81.1, **Liquor Commissions**
c. Part III. Chapter 82.1, **Licenses and Permits, General Provisions**
d. Part IV. Chapter 83.1, **Procedure for Obtaining License**
e. Part V. Chapter 84.1, **Duties of and Supervision Over Licensee**
f. Part VI. Chapter 85.1, **Revocation of License**
g. Part VII. Chapter 86.1, **General Violations and Prosecutions**

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

Date: 11/29/2021

Department or Agency: Liquor Commission, City & County of Honolulu

Administrative Rule Title and Chapter: Chapters 80.1-86.1, Rules of the Liquor Commission

Chapter Name: 80.1-General Provisions; 81.1-Liquor Commissions; 82.1-Licenses and Permits, General Provisions; 83.1-Procedure for Obtaining License; 84.1-Duties of and Supervision Over Licensee; 85.1-Revocation of License; 86.1-General Violations and Prosecutions

Contact Person/Title: Anna Hirai, Assistant Administrator

E-mail: ahirai@honolulu.gov Phone: 808-768-7302

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

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

☐ Yes ☑ No

If "**Yes**," provide details: See attachment.

I. Rule Description:

☑ New ☑ Repeal ☐ Amendment ☐ Compilation

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

☑ Yes ☐ No

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

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

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

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

☐ Yes ☑ No

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

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

☐ Yes ☑ No

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

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

   See attachment.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

   See attachment.

   If the proposed rule imposes a new or increased fee or fine:

   a. Amount of the current fee or fine and the last time it was increased.

      Not applicable.

   b. Amount of the proposed fee or fine and the percentage increase.

      Not applicable.

   c. Reason for the new or increased fee or fine.

      Not applicable.

   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

      Not applicable.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

   None; not applicable.

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

   See attachment.

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

   See attachment.

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

   See attachment.

7. How the agency involved small business in the development of the proposed rules.

   See attachment.

   a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

      See attachment.

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

   No.

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

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

      Not applicable.

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

      Not applicable.

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

      Not applicable.

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

      Not applicable.

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

      Not applicable.

* * *

ATTACHMENT TO
PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT

A.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 80 and Adoption of Chapter 80.1, General Provisions, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 81 and Adoption of Chapter 81.1, Liquor Commissions, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 82 and Adoption of Chapter 82.1, Licenses and Permits, General Provisions, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 83 and Adoption of Chapter 83.1, Procedure for Obtaining License, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 84 and Adoption of Chapter 84.1, Duties of and Supervision Over Licensee, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 85 and Adoption of Chapter 85.1, Revocation of License, promulgated by Liquor Commission, City and County of Honolulu.

Discussion and Action on the Proposed Repeal of Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Chapter 86 and Adoption of Chapter 86.1, General Violations and Prosecutions, promulgated by Liquor Commission, City and County of Honolulu.

B.

Draft rules will be available in hard copy at the LIQ offices and will be posted on the LIQ website.

A copy of the proposed rules in their entirety is attached. Because so many of the rules are being reinstated, or reinstated with amendments, we provide the proposed rules in

Ramseyer format to facilitate identifying any changes, and the source of the proposed changes (see attached Ramseyer color key).

To further assist review, please see the attached tables entitled "Comprehensive Chart" (chronological listing of all proposed rules, with description of action taken) and "Category Chart" (grouping all proposed rules by type of action taken).

SUBMITTER'S NOTE: The chapter numbers in the All Rules Proposed document and accompanying tables are missing ".1" to indicate the existence of a repealed/adopted chapter. The SBRRB notice requirement contains the correct chapter numbers, and all chapter number references in LIQ'S notice of public hearing and rule amendment documents will be corrected to reflect the correct chapter numbers.

1.

As of today's date, LIQ has 1,422 licensees, representing 12 active license classes. With the exception of hotel class licensees (49/1,422), virtually all licensees are small businesses within the meaning of HRS §201M-1. The proposed rules are substantially based on existing rules, with changes to clarify existing requirements, eliminate unnecessary regulation, and update necessitated by statutory changes. LIQ believes that adverse impact has been minimized.

2.

As the proposed rules are substantially based on existing rules with the above-described changes, no increase in the level of direct costs or indirect costs are anticipated for licensee compliance.

4.

Clarification of existing requirements and elimination of unnecessary regulation were based on licensee and staff input. Accordingly, adverse impact to our licensees has been minimized to the extent practicable.

5.

Any requirements that imposed procedures and protocols solely on staff (internal management) without impacting a licensee's rights or available procedures were not included in any proposed rules.

6.

Licensees may avail themselves of email and telephone inquiries to obtain information on a rule's interpretation. In addition, LIQ's free online server training will cover any new or changed requirements contained in the new rules. Finally, enforcement is

expected to issue warnings (no monetary penalty) in lieu of a notice of violation (monetary penalty) during the transition from the existing to the new rules.

7.

LIQ solicited input from the 12 active license classes via the licensees themselves or licensee representatives (collectively, "stakeholders") prior to conducting stakeholder meetings. LIQ conducted four (4) Zoom stakeholder meetings in 2021, which are listed in the attached table entitled "Stakeholder Meeting Attendance", which includes attendance demographics.

7a.

Stakeholder input from the four (4) meetings are detailed in the attached table entitled "Stakeholder Input". Of the 17 inputs received, LIQ anticipates substantial testimony at public hearing pertaining to the below proposed rules:

§3-82-31.15 Deliveries
§3-82-38.18 Sampling on Licensed Premises

In the case of the Deliveries rule, LIQ wishes to proceed to public hearing with both versions (depicted in purple and green text). The versions could not be reconciled through informal discussion, and LIQ believes that the Commission decision makers (the five-member Commission) would benefit from testimony for and against both positions prior to approving a particular version, or developing a hybrid version.

RECEIVED
By SBRRB at 2:12 pm, Dec 01, 2021

KUPU SPIRITS — MAUI BREWING Co — MAUI HARD SELTZER

1 December 2021

Small Business Regulatory Review Board, DBEDT
Honolulu, HI 96813

Re: Proposed Honolulu Liquor Commission Proposed rule change

Aloha all,

I am writing to submit testimony in regards to the proposed HCLC rule changes. We take specific issue with the addition of “under same ownership” added to the Class 14 and Class 18 licenses where they relate to “satellite locations”. Unfortunately I will be traveling and may not be able to attend the zoom.

This change will be responsible for negative impacts to Hawaii’s small businesses in the brewing, distilling, and winemaking world. These small businesses are already reeling with the disproportionally negative impacts of the COVID pandemic as we are extremely dependent on the food & beverage and tourism industries. The addition of this language will have further detrimental impacts.

We own and operate 4 restaurant locations and a central production facility where we perform all brewing, distilling and winemaking functions. We do plan for more expansion in Hawaii however this change could have us rethink investing further in Hawaii. Each location operates within its own entity for many reasons. The primary two reasons for this is access to capital in regards to investors and debt financing, and separation of liability between each location. Simply put, the addition of this language shows no understanding of basic business structures and confuses corporate structure oversight with controlling “brands”. These are not the same thing.

I was personally part of the legislative actions to create the class 18 license as well as numerous modifications to the class 14 license. These changes have resulted in the creation of a whole industry in Hawaii that did not exist prior. The legislators that

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Phone 808.213.3002 | www.MauiBrewing.com

sponsored the legislation and full legislature that voted these changes into placed understood the reasoning for the language as it stands.

The idea behind the satellite location was to allow a brand such as “ABC Brewing” to expand and grow as a small business and perform the functions of its primary license and location at other location throughout the State. For example, ABC having a 14 or 18 license could brew and package at a main facility and sell said beverages at another branded location direct to retail. The reason for this is the manufacturing side of these businesses is highly capital intensive, equipment alone for brewing and packaging could easily be $3,000,000 and upwards of $30,000,000 in our case. A small brewer simply cannot invest in these assets at each location. This is the basis for the satellite location.

Requiring “same ownership” opens up our small businesses to an array of liability issues and decrease the ability to access capital as investor groups are often the primary financing for these small business locations. I’m happy to have further discussions and give examples as needed.

Mahalo in advance for your consideration. It is my hope that you will require this proposal to be amended and remove this language. I’d very much like to continue to be involved and part of a solution.

Sincerely,

Garrett W. Marrero
Garrett@MauiBrewing.com
808.213.3007 office
808.280.4687 cell

Lanikai Brewing Company
175 Hamakua Drive, Unit C
Kailua, Hawaii 96734
www.lanikaibrewing.com

RECEIVED
By SBRRB at 3:36 pm, Dec 03, 2021

1 December 2021

Aloha,

We are a brewery and distillery currently located in Kailua, HI, but also working to build out more facilities on Oahu and other neighbor islands over the next few years. As you know, the hospitality industry has been decimated through the pandemic and many are just holding on with a thread with significant exposure and a long road to get back to our pre-pandemic work flow.

We recently learned of SBRRB meeting on Thursday 12/9/21 where there is an agenda item that could potentially negatively impact our industry relating to satellite locations for our license classes. We would like to include this as our testimony (I will be traveling on Thursday and not likely to attend the meeting for testimony in public).

Satellite locations are extremely valuable to breweries as they allow us to grow within our respective brands, which therefore allows us to grow our manufacturing component of our business. All of this growth translates to job as well as taxable income creation. Our concern rests in the proposed language where the requirement is the “same ownership” for the satellite entities. This is concerning for a liability purpose from potential accidents where that liability from one location would carry over to all locations. We have been advised by our lawyers that the separation of our entities create that protection, while still being able to operate under our brand. This also could impact our ability to fundraise for our growth in new entities. Finally, it could potentially impact our ability to sell our products to go where patrons can take them as gifts or home to enjoy later.

We propose that the satellite locations be simply under the same brand (verses ownership), so that we have what we believe to be the spirit of this but also to have increased protection from liability.

'Okole Maluna,

Steven R Haumschild

Steve Haumschild, MBA
CEO & Brewmaster
Certified Cicerone®
Lanikai Brewing Company, Island Inspired™ Craft Beer and Spirits

RAMSEYER COLOR KEY
(source of proposed revision)

RED	City Council
MAGENTA	Commission
BLACK	LIQ Administration or Multiple Sources
ORANGE	LIQ Administrator
BLUE	LIQ Admin. Services (includes Audit)
BROWN	LIQ Chief Inv. & Enforcement
GREEN	LIQ Licensing
PURPLE	Other (Licensees, Attorneys, etc.)

COMPREHENSIVE CHART

Rule No. §	Heading	Previous Rule No. §	Action
3-80-1.01	Definitions	3-80-1.1	Number change. *Added:* Bona fide; fit and proper; food; industry member; inventory balancing; meals; pool buying; sample. *Amended:* Bartender; caterer; employee; host/hostess; manager. *Deleted:* Showroom.
3-80-2.01	Excepted Articles; penalty	---	Reserved.
3-80-3.01	Illegal manufacture, importation, or sale of liquor	---	Reserved.
3-80-4.01	Minors on unlicensed premises	3-80-4	Number, heading change only.
3-80-5.01	Powdered alcohol	---	Reserved.
3-81-11.01	Designation of commission chairperson	3-81-11.1	Number change. *Amended*: (b) Specify majority vote.
3-81-11.501	Question of law	3-81-11.51	Number change only.
3-81-12.01	Commission and board office	---	Reserved.
3-81-13.01	Meeting dates, time, and place	3-81-13.1	Number change only.
3-81-14.01	Public information	3-81-14.1	Number change only.
3-81-15.01	Reports, accounts, audit	---	Reserved.
3-81-16.01	County liquor commission and liquor control adjudication board funds; disposition of realization; payment of expenses	---	Reserved.
3-81-17.01	Limitation on issuance of a liquor license	3-81-17. 1	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended*: (b) Who to obtain zoning clearance from.
3-81-17.02	Declaratory ruling by commission	3-81-17.2	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-17.03	Petition for adoption, amendment, or repeal of rules	3-81-17.3	Number change only.
3-81-17.04	Delegation of administrative duties; emergency rules	3-81-17.4	Number change. *Added*: (b) Adoption, duration of emergency rules.
3-81-17.05	Mediation in contested cases	3-81-17.6	Number change only.
3-81-17.06	Monies collected from assessment of fines	3-81-17.7	Number change. *Added*: Programs promoting business best practices added to list of programs.

Rule No. §	Heading	Previous Rule No. §	Action
3-81-17.07	Waiver	3-81-17.8	Number change only.
3-81-17.08	Guidance document	---	New rule.
3-81-17.09	Surcharge for late applications	---	New rule.
3-81-17.501	License fees	3-81-17.51	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-17.502	Prorated license fees, forfeiture of fees	3-81-17.52	Number change. *Added:* (a) Refunds for special, transient vessel, caterer, and temporary licenses.
3-81-17.503	License fees; when due and how calculated	3-81-17.53	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-17.504	Gross liquor sales reports	3-81-17.54	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* (c), (f), (g), (h) Specifies conditions for refunds; filing deadline; complimentary drinks or samples; reporting while in safekeeping.
3-81-17.505	Additional license fees on gross liquor sales	3-81-17.55	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-17.506	Failure to file accurate gross liquor sales reports	3-81-17.56	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-17.507	Payment for under reporting gross liquor sales	3-81-17.57	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-19.01	Hearings	3-81-19.1	Number change. *Added*: (a) Use of interactive conference technology to establish quorum.
3-81-19.02	Legal counsel or other authorized representative	3-81-19.2	Number change. Technical amendments for purposes of clarity, consistency, style.
3-81-19.03	Authorized agent representing party	3-81-19.3	Number change only.
3-81-19.04	Substitution of parties	3-81-19.4	Number change only.
3-81-19.05	Consolidation	3-81-19.5	Number change only.
3-81-19.06	Service, generally	3-81-19.6	Number change only.
3-81-19.07	Service, by whom	3-81-19.7	Number change only.
3-81-19.08	Time	3-81-19.8	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended:* (b) Hours documents will be accepted for filing.

Rule No. §	Heading	Previous Rule No. §	Action
3-81-19.09	Extensions of time	3-81-19.9	Number change only.
3-81-19.10	Motions	No Change	---
3-81-19.11	Powers of the commission in conducting hearings	No Change	---
3-81-19.12	Disqualification of member of commission	No Change	---
3-81-19.13	Ex parte communications	No Change	---
3-81-19.14	Decisions, generally	No Change	*Amended*: (b) Who can accept service of decision and order.
3-81-20.01	Access, examination, and inspection	3-81-20	Number, heading change. *Added:* Specifies that auditors will have same access as investigators.
3-81-21.01	Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses' fees	---	Reserved.
3-81-22.01	Political activities of commission employees	---	Reserved.
3-82-31.01	Determination of classification for licensed premises	3-82-31.1	Number change only.
3-82-31.02	Conduct of business	3-82-31.2	Number change. Technical amendments for purposes of clarity, consistency, style. *Deleted:* Subsection (c) moved to 3-82-31.04.
3-82-31.03	Determination of nudity in cabarets	3-82-31.3	Number change only.
3-82-31.04	Sales and service on vessels while docked	3-82-31.4 3-82-31.2(c)	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* Replaced by 3-82-31.04(c).
3-82-31.05	Brewpub licenses	3-82-31.5	Number change. Technical amendments for purposes of clarity, consistency, style. *Added*: (c) Application for second location.
3-82-31.06	Special licenses by for profit organizations	3-82-31.6	Number change. *Added*: Application submission deadline. *Deleted:* Zoning clearance requirement.
3-82-31.07	Catering by restaurant, hotel, or condominium hotel licensees	3-82-31.7	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* (b), (d), (e), (g), (h) Application requirements; registered manager requirement.

Rule No. §	Heading	Previous Rule No. §	Action
3-82-31.08	Restrictions on vessels	3-82-38.14	Number change only.
3-82-31.09	Catering by food service businesses	3-82-31.9	Number change. Technical amendments for purposes of clarity, consistency, style.
3-82-31.10	Winery licenses	No Change	Technical amendments for purposes of clarity, consistency, style.
3-82-31.11	Manufacturer licenses	No Change	---
3-82-31.12	Display of prices in retail dealer premises	3-82-36.1	Number change only.
3-82-31.13	Liquor on retail dealer premises during prohibited sales hours	3-82-36.2	Number change only.
3-82-31.14	Drive-in retail dealer sales prohibited	3-82-36.3	Number change. *Added*: Curbside delivery permitted.
3-82-31.15	Deliveries	3-82-36.4 3-82-42.2	Number change. *Amended:* Total re-write of rule; two (2) versions.
3-82-31.16	Reserved	---	No content; reserved.
3-82-31.17	Small craft producer pub licenses	---	New rule. Tracks Class 14 brewpub licenses requirements (3-82-31.05).
3-82-31.18	One-day special licenses for fund-raising events by not for profit organizations	3-82-32.31	Number change only.
3-82-31.19	Exemption for not for profit organizations	3-82-32.32	Number change. *Added:* Specifies administrator's discretion to refer application to hearing.
3-82-31.20	Requirements of a hotel license	3-82-38.12	Number change only.
3-82-31.21	Restrictions on hotel and condominium hotel licenses	3-82-38.13	Number change only.
3-82-31.22	Requirements of a restaurant license	3-82-38.22	Number change. *Added*: (a) (b) Meal preparation and meal requirements.
3-82-31.23	Requirements of a condominium hotel license	3-82-38.24	Number change only.
3-82-31.24	Entertainment in cabarets	3-82-47.3	Number change only.
3-82-32.01	Temporary license	3-82-32.1	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* (d), (e), (f) Conditions, requirements.
3-82-32.501	Sampling at trade shows and exhibitions	3-82-32.51	Number change only.
3-82-33.01	Special powers, privileges, and rights	---	Reserved.
3-82-33.101	Applications for individual permits to receive shipments of liquor	3-82-33.11	Number change. *Amended:* (a) Application fee.

Rule No. §	Heading	Previous Rule No. §	Action
3-82-33.601	Direct shipment of wine by wineries	3-82-33.6	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended:* (b) Application fee.
3-82-34.01	Sham operation under club license; supervision	---	Reserved.
3-82-35.01	Club membership list	3-82-35.1	Number change only.
---	~~Club guests~~	3-82-35.2	"Repealed" (not carried forward to new rules).
3-82-35.501	Special conditions; condominium hotel licenses	---	Reserved.
3-82-37.01	Retail alcohol sales; records	3-82-37.1	Number change only.
3-82-38.01	Familiarity with liquor laws and rules	3-82-38.1	Number change only.
3-82-38.02	Liquor laws and rules on licensed premises	3-82-38.2	Number change only.
3-82-38.03	Preparation of drinks at open bars	3-82-38.3	Number change only.
3-82-38.04	Employee records	3-82-38.4	Number change. Technical amendments for purposes of clarity, consistency, style.
3-82-38.05	Registration of employees	3-82-38.5 3-82-38.6	Number change. Technical amendments for purposes of clarity, consistency, style. "Re-write" of existing rule.
3-82-38.06	~~Registration of dancers~~	3-82-38.6	Combined with 3-82-38.05; reserved.
3-82-38.07	Refusal or revocation of employees registration, and proof of registration	3-82-38.7	Number change only.
3-82-38.08	Annual submission of employee list	3-82-38.8	Number and heading change. Technical amendments for purposes of clarity, consistency, style.
3-82-38.09	Licensee and manager in charge of premises	3-82-38.9	Number changed. "Re-write" of existing rule.
3-82-38.10	Compliance with any other applicable laws	No Change	New rule.
3-82-38.11	Price list to be posted	No Change	---
3-82-38.12	Music, dancing, entertainment	3-82-47.1	Number change. *Amended:* (a) (b) Gaming device restriction extended to off-premises licensees; gambling prohibited.
3-82-38.13	Dance floor	3-82-47.2	Number change only.
3-82-38.14	Term of license	3-82-31.4	Number change. *Added:* (d) Restrictions on license renewal.
3-82-38.15	Unlawful discrimination	No Change	---
3-82-38.16	Trade name; change; fee	3-81-17.58	Number change. *Amended:* Application fee.
3-82-38.17	Use of unauthorized trade name	3-81-17.59	Number change only.

Rule No. §	Heading	Previous Rule No. §	Action
	prohibited		
3-82-38.18	Sampling on licensed premises	No Change	*Amended:* (a), (b), (c), (g) Additional restrictions; treatment of wholesale dealers.
3-82-38.19	Hours of business	No Change	*Amended*: (d) Manufacturer and wholesale dealer sampling.
3-82-38.20	Sale, service, or consumption before or after hours of business	No Change	---
3-82-38.21	Extension or curtailment of hours of business	No Change	---
3-82-38.22	Recorking	3-82-31.8	Number change only.
3-82-38.23	Compliance with allowable noise levels	No Change	---
3-82-38.24	Liquor display and storage	3-82-44.2	Number change only.
3-82-38.25	Restrictions or conditions of license	No Change	*Amended:* (a) Extends licensee's responsibility to sidewalks adjacent to the licensed premises.
3-82-38.26	Bottle service for on-premises consumption	No Change	*Added:* Storage of customer's unused product prohibited.
3-82-38.27	"Growlers" or containers used for off-premises consumption	No Change	---
3-82-38.28	Liquor in unauthorized areas	---	New rule.
3-82-39.01	Warehousing	3-82-42.1	Number change. *Added*: (7) Investigator access.
3-82-39.501	Liquor license prohibited; where	---	Reserved.
3-82-40.01	Unauthorized liquor	3-82-40.1	Number change only.
3-82-41.01	Transfer of license	3-82-41.1	Number change. *Amended*: (a) When transfer prohibited.
3-82-41.02	Transfer of corporate stock; notification regarding limited partners, limited liability company managers, or members	3-82-41.2	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* Submission requirements; consequences of late submission; conversions and mergers.
3-82-41.03	Payment of fees upon transfer of license	3-82-41.3	Number change only.
3-82-41.04	Management or operating agreements	3-82-41.4	Number change. *Deleted:* Information regarding manager or operator. *Added:* Clarifies permissible use of agreement.
3-82-41.05	Surrender of license upon suspension, revocation, or closing of business	3-85-91.11	Number change only.
3-82-41.06	Licenses held in safekeeping	3-85-91.12	Number change. Technical amendments for purposes of clarity, consistency, style.

Rule No. §	Heading	Previous Rule No. §	Action
3-82-42.01	Trade Practices	---	New rule.
3-82-44.01	Advertisements and signs	3-82-44.1	Number change. Technical amendments for purposes of clarity, consistency, style.
3-82-45.01	Requirement for criminal history and fingerprint card	3-82-45.1	Number change. Technical amendments for purposes of clarity, consistency, style.
---	~~Requirements applicable to late night cabarets, establishments where entertainment is provided by a dancer and hostess bars~~	3-82-45.2	"Repealed" (not carried forward to new rules).
3-82-46.01	Time limitations for buying	3-82-46.1	Number change only.
3-82-47.01	Ninety-day trial entertainment	---	New rule.
3-83-51.01	Prior inspection	---	Reserved.
3-83-52.01	Public hearing	---	Reserved.
3-83-53.01	License applications; notice of hearing; affidavits	3-83-53.1	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* (a)(1) More detailed requirements detail.
3-83-53.02	License application background verification	3-83-53.2	Number change only.
3-83-53.03	Primary decision makers	---	New rule.
3-83-53.04	Notarial act performed using audio-visual communication technology; electronic or digital signatures	---	New rule.
3-83-53.501	County liquor commissions; criminal history record check	---	Reserved.
3-83-54.01	Filing fees	3-83-54.1	Number change. *Amended:* Filing fees.
3-83-55.01	Reference to investigator	---	Reserved.
3-83-56.01	Report by investigator	---	Reserved.
3-83-57.01	Affidavits; forms	3-83-57.1	Number change only.
3-83-57.02	Change of class or category	3-83-57.2	Number change only.
3-83-57.03	Publication cost deposits	3-83-57.3	Number change only.
3-83-57.04	Neighborhood board notification	3-83-57.4	Number change. Technical amendments for purposes of clarity, consistency, style.
3-83-58.01	Time for filing protests	3-83-58.1	Number change only.
3-83-59.01	Procedures for applying for a license	3-83-59.1	Number change. Technical amendments for purposes of clarity, consistency, style.
3-83-59.02	Petition for rehearing	3-83-59.2	Number change only.
3-83-60.01	Denial of license	---	New rule.

Rule No. §	Heading	Previous Rule No. §	Action
3-83-61.01	Renewal of existing license	3-83-61.1	Number change. *Added:* (7), (8) Additional justifications for withholding of renewed license: (10) Additional certification requirements.
3-83-62.01	Increase to licensed premises	3-83-62(c), (e)	Number change. *Added:* (b), (d) Conditions associated with request for increase.
3-84-71.01	Posting of license	---	Reserved.
3-84-72.01	Sanitation requirements	3-84-72.1	Number change. Technical amendments for purposes of clarity, consistency, style. *Added:* Guidelines for toilet facilities.
3-84-72.02	Premises lighting; doors	3-84-72.2	Number change only.
3-84-72.03	Windows on interior rooms	3-84-72.3	Number change. *Amended:* (a) Licensees subject to rule restrictions.
3-84-72.04	Alterations	3-83-62(a), (b), (d)	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended:* (a) Changes approval process for retail dealer licensees.
3-84-73.01	Liquor content of drinks	3-84-73.1	Number change only.
3-84-73.02	Quality of liquor	3-84-73.2	Number change only.
3-84-74.01	COLAs; labels	---	New rule.
3-84-75.01	Analyses	---	Reserved.
3-84-76.01	Tampering with samples; penalty	---	Reserved.
3-84-77.01	Refusal of samples; penalty	---	Reserved.
3-84-78.01	Conduct of employees	No change	Technical amendments for purposes of clarity, consistency, style. *Amended:* (a) Definition of employee; both on or off the licensed premises covered.
3-84-78.02	Restrictions on nudity; dancers	No change	---
3-84-78.03	Entertainment	No change	---
3-84-78.04	Sexual acts and their simulations by persons	No change	---
3-84-78.05	Visual reproductions of sexual acts and simulations	3-84-78.041	Number change only.
3-84-78.06	Fondling	3-84-78.042	Number change only.
3-84-78.07	Drugs and other illegal activities	3-84-78.05	Number change. *Added:* (a) Makes licensee liability explicit.
3-84-78.08	Solicitation of business outside of premises	3-84-78.06	Number change only.

Rule No. §	Heading	Previous Rule No. §	Action
3-84-78.501	Practices to promote consumption of liquor; prohibited	3-84-78.51	Number change. *Added*: (b) Additional prohibited acts.
3-84-79.01	Obstructing commission operations	3-84-79.1	Number change only.
3-84-79.02	Improper influence	3-84-79.2	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended:* (a) Includes commissioner as potential recipient.
3-84-80.01	Arrest	---	Reserved.
3-84-82.01	No action for debt	---	Reserved.
3-84-84.01	Exclusion of intoxicated person from premises; penalty	---	Reserved.
3-84-85.01	Free goods prohibited	3-84-85.1	Number change only.
3-84-85.02	Quantity Discounts	3-84-85.2	Number change only.
3-85-91.01	Notice of hearing and subpoena	3-85-91.1	Number change only.
3-85-91.02	Pre-hearing conference	3-85-91.2	Number change only.
3-85-91.03	Testimony and record; adjudication hearings	3-85-91.3	Number change only.
3-85-91.04	Pleadings; adjudication hearings	3-85-91.4	Number change only.
3-85-91.05	Evidence; adjudication hearings	3-85-91.5	Number change only.
3-85-91.06	Disclosure; adjudication hearings	3-85-91.6	Number change only.
3-85-91.07	Procedures; adjudication hearings	3-85-91.7	Number change. Technical amendments for purposes of clarity, consistency, style.
3-85-91.08	Motion to dismiss; adjudication hearings	3-85-91.8	Number change only.
3-85-91.09	Taking of further evidence; adjudication hearings	3-85-91.9	Number change only.
3-85-91.10	Reconsideration of decision and order; adjudication hearings	No Change	---
3-85-92.01	Judicial review	3-85-92	Number change only.
3-85-93.01	Reports to prosecuting officers	---	Reserved.
3-85-94.01	Forfeiture of fee paid	---	Reserved.
3-85-95.01	Bankruptcy, insolvency, death	---	Reserved.
3-85-96.01	Cancellation	---	Reserved.
3-85-97.01	Sale without license; conditions	3-85-97.1	Number change only.
3-86-101.01	Manufacture or sale without license; penalty	---	Reserved.
3-86-101.401	Hearing, illegal manufacture, importation, or sale of liquor	---	Reserved.
3-86-101.501	Sale or service of liquor to minors; prohibited	3-86-101.51	Number change. *Amended:* (a) Makes ID check mandatory.

Rule No. §	Heading	Previous Rule No. §	Action
3-86-101.502	Minors employed on licensed premises	3-86-101.53	Number change. Technical amendments for purposes of clarity, consistency, style. *Amended:* (a), (b) Requirements for employment of minors reduced.
3-86-101.503	Minors on licensed premises with nude dancing	3-86-101.54	Number change. Technical amendments for purposes of clarity, consistency, style.
3-86-102.01	Other offenses; penalty	---	Reserved.
3-86-102.501	Purchasing from other than primary source of supply; penalty	---	Reserved.
3-86-104.01	Investigators, employees, counsel for	---	Reserved.
3-86-105.01	Determination whether acts were in scope of duty	---	Reserved.
3-86-106.01	Prosecutions not to exclude other remedies affecting license or goods	---	Reserved.
3-86-107.01	Presumptive evidence	---	Reserved.
3-86-108.01	Search warrants; seizure	---	Reserved.
3-86-109.01	Seizure without warrant	---	Reserved.
3-86-110.01	Arrest; abetters	---	Reserved.
3-86-111.01	Condemnation of property or liquor; disposition	---	Reserved.
3-86-113.01	Claims	---	Reserved.
3-86-114.01	Appeals	---	Reserved.

BY CATEGORY

Proposed for "Repeal"

Rule Number §	Heading
3-82-35.2	Club guests
3-82-38.6	Registration of dancers
3-82-45.2	Requirements applicable to late night cabarets, establishments where entertainment is provided by a dancer and hostess bars
	Total: 3

No Number Change, No Proposed Amendment

Rule Number §	Heading
3-81-19.10	Motions
3-81-19.11	Powers of the commission in conducting hearings
3-81-19.12	Disqualification of member of commission
3-81-19.13	Ex parte communications
3-82-31.11	Manufacturer licenses
3-82-38.11	Price list to be posted
3-82-38.15	Unlawful discrimination
3-82-38.20	Sale, service, or consumption before or after hours of business
3-82-38.21	Extension or curtailment of hours of business
3-82-38.23	Compliance with allowable noise levels
3-82-38.27	"Growlers" or containers used for off-premises consumption
3-84-78.02	Restrictions on nudity; dancers
3-84-78.03	Entertainment
3-84-78.04	Sexual acts and their simulations by persons
3-85-91.10	Reconsideration of decision and order; adjudication hearings
	Total: 15

Number Change/Assignment Only (including reserved)

Rule Number §	Heading
3-80-2.01	Excepted Articles; penalty (reserved)
3-80-3.01	Illegal manufacture, importation, or sale of liquor (reserved)
3-80-4.01	Minors on unlicensed premises
3-80-5.01	Powdered alcohol (reserved)
3-81-11.501	Question of law
3-81-12.01	Commission and board office (reserved)
3-81-13.01	Meeting dates, time, and place
3-81-14.01	Public information
3-81-15.01	Reports, accounts, audit (reserved)
3-81-16.01	County liquor commission and liquor control adjudication board funds; disposition of realization; payment of expenses (reserved)
3-81-17.03	Petition for adoption, amendment, or repeal of rules
3-81-17.05	Mediation in contested cases
3-81-17.07	Waiver
3-81-19.03	Authorized agent representing party
3-81-19.04	Substitution of parties
3-81-19.05	Consolidation

Rule Number §	Heading
3-81-19.06	Service, generally
3-81-19.07	Service, by whom
3-81-19.09	Extensions of time
3-81-21.01	Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses' fees (reserved)
3-81-22.01	Political activities of commission employees (reserved)
3-82-31.01	Determination of classification for licensed premises
3-82-31.03	Determination of nudity in cabarets
3-82-31.08	Restrictions on vessels
3-82-31.12	Display of prices in retail dealer premises
3-82-31.13	Liquor on retail dealer premises during prohibited sales hours
3-82-31.16	Reserved
3-82-31.18	One-day special licenses for fund-raising events by not for profit organizations
3-82-31.20	Requirements of a hotel license
3-82-31.21	Restrictions on hotel and condominium hotel licenses
3-82-31.23	Requirements of a condominium hotel license
3-82-31.24	Entertainment in cabarets
3-82-32.501	Sampling at trade shows and exhibitions
3-82-33.01	Special powers, privileges, and rights (reserved)
3-82-34.01	Sham operation under club license; supervision (reserved)
3-82-35.01	Club membership list
3-82-35.501	Special conditions; condominium hotel licenses
3-82-37.01	Retail alcohol sales; records
3-82-38.01	Familiarity with liquor laws and rules
3-82-38.02	Liquor laws and rules on licensed premises
3-82-38.03	Preparation of drinks at open bars
3-82-38.06	Reserved
3-82-38.07	Refusal or revocation of employees registration, and proof of registration
3-82-38.13	Dance floor
3-82-38.17	Use of unauthorized trade name prohibited
3-82-38.22	Recorking
3-82-38.24	Liquor display and storage
3-82-39.501	Liquor license prohibited; where (reserved)
3-82-40.01	Unauthorized liquor
3-82-41.03	Payment of fees upon transfer of license
3-82-41.05	Surrender of license upon suspension, revocation, or closing of business
3-82-46.01	Time limitations for buying
3-83-51.01	Prior inspection (reserved)
3-83-52.01	Public hearing (reserved)
3-83-53.02	License application background verification
3-83-53.501	County liquor commissions; criminal history record check (reserved)
3-83-55.01	Reference to investigator (reserved)
3-83-56.01	Report by investigator (reserved)
3-83-57.01	Affidavits; forms
3-83-57.02	Change of class or category
3-83-57.03	Publication cost deposits
3-83-58.01	Time for filing protests

Rule Number §	Heading
3-83-59.02	Petition for rehearing
3-84-71.01	Posting of license
3-84-72.02	Premises lighting; doors
3-84-73.01	Liquor content of drinks
3-84-73.02	Quality of liquor
3-84-75.01	Analyses (reserved)
3-84-76.01	Tampering with samples; penalty (reserved)
3-84-77.01	Refusal of samples; penalty (reserved)
3-84-78.05	Visual reproductions of sexual acts and simulations
3-84-78.06	Fondling
3-84-78.08	Solicitation of business outside of premises
3-84-79.01	Obstructing commission operations
3-84-80.01	Arrest (reserved)
3-84-82.01	No action for debt (reserved)
3-84-84.01	Exclusion of intoxicated person from premises; penalty (reserved)
3-84-85.01	Free goods prohibited
3-84-85.02	Quantity Discounts
3-85-91.01	Notice of hearing and subpoena
3-85-91.02	Pre-hearing conference
3-85-91.03	Testimony and record; adjudication hearings
3-85-91.04	Pleadings; adjudication hearings
3-85-91.05	Evidence; adjudication hearings
3-85-91.06	Disclosure; adjudication hearings
3-85-91.08	Motion to dismiss; adjudication hearings
3-85-91.09	Taking of further evidence; adjudication hearings
3-85-92.01	Judicial review
3-85-93.01	Reports to prosecuting officers (reserved)
3-85-94.01	Forfeiture of fee paid (reserved)
3-85-95.01	Bankruptcy, insolvency, death (reserved)
3-85-96.01	Cancellation (reserved)
3-85-97.01	Sale without license; conditions
3-86-101.01	Manufacture or sale without license; penalty (reserved)
3-86-101.401	Hearing, illegal manufacture, importation, or sale of liquor (reserved)
3-86-102.01	Other offenses; penalty (reserved)
3-86-102.501	Purchasing from other than primary source of supply; penalty (reserved)
3-86-104.01	Investigators, employees, counsel for (reserved)
3-86-105.01	Determination whether acts were in scope of duty (reserved)
3-86-106.01	Prosecutions not to exclude other remedies affecting license or goods (reserved)
3-86-107.01	Presumptive evidence (reserved)
3-86-108.01	Search warrants; seizure (reserved)
3-86-109.01	Seizure without warrant (reserved)
3-86-110.01	Arrest; abetters (reserved)
3-86-111.01	Condemnation of property or liquor; disposition (reserved)
3-86-113.01	Claims (reserved)
3-86-114.01	Appeals (reserved)
	Total: 107

*Number Change (unless indicated by *), Principally Technical Amendments*

Rule Number §	Heading
3-81-11.01	Designation of commission chairperson
3-81-17.01	Limitation on issuance of a liquor license
3-81-17.02	Declaratory ruling by commission
3-81-17.501	License fees
3-81-17.503	License fees; when due and how calculated
3-81-17.505	Additional license fees on gross liquor sales
3-81-17.506	Failure to file accurate gross liquor sales reports
3-81-17.507	Payment for under reporting gross liquor sales
3-81-19.02	Legal counsel or other authorized representative
3-82-31.09	Catering by food service businesses
3-82-31.10*	Winery licenses
3-82-33.101	Applications for individual permits to receive shipments of liquor
3-82-33.601	Direct shipment of wine by wineries
3-82-38.04	Employee records
3-82-38.08	Annual submission of employee list
3-82-38.16	Trade name; change; fee
3-82-41.06	Licenses held in safekeeping
3-82-44.01	Advertisements and signs
3-82-45.01	Requirement for criminal history and fingerprint card
3-83-54.01	Filing fees
3-83-57.04	Neighborhood board notification
3-83-59.01	Procedures for applying for a license
3-85-91.07	Procedures; adjudication hearings
3-86-101.503	Minors on licensed premises with nude dancing
	Total: 24

New Content

Rule Number §	Heading
3-81-17.08	Guidance document
3-81-17.09	Surcharge for late applications
3-82-31.17	Small craft producer pub licenses
3-82-38.10	Compliance with any other applicable laws
3-82-38.28	Liquor in unauthorized areas
3-82-42.01	Trade practices
3-82-47.01	Ninety-day trial entertainment
3-83-53.03	Primary decision makers
3-83-53.04	Notarial act performed using audio-visual communication technology; electronic or digital signatures
3-83-60.01	Denial of license
3-84-74.01	COLAs; labels
	Total: 11

Substantive Changes Proposed (With or Without Number Change)

Rule Number §	Heading
3-80-1.01	Definitions
3-81-17.04	Delegation of administrative duties; emergency rules

Rule Number §	Heading
3-81-17.06	Monies collected from assessment of fines
3-81-17.502	Prorated license fees, forfeiture of fees
3-81-17.504	Gross liquor sales reports
3-81-19.01	Hearings
3-81-19.08	Time
3-81-19.14	Decisions, generally
3-81-20.01	Access, examination, and inspection
3-82-31.02	Conduct of business
3-82-31.04	Sales and service on vessels while docked
3-82-31.05	Brewpub licenses
3-82-31.06	Special licenses by for profit organizations
3-82-31.07	Catering by restaurant, hotel, or condominium hotel licensees
3-82-31.14	Drive-in retail dealer sales prohibited
3-82-31.15	Deliveries
3-82-31.19	Exemption for not for profit organizations
3-82-31.22	Requirements of a restaurant license
3-82-32.01	Temporary license
3-82-38.05	Registration of employees
3-82-38.09	Licensee and manager in charge of premises
3-82-38.12	Music, dancing, entertainment
3-82-38.14	Term of license
3-82-38.18	Sampling on licensed premises
3-82-38.19	Hours of business
3-82-38.25	Restrictions or conditions of license
3-82-38.26	Bottle service for on-premises consumption
3-82-39.01	Warehousing
3-82-41.01	Transfer of license
3-82-41.02	Transfer of corporate stock; notification regarding limited partners, limited liability company managers, or members
3-82-41.04	Management or operating agreements
3-83-53.01	License applications; notice of hearing; affidavits
3-83-61.01	Renewal of existing license
3-83-62.01	Increase to licensed premises
3-84-72.01	Sanitation requirements
3-84-72.03	Windows on interior rooms
3-84-72.04	Alterations
3-84-78.01	Conduct of employees
3-84-78.07	Drugs and other illegal activities
3-84-78.501	Practices to promote consumption of liquor; prohibited
3-84-79.02	Improper influence
3-86-101.501	Sale or service of liquor to minors; prohibited
3-86-101.502	Minors employed on licensed premises
	Total: 43

STAKEHOLDER MEETING ATTENDANCE

Date	Licensees	Licensee Representatives	LIQ Staff	Total
March 30, 2021	5[1]	9	8	22
May 4, 2021	4[2]	10	5	19
June 15, 2021	6[3]	7	7	20
October 26, 2021	5[4]	8	8	21

[1] One (1) brew pub; four (4) wholesale dealer.
[2] One (1) brew pub; one (1) retail dealer; one (10) wholesale dealer.
[3] Two (2) brew pub; one (1) hotel; two (2) wholesale dealer.
[4] One (1) brew pub; two (2) retail dealer; two (2) wholesale dealer.

STAKEHOLDER INPUT

Rule No. §	Heading	Type	Input	Response
3-81-17.04	Delegation of administrative duties; emergency rules	Request clarification and discussion	Identify source of emergency declaration.	Added.
3-81-17.08	Guidance document	Request clarification and discussion	Improve description of process.	Reflected in final version.
3-81-17.09	Surcharge for late applications	Request clarification and discussion	Should not impose surcharge if application cannot be completed in time.	Added.
3-82-31.05	Brewpub licenses	Disagree with requirements for second location.	Cannot require exact same entity.	Language revised.
3-82-31.14	Drive-in retail dealer sales prohibited	Request addition.	Provide for curbside delivery.	Added.
3-82-31.15	Deliveries	Proposed re-write of original rule.	Re-write provides for third party service provider use.	Two versions.
3-82-31.17	Small craft producer pub licenses	Disagree with requirements for second location.	Cannot require exact same entity.	Language revised.
3-82-31.22	Requirements of a restaurant license	Request revision.	Provide for raw foods preparation (sushi).	Added.
3-82-38.05	Registration of employees	Request clarification.	Specify treatment of transient vessels; make duties of manager consistent with other rules.	Deletions and additions.
3-82-38.09	Licensee and manager in charge of premises	Request clarification.	Specify treatment of specials and transient vessels	Deleted special; added transient.
3-82-38.18	Sampling on licensed premises	Request clarification and discussion.	Provide for ready-to-drink samples; provide ability to serve non-straight shots; address wholesaler sampling.	Added.
3-82-42.01	Trade practices	Request clarification and discussion.	Industry member terminology problematic.	Original language restored.
3-82-45.01	Requirement for criminal history and fingerprint card	Request clarification and discussion.	Make treatment of primary decision makers uniform.	Publicly-traded LLCs added.
3-83-53.01	License applications;	Suggested edit.	Adjust for smaller scale due to size of parcels	Added.

Rule No. §	Heading	Type	Input	Response
	notice of hearing; affidavits		on county tax map records; add LLCs.	
3-83-53.03	Primary decision makers	Request clarification and discussion.	Make treatment of primary decision makers uniform.	LLCs added.
3-86-101.502	Minors on licensed premises	Request clarification.	Possible inconsistent treatment of minors in rules and recent law amendments.	Heading changed to reflect rule pertains to minor employees; language added to recognize minor employees.
3-86-101.503	Minors on licensed premises with nude dancing	Request clarification.	Possible inconsistent treatment of minors in rules and recent law amendments.	Language added to recognize minor employees.

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By SBRRB at 8:16 am, Nov 30, 2021

LIQUOR COMMISSION OF THE CITY AND COUNTY OF HONOLULU

RULES OF THE LIQUOR COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

Be it prescribed by the Liquor Commission of the City and County of Honolulu, State of Hawaii:

Subtitle 6 Liquor Commission, Rules of the Liquor Commission of the City and County of Honolulu (March 24, 2018 ed.), is repealed in its entirety and replaced by the following rules effective XXXXXXXXXX.

TITLE 3 DEPARTMENT OF BUDGET AND FISCAL SERVICES
SUBTITLE 6 LIQUOR COMMISSION

RULES OF THE LIQUOR COMMISSION
OF THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII

*** * * * * * * * * ***

PART 1. GENERAL PROVISIONS
CHAPTER 80

§3-80-1. DEFINITIONS.

§3-80-1.01. Definitions. The definitions applicable to a particular word set forth in Haw. Rev. Stat. §281-1 (hereinafter any reference to the Hawaii Revised Statutes, as amended, shall be cited as HRS), shall govern whenever any word contained in that section is used herein. Words in the masculine or feminine gender signify both the masculine and feminine gender, and those in singular or plural number signify both the singular and plural number.

"Adjudication hearing" means a proceeding held pursuant to HRS §281-91 in which it is proposed to revoke or suspend any license issued, or assess and collect a penalty, or reprimand a licensee. The summary revocation of any special license is not included within the scope of this term.

"Administrator" means the individual, duly appointed and authorized by the commission, to be responsible for the operation and activities of the commission staff.

"Ambient noise" means the totality of sounds in a given place and time, independent of the sound contribution of the specific source being measured.

"Authorized agent" means a person who is authorized in writing or in person by the licensee or applicant to act for or be the representative of the licensee or applicant in commission proceedings.

"Bartender" means a person who prepares or mixes alcoholic drinks in accordance with established recipes and procedures, collects and receives payment for drinks served as all or part of the person's duties, and is responsible for the cleanliness and orderly condition of the bar area. This excludes people who only open or pour draught or bottled beer or wine. This also excludes a customer who brings into the

premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the **[~~pourer's~~]** **customer's** table and consume the serving of liquor at the **[~~pourer's~~]** **customer's** table.

"Bona fide" means made in good faith without fraud or deceit.

"Caterer" as it pertains to a Class 13(a) licensee means a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) licensee which provides off-premises liquor service in connection with food service, as stated in HRS §281-31(m).

"Chaser" means a supplemental beverage that accompanies a straight, unmixed serving of liquor.

"City" means the city and county of Honolulu and includes the commission attorneys responsible for prosecuting or defending cases before the commission.

"Commission" means the liquor commission of the city and county of Honolulu, State of Hawaii.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium hotel guest room" means (1) a guest room that is a unit, as defined in HRS §514B-3, which is used to provide transient lodging for periods less than thirty (30) days under a written contract with the owner of a unit in a condominium hotel operation; or (2) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for periods of less than thirty (30) days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"Dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains unclothed or in such attire as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the dancer is performing and while the dancer remains on the licensed premises between performances.

"Dancing", as it pertains to a customer on the licensed premises, means the movement of the customer's body in a way that goes with the rhythm and style of music that is being played.

"Day" refers to the business day of a particular class of license as specified in rule §3-82-38.19 (unless otherwise specified); i.e., the business day of a restaurant is 6:00 a.m. until 2:00 a.m. the following morning.

"dBA" means a unit of measurement of decibels at the "A" level. "A" level is the total sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Decibels" (dB) means the unit for measuring the volume of sound, equal to twenty (20) times the logarithm to the base-10 of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (0.0002 dynes per square centimeter).

"Employee" means any person who performs a service usually or normally done **or acts in a capacity of any employee on behalf of the licensee, regardless of** on or **off** **[~~within~~]** a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated. This excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the **[~~pourer's~~]** **customer's** table and consume the serving of liquor at the **[~~pourer's~~]** **customer's** table.

"Entertainer" means any musician, singer, comic, person who operates a system that provides amplified, recorded music for dancing, person who operates a system that provides music so that customers may sing (i.e., "karaoke machines"), or other person who performs a specialized talent for the customers of a licensed premises, regardless of whether that person is under contract or on commission, registered or not registered, compensated or not compensated. This definition excludes dancers and go-go dancers.

"Excessive noise" means the presence of sound, as measured by standard testing devices, of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the county or in such areas of the county as are affected thereby.

"Excessive noise source" means any sound or sequence of sounds to which an individual is exposed and which exceeds the permissible sound levels more than ten per cent (10%) of the time in any twenty (20) minute period. For the purpose of this definition, any sound having a duration of less than one (1) second shall be deemed to last one (1) second.

"Fit and proper" as it pertains to an applicant in HRS §281-45 and the report described in HRS §281-56 related to the applicant shall mean a person (1) who has not been convicted of a felony, or has been pardoned; (2) has not held a liquor license that has been revoked for cause by the commission within the last twenty-four (24) months from the date of the application; and (3) does not owe the State of Hawaii any delinquent taxes, penalties, or interest.

"Food" means a nutriment in solid form, as opposed to a liquid form. "Food" does not include alcoholic beverages, soft drinks, juice, water, or tobacco.

"General" where applied to licenses, means includes all liquor except alcohol.

"Go-Go dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains clothed and in such attire that does not expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A go-go dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the go-go dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the go-go dancer is performing and while the go-go dancer remains on the licensed premises between performances.

"Host or hostess" means a person who is either compensated or not compensated and allowed to sit with **[~~patrons~~] customers**, whether or not the individual, employee, or entertainer is consuming nonalcoholic beverages while in the company of the **[~~patrons~~] customers**. As stated in HRS §281-31, the host or hostess shall only be allowed to be employed or utilized under a class 5 dispenser, category 4 **hostess** license. Under a class 2 license or class **[~~12-14~~] 11-18** licenses, a host or hostess shall be described as the person who meets, greets, or seats the customer.

"Hotel guest room" means a room within a hotel licensee's premises where sleeping accommodations are provided and offered for compensation to transients or permanent guests.

"Industry member" means any person engaged in business, within and without the city and county of Honolulu or State of Hawaii, as a distiller, brewer, rectifier, blender, or other producer; or as an importer or wholesaler including class 1 manufacturer licensee, class 3 wholesale dealer's licensee, class 14 brewpub licensee, class 16 winery licensee, class 18 small craft producer pub licensee, of distilled spirits, wine, or malt beverages; or as a bottler of distilled spirits, wine, beer, or malt beverages; or as a bottler, or warehousemen and bottler, of distilled spirits. An industry member must possess a valid federal alcohol and tobacco tax and trade bureau permit or brewer's notice. An industry member does not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

"Inventory balancing" means the movement of lawfully obtained liquor to balance excesses and shortages between or among the same licensee's individually licensed premises.

"Issued license" is one possessed by a licensee whose application has been approved after full compliance with all licensing requirements.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another involving sexual contact.

"Manager" means the designated person duly registered with the commission as a manager or assistant manager who is in active charge of the licensed premises during the time the establishment is **[~~licensed to sell or serve liquor~~] open for business**.

"Meals" means the usual assortment of foods commonly ordered at various hours of the day (i.e. breakfast, lunch, or dinner) that are prepared within the licensee's premises; the service of any prepackaged food not prepared on the licensed premises shall not be deemed in compliance with this requirement.

"Noise" means any sound that may produce adverse physiological or psychological effects or interfere with individual or group activities, including but not limited to communication, work, rest, recreation, or sleep.

"Party" means the commission if named, permitted, or entitled as of right to participate in a proceeding; each person named in a proceeding; or any other person permitted or entitled as of right to participate in a proceeding before the commission in the capacity of a petitioner, claimant, respondent, intervenor, or in a capacity other than that of a witness.

"Person" means individuals, partnerships, corporations, associations, or public or private organizations of any character, other than the commission.

"Permissible sound levels" means the sound levels assigned to zoning areas as established by the Hawaii state director of health.

"Pool buying" means two (2) or more licensees sharing the cost of a single purchase of liquor.

"Professional entertainment" means any live music, dancing by dancers, or other entertainment performed by a professional or semi-professional entertainer who is paid for the performance.

"Property line boundary" means a line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses, or duplexes owned, rented, or leased by different persons.

"Sample" means an individual serving of the licensee's liquor inventory offered for promotional purposes to taste (sample) liquor, either on- or off-premises.

"Sexual contact" means any touching of the sexual or other intimate parts of a person by the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

[~~"Showroom" means an approved room which provides an authorized form of entertainment and may serve any required or attached drinks together so to limit disturbance to that entertainment.~~]

"Sound level meter" means an instrument or combination of instruments which meets or exceeds the requirement for a Type I or Type II sound level meter as specified in the American National Standards Institute or the International Electrotechnical Commission.

"State" means the State of Hawaii.

"Undue noise" or "undue disturbance" means disturbance to the peace and quiet of the residents or tenants of the neighborhood from music, customers, or other noise originating from a licensed premises that is unreasonable. Music, customers, or other noise originating from a licensed premises is unreasonable within the meaning of rule §3-84-78.03 if considering the nature and purpose of the licensee's conduct and the circumstances known to the licensee, including the nature and zoning district of the location and the time of the day or night, the licensee's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen conducting the same type of business would follow in the same situation; or the failure to heed the reasonable admonition of a commission investigator that the noise is unreasonable and should be stopped or reduced.

"Valid license" means a liquor license that has been issued in accordance with HRS Chapter 281 and has not been cancelled or revoked.

"Zoning districts" means the land use districts established by rules or ordinances adopted by council, legislature, or county or state government agencies**, to wit**:

Zoning Districts; Classifications:

(1) Class A Zoning Districts shall include all areas equivalent to county lands zoned conservation (P-1), residential (R-1 through R-70) or similar.

(2) Class B Zoning Districts shall include all areas equivalent to county lands zoned apartment (A-1 through current A-5), business (B-1 through current B-5), hotel (H-1 and H-2), resort (B-R) or similar.

(3) Class C Zoning Districts shall include all areas equivalent to county lands zoned Agricultural (AG-1 and AG-2), Industrial (I-1 through I-3) or similar.

§3-80-2. EXCEPTED ARTICLES; PENALTY. Reserved.

§3-80-3. ILLEGAL MANUFACTURE, IMPORTATION, OR SALE OF LIQUOR. Reserved.

§3-80-4. LIQUOR CONSUMPTION ON UNLICENSED PREMISES PROHIBITED, WHEN.

§3-80-4.01. Minors on unlicensed premises. The service of liquor to a minor or the consumption of liquor by a minor in any restaurant or other premises where food, beverages, or entertainment are sold or provided is prohibited. Any person who keeps or maintains a restaurant or other premises is responsible for insuring that minors do not consume or possess liquor.

§3-80-5. POWDERED ALCOHOL. Reserved.

PART II. LIQUOR COMMISSIONS
CHAPTER 81

§3-81-11. COUNTY LIQUOR COMMISSIONS AND LIQUOR CONTROL ADJUDICATION BOARDS; QUALIFICATIONS; COMPENSATION.

§3-81-11.01. Designation of commission chairperson. (a) In accordance with HRS §281-11, the commission shall designate one (1) of its members as the chairperson. The designation shall be by an affirmative vote of a majority of all members to which the commission is entitled.

(b) The term of the chairperson shall begin January 1 and end on December 31 of each year. The chairperson may be redesignated by an affirmative vote of the majority of all members to which the commission is entitled. In the event of the chairperson's departure from the commission, an interim chairperson will be designated by **majority** vote to fill the remaining term.

(c) During a temporary absence of the chairperson, the chairperson shall designate another member to act as the chairperson pro tempore.

§3-81-11.5. LIQUOR COMMISSION AND BOARD ATTORNEY.

§3-81-11.501. Question of law. (a) The commission, with the concurrence of the corporation counsel and the approval of the city council, may appoint an attorney as a special deputy corporation counsel who shall be responsible for prosecuting or defending cases before the commission.

(b) Where a question of law is involved, the commission may refer the matter to the corporation counsel or its own duly appointed special deputy. The commission also may obtain the assistance of other agencies, where necessary or desirable.

§3-81-12. COMMISSION AND BOARD OFFICE. Reserved.

§3-81-13. MEETINGS.

§3-81-13.01. Meeting dates, time and place. The commission shall conduct its meetings and hearings at specified dates, times, and places as set by the commission.

§3-81-14. RECORDS.

§3-81-14.01. Public information. (a) Any person may inspect public records of the commission as provided under HRS Chapter 92F by filling out a request for information form at the office of the commission during regular business hours, or by submitting a written request to the commission. Copies of records are available at a price fixed by ordinance.

(b) All rules of the commission are available for public inspection during regular business hours at the office of the commission and the office of the city clerk. Copies of the rules and supplements are available at a price to cover publication costs and mailing costs, if applicable.

§3-81-15. REPORTS, ACCOUNTS, AUDIT. Reserved.

§3-81-16. COUNTY LIQUOR COMMISSION AND LIQUOR CONTROL ADJUDICATION BOARD FUNDS; DISPOSITION OF REALIZATION; PAYMENT OF EXPENSES. Reserved.

§3-81-17. JURISDICTION AND POWERS.

§3-81-17.01. Limitation on issuance of a liquor license. (a) A license application shall not be accepted if the proposed **licensed** premises is located in an area that has reached or exceeded the maximum number of licenses of that particular class as determined by the commission **by rule.** This rule shall not apply to transfers of licenses or to stock transfers. Area boundaries shall be designated by legislative state house districts as of the effective date of this rule. If the legislative state house districts are amended, the area boundaries as of the effective date of this rule shall continue to govern, unless the commission directs otherwise.

(b) A license shall not be issued without a zoning clearance from the city and county of Honolulu department of planning and permitting for the proposed **licensed** premises. If the proposed **licensed** premises is located in the kakaako community development district **or the kalaeloa community development district**, a zoning clearance will be required from the Hawaii community development authority (HCDA). If the proposed **licensed** premises is located in the aloha tower marketplace, a zoning clearance will be required from the aloha tower development corporation. **If the proposed licensed premises is located outside of the authority or jurisdiction of the above mentioned agencies, a zoning clearance will be required from the appropriate governmental agency with the jurisdiction and which is authorized to issue such zoning clearance.**

§3-81-17.02. Declaratory ruling by commission. (a) Any **[~~interested~~]** person may petition the commission for a declaratory order as to the applicability of any statute or of any rule or order of the commission.

(b) The petition shall be typewritten, submitted in eight (8) copies, and shall contain:

(1) The name, address, and telephone number of the petitioner.

(2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition.

(3) A designation of the specific provision, rule, or order in question.

(4) A complete statement of the relevant facts.

(5) A statement of the position or contention of the petitioner.

(6) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention.

(7) The signature of each petitioner.

(c) Any petition that does not conform to the foregoing requirements may be rejected.

(d) The commission may, for good cause, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may refuse to issue a declaratory order where:

(1) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future.

(2) The petitioner's interest is not of the type that would give it standing to maintain an action if it were to seek judicial relief.

(3) The issuance of the declaratory ruling may adversely affect the interests of the city or any of its officers or employees in litigation that is pending or may reasonably be expected to arise.

(4) The matter is not within the jurisdiction of the commission.

(e) Where a question of law is involved, the commission may refer the matter to the corporation counsel or its own duly appointed special deputy. The commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) The commission shall consider each petition submitted, and within a reasonable time after its submission, either deny the petition in writing, stating its reasons for the denial, or issue a declaratory order on the matters contained in the petition.

(g) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. Declaratory orders shall not be applicable to different fact situations or where additional facts not considered in the order exist.

§3-81-17.03. Petition for adoption, amendment or repeal of rules. (a) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission.

(b) The petition may contain any pertinent information, but it shall be typewritten, submitted in eight (8) copies and shall include:

(1) The name, address, and telephone number of each petitioner.

(2) A statement of the nature of the petitioner's interest.

(3) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.

(4) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(5) The signature of each petitioner.

(c) The commission shall, within a reasonable time after the submission of the petition, either deny the petition in writing, stating its reasons for the denial, or initiate proceedings in accordance with HRS Chapter 91 for the adoption, amendment, or repeal of the rule, as the case may be.

(d) Any petition that does not conform to the foregoing requirements may be rejected.

§3-81-17.04. Delegation of administrative duties; emergency rules. (a) The commission at its discretion may delegate to the administrator routine administrative duties and functions which do not require a hearing and which the commission determines will more efficiently assist the commission in its responsibilities.

(b) In the event a national, state, or local emergency is declared by federal, state, or local governmental authority, the administrator, with the approval of the mayor or the commission, may adopt emergency rules for the health, safety, or welfare of the public or the protection of life and property. Such emergency rules may be adopted without notice of hearing or publication, and shall be in effect for the duration of the emergency only.

§3-81-17.05. Mediation in contested cases. (a) The commission may encourage parties to a contested case hearing to participate in mediation prior to the hearing subject to conditions imposed by the commission described herein or in rules adopted by the commission. The commission may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period under this rule shall exceed thirty (30) days from the date the case is referred to mediation, unless otherwise extended by the commission.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten (10) days of the referral to mediation, the commission may select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the commission, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the matter, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this rule shall constitute a meeting under HRS §92-2. Any mediator notes under this rule shall be exempt from HRS §92-21 and HRS Chapter 92F. Hawaii Revised Statutes §91-10 shall not apply to mediation proceedings.

§3-81-17.06. Monies collected from assessment of fines. The administrator, with commission approval, shall be authorized to designate a portion of fine monies collected for use in programs to promote compliance with liquor laws, business development **and business best practices**, and improvement of interagency and interoffice functions. Such programs may include, but are not limited to, grant assistance programs,

enforcement, public service announcements promoting responsible drinking and driving, youth programs, education, and liquor control administrative meetings.

§3-81-17.07. Waiver. Upon receipt of a written request from a license applicant or a licensee, or upon the commission's initiative but with the concurrence of a license applicant or a licensee, the commission may waive any portion of the rules upon a showing by the license applicant or the licensee that (1) the license applicant or the licensee would suffer undue hardship, economic or otherwise, if the rule were to be strictly implemented; (2) the waiver of the rule would not unduly burden or adversely affect any affected parties; and (3) the waiver is consistent with the underlying purposes of HRS Chapter 281 and the rules. Waiver requests made by the license applicant or the licensee must be submitted in writing to the commission, and shall include all documentation which supports the waiver request.

§3-81-17.08. Guidance document. (a) Upon request by any party or to clarify commission personnel's interpretation of HRS Chapter 281 and the rules, commission personnel may issue a guidance document without undergoing formal rulemaking under HRS Chapter 91. Guidance documents do not have the force and effect of law and are intended only to provide clarity regarding existing requirements under HRS Chapter 281 or the rules.

(b) Upon a request to commission personnel for a guidance document on a specific subject matter, or upon commission personnel's determination that a need for a guidance document on a specific subject matter exists, the procedure will be as follows:

(1) Following internal review, the guidance document will include an explanation of the need for a guidance document to address the purpose of, necessity for, and benefits of the proposed guidance. The guidance document will have a statement of reasons, and will also identify the factual material upon which the agency relies in proposing the guidance document. The guidance document will contain the required determinations, findings, and analyses, including the regulatory impact analysis made by commission staff;

(2) The guidance document must be approved by the commission section head, the chief investigator or the administrative services officer, and the administrator or the administrator's designee prior to publication.

(3) The procedures listed in (2) and (3) apply to any request for revision to or repeal of an existing guidance document.

(c) If the guidance document will be relied upon to the detriment of a person in any proceeding before the commission, the person shall be afforded an adequate opportunity to contest the position taken in the document.

(d) A guidance document may contain binding instructions to commission personnel.

(e) If the commission proposes to act in a contested case at variance with a position expressed in a guidance document, it shall provide an explanation for the variance. If an affected person in a contested case has relied to its detriment

on the commission's position expressed in the guidance document, the explanation must include a justification for the commission's conclusion that the need for the variance outweighs the affected person's reliance interest.

(f) The commission shall maintain an index of all of its effective guidance documents; publish the index on its website; and make all guidance documents available to the public. The commission may not rely on a guidance document or cite it as precedent against any party to a proceeding unless the guidance document is published on the commission website.

(g) A guidance document may be considered by the commission in a contested case, but it does not bind the commission in the exercise of its discretion.

(h) A person may petition under rule §3-81-17.03 to promulgate a rule in place of a guidance document.

(i) A person may petition to revise or repeal a guidance document. Upon receipt of the petition, the commission shall have sixty (60) days to do the following:

(1) Revise or repeal the guidance document;

(2) Initiate a proceeding to consider a revision or repeal; or

(3) Deny the petition in a record and state its reasons for the denial.

§3-81-17.09. Surcharge for Late Applications. For any application that must be submitted by a stated deadline prior to an event, the commission will impose a surcharge in such amount as shall be established by the commission if the late application is processed in time for the event. Applications for fundraising events conducted by nonprofit organizations, political candidates, and political parties shall be exempt from the surcharge.

§3-81-17.5. FEES; JUSTIFIED, METHOD OF CHANGE, LIMITATION.

§3-81-17.501. License fees. (a) The fees for licenses shall be per **[~~annum~~] fiscal year** except where specified. In addition to the basic license fee, an additional license fee will be assessed. This additional license fee will be assessed if the **commission's** gross liquor sales achieves a certain threshold (hereinafter referred to as deductible). The additional license fee assessment will be calculated on the net of the gross liquor sales less a deductible. The deductible will be prorated for licenses issued during the course of the fiscal year. For licenses that are cancelled or revoked during the course of a fiscal year **[~~but prior to the calculation of the deductible for that fiscal year~~]**, the prior year's deductible (prorated) will be used.

(b) The deductible will be calculated through the following formula:

(1) Calculation of additional fees required for the next fiscal year.

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

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

(2) Calculation of the deductible.
The prior year's gross liquor sales of each licensee will be entered into a database. The gross liquor sales will be analyzed and based on the assessment rate of the respective class and additional license fees required (ALF), the deductible for the fiscal year will be calculated. The calculated deductible will be rounded to the nearest thousands of dollars.

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

Fee Schedule (X/X/21)

CLASS	KIND	CATEGORY	FEES
1 Manufacturer			
	(a) Beer		$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed $5,000.
	(b) Wine		$900, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed $5,000.
	Wine manufactured from fruits grown in the state		$180
	(c) Alcohol		$540
	(d) Other liquors		$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed $5,000.
2 Restaurant			
	(a) General (includes all liquor, except alcohol)		
		(1) Category 1 - Standard	$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 2 – Music/Dancing	$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed

CLASS	KIND	CATEGORY	FEES
			$25,000.
	(b) Beer & Wine		
		(1) Category 1 - Standard	$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 2 – Music/Dancing	$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
	(c) Beer		
		(1) Category 1 - Standard	$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 2 – Music/Dancing	$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
3 Wholesale Dealer			
	(a) General (includes all liquor except alcohol)		$3,960, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed $10,000.
	(b) Beer & Wine		$1,260, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed $10,000.
	(c) Alcohol		$180
4 Retail Dealer			
	(a) General (includes all liquor except alcohol)		$1,800, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed $15,000.
	(b) Beer & Wine		$1,380, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed $15,000.
	(c) Alcohol		$96
5 Dispenser			
	(a) General		

CLASS	KIND	CATEGORY	FEES
	(includes all liquor except alcohol)		
		(1) Category 1 - Standard	$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 2 – Nudity	$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(3) Category 3 – Music/Dancing	$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(4) Category 4 – Hostess	$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(5) Categories 3 & 4	$2,280, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(6) Categories 2 & 3	$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(7) Categories 2 & 4	$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(8) Categories 2, 3 & 4	$2,640, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
	(b) Beer & Wine		
		(1) Category 1 - Standard	$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 3 – Music/Dancing	$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(3) All other	$1,560, and one-half of one percent

CLASS	KIND	CATEGORY	FEES
		combinations	(0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
	(c) Beer		
		(1) Category 1 - Standard	$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(2) Category 3 – Music/Dancing	$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
		(3) All other combinations	$840, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
6 Club			
		(1) Category 1 – Standard	$1,020, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $15,000.
		(2) Category 2 – Music/Dancing	$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $15,000.
8 Transient Vessel			
	[~~(a) Per day~~]		$90 **per day**
	[~~(b) Per year~~]		**[~~$1,980~~]**
9 Tour or Cruise Vessel			
		(1) Category 1 - Standard	$1,380, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed $10,000.
		(2) Category 2 – Music/Dancing	$1,440, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed $10,000.
10 Special	**[~~Special, per day~~]**		
	(a) General (includes all		$90 per day

CLASS	KIND	CATEGORY	FEES
	liquor, except alcohol)		
	(b) Beer & Wine		$60 per day
	(c) Beer		$45 per day
11 Cabaret			
	General	(1) Category 1 - Standard	$3,000, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $30,000.
		(2) Category 2 - Nudity	$3,600, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $30,000.
12 Hotel			
	General		$5,940, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $45,000.
13 Caterer			
	(a) General (Class 2, Class 12, Class 15 only)		$45 per day
	(b) Caterer, General (Food Service Business Type)		
		(1) Category 1 – Standard	$900, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000, plus $45 per day.
		(2) Category 2 – Music/Dancing	$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000, plus $45 per day.
14 Brewpub			
		(1) Category 1 – Standard	$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $40,000.
		(2) Category 2 – Music/Dancing	$2,700, and three-fourths of one percent (0.0075) of the total gross

CLASS	KIND	CATEGORY	FEES
			liquor sales less a *deductible, not to exceed $40,000.
15 Condominium Hotel			
			$4,500, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $45,000.
16 Winery			
			$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed $25,000.
17 BYOB			
		(1) Category 1 – Music only	$540
		(2) Category 2 – Music/Dancing	$660
18 Small Craft Producer Pub			
		(1) Category 1 - Standard	$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $40,000.
		(2) Category 2 – Music/Dancing	$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed $40,000.
Temporary			$420 for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment **and maximum fee** of the respective license class of the license applied to the total gross liquor sales. The fee for renewal of such license shall be $420 for the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the

CLASS	KIND	CATEGORY	FEES
			total gross liquor sales.

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

§3-81-17.502. Prorated license fees, forfeiture of fees. (a) Full payment of the prorated license fee is due and payable at the time the license is issued except for special, transient vessel **[~~(per day)~~]**, caterer, and temporary licenses which fees shall be paid in full at the time of filing the application. **There shall be no refund of fees for special, transient vessel, caterers, and temporary licenses once the license is issued by the commission.**

(b) Upon the licensee's termination of its business, or upon revocation or cancellation of the license by the commission, all fees paid for the remaining unexpired license term shall be forfeited.

§3-81-17.503. License fees; when due and how calculated. (a) The fee for any license renewed shall be due with the renewal application and payable on or before June 30 of each year. For any license other than special, transient vessel (per day), caterer, temporary, or renewed licenses, the fee shall be due and payable on the date the license is issued. The fee for a license issued July 1 shall be for a full year. The fee paid for a license issued on any other date shall be prorated from the first day of the month in which the license is issued to the end of the license year.

(b) License fees required to be paid on June 30 of each year, or on such other date as provided by this rule, shall be the fees prescribed by rule §3-81-17.501 for each respective class**, [~~and~~]** kind**, and category** of license.

(c) The license fee for a special and caterer license shall be based on the calendar day ending and expiring at midnight.

(d) If a licensee fails to effect its renewed license following payment of the license fee, refund of the fee to the licensee shall be reduced by any outstanding assessments and/or penalties for liquor law or rule violations.

§3-81-17.504. Gross liquor sales report[~~s~~]. (a) All licensees, except transient vessel **[~~(per day)~~]**, special, and bring-your-own-beverage, shall file a report as directed by the commission showing the true and accurate gross sales of liquor and purchases of liquor. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The **[~~gross sales~~]** report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by rule §3-81-17.501.

(b) All tour **[~~and~~]** **or** cruise vessel licensees shall file a report on a prescribed form as directed by the commission showing the true and accurate declaration of liquor purchases. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party.

The **[~~gross sales~~]** report shall also indicate the additional **license** fee due and payable which exceeds the minimum fees established by rule §3-81-17.501.

(c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. **If a refund is owed to a revoked, canceled, or expired license, it shall be refunded upon receipt of a final report and payment, if applicable.** All reports shall be complete and filed with the additional license fee, if applicable, on or before the required filing dates by **either electronically filing using the commission's online database system,** delivering **[~~them~~]** to the office of the commission, or by depositing **[~~them~~]**, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

(d) All licensees, except transient vessel **[~~(per day)~~]**, special, and bring-your-own-beverage, shall produce within three (3) calendar days for commission inspection books or records showing all income, purchases, and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time, and shall be preserved for a period of four (4) years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

(e) Gross sales from off-premises catering shall be included in the gross sales report of the restaurant, hotel, or condominium hotel licensee.

(f) Licensees who give complimentary drinks or samples without charge shall report the value of those drinks in their annual gross **liquor** sales report. If there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of **[~~liquor purchased~~]** **the liquor cost**. **If there is no sales price related to the samples, the licensee shall report the value at two (2) times the amount of the liquor cost.**

(g) In addition to the report for the period ending June 30, wholesale **dealer** licensees shall complete and file an interim gross **liquor** sales **[~~of liquor~~]** report for the period July 1 to December 31. The interim report is due not later than **[~~March 1~~]** **January 31st** of the following year. The commission may direct the wholesale dealer class to file additional interim gross **liquor** sales **[~~of liquor~~]** reports, and establish the respective due date(s).

(h) Licenses held in safekeeping in accordance with rule §3-82-41.06 shall file a partial report within thirty-one (31) days from the date the license is placed in safekeeping. The licensee is exempt from filing a gross sales report while the license is held in safekeeping.

§3-81-17.505. Additional license fees on gross liquor sales. (a) The additional license fee based on gross **liquor** sales **[~~of liquor~~]** shall be due and payable thirty-one (31) days after expiration, revocation, or cancellation of the license under which the additional license fee accrued. In case of a license transfer, the additional license fee chargeable against such licenses shall become due and payable before the actual transfer of the license. **[~~If the deductible for the fiscal year has not been calculated,~~]** The prior year's deductible (prorated) will be applied to gross liquor sales to determine if any additional license fee is due.

(b) If the license is issued after July 1, any additional license fee based on gross sales of liquor shall be determined by prorating the deductible for the year.

§3-81-17.506. Failure to file accurate gross liquor sales reports. **(a)** No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report.

(b) It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to these rules.

§3-81-17.507. Payment for under reporting gross liquor sales. Any licensee who is determined by the administrator to have under-reported gross liquor sales shall be required to pay the amount due **to** the commission within fifteen (15) days from notification.

§3-81-18. REPEALED.

§3-81-19. HEARINGS, ATTENDANCE, EXAMINATIONS.

§3-81-19.01. Hearings. **(a)** All hearings shall be conducted pursuant to HRS Chapters 91 and 92 and these rules. **Any commissioner participating in a hearing by interactive conference technology shall be considered present at the hearing for the purpose of determining compliance with the quorum and voting requirements of the commission.**

(b) All hearings shall be before the commission. All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The hearing shall be at the time and place set forth in the notice of hearing and may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. The commission, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by written or oral argument in lieu of a hearing unless this procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

§3-81-19.02. Legal counsel or other authorized representative. (a) A party may be represented by legal counsel or any other individual authorized in writing to represent that party at any proceeding before the commission.

(b) Substitution of legal counsel shall be effective only upon filing written notice of substitution with the commission.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the commission, and legal counsel shall be subject to the guidelines of the Hawaii **[~~Code of Professional Responsibility~~]** **Rules of Professional Conduct** and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty (30) days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

§3-81-19.03. Authorized agent representing party. (a) When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the commission, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized to so act.

(b) The agent shall provide written authorization from the licensee or applicant to act in this capacity in all proceedings. This authorization shall be renewed annually or is considered invalid. The commission may at any time, however, require the individual to furnish proof of authorization.

(c) Authorized agents shall be bound by the provisions of the code of conduct currently applicable to attorneys and others authorized by law to represent parties. The commission reserves the right to refuse to recognize authorized agents in its proceedings for sufficient cause.

§3-81-19.04. Substitution of parties. (a) Substitution of parties may be ordered upon motion and for good cause shown, provided that the substitution shall:

(1) Be conducive to the ends of justice;

(2) Not unduly delay any proceeding; and

(3) Not otherwise unduly harass, hinder, or prejudice the rights of any party.

(b) In the case of the death or legal incapacity of any party, substitution may be ordered by the commission without the necessity of filing a motion therefor.

§3-81-19.05. Consolidation. The commission may on its own motion, or upon motion by any party, consolidate two (2) or more proceedings which involve substantially the same issues, arise out of the same general transaction, or involve the same person or persons, provided the consolidation shall be conducive to the ends of justice and shall not unduly delay any proceeding, or hinder, harass, or prejudice any party.

§3-81-19.06. Service, generally. (a) Unless otherwise provided by this chapter or by other applicable law, whenever service is required to be made on any party to a proceeding before the commission, service shall be made personally or by certified mail; the document to be served at the party's last known address or to the party's attorney of record or to any other individual duly authorized to represent the party in the proceeding.

(b) If personal service or service by certified mail is unsuccessful, the commission may authorize service by publication if permitted by statute. The commission may require that personal service be attempted prior to permitting service by publication. After service by publication has been authorized, whenever service is

required to be made on that party thereafter, service by first class mail to the party's last known address shall be sufficient.

§3-81-19.07. Service, by whom. Unless otherwise provided by these rules, a party filing a pleading, motion, memorandum, document, or other paper in connection with an adjudication hearing shall cause a copy of the pleading, motion, memorandum, document, or other paper to be served upon each of the other parties to the adjudication hearing, or upon any agent or attorney representing the other party. The party shall attach to the pleading, motion, memorandum, document, or other paper a certificate of service indicating the date and manner of service.

§3-81-19.08. Time. (a) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed, the day of the act, event, or default after which the designated 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, or legal holiday in the State, in which event the period shall run until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven (7) days or less. A half**-day** holiday shall not be considered a holiday for the purpose of these computations.

~~**[(b) The hours of a day during which documents will be accepted for filing by the Commission shall be those specified in HRS §80-1.]**~~

(b) The hours of a day during which documents will be accepted for filing by the commission shall be those specified in HRS §78-1.6, which shall not include state holidays designated under HRS §8-1 and as observed under HRS §8-2.

§3-81-19.09. Extensions of time. Unless otherwise provided, the commission may, at the request of any party, extend the time within which any action shall be taken. The commission, in its sole discretion, may require that the extension be stipulated to by all parties to the proceeding or that the request be by motion for good cause shown.

§3-81-19.10. Motions. (a) Unless made during a hearing, an application for any relief or order shall be made by written motion, stating with particularity the grounds therefor and setting forth the relief or order sought.

(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law, shall be accompanied by a memorandum of points and authorities in support thereof.

(c) If a hearing is held on the motion, the party filing the motion shall serve a copy of the motion and notice of hearing on the motion upon all parties not later than seventy-two (72) hours before the hearing on the motion, and the opposing party shall file and serve any counter affidavits or memorandum in opposition not less than twenty-four (24) hours before the hearing.

(d) Motions shall be filed with the commission at its offices during regular business hours.

(e) Failure to comply with the requirements of this section may be the basis for the denial of any motion.

(f) The decision on the motion may be made orally at the time of the hearing on the motion, or in writing, or as part of the commission's decision.

§3-81-19.11. Powers of the commission in conducting hearings. Unless otherwise provided by law, the commission shall have the power:

(1) To hold hearings and issue notices;
(2) To administer oaths and affirmations;
(3) To consolidate or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
(4) To issue decisions and orders consistent with state statutes and the rules of the commission;
(5) To issue subpoenas and examine witnesses;
(6) To rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, unduly repetitious, or cumulative, and, accordingly, may restrict lines of questioning or testimony;
(7) To regulate the course and conduct of the hearing;
(8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
(9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
(10) To hold conferences, including pre-hearing conferences, before or during the hearing, for the settlement or simplification of issues;
(11) To rule on motions and dispose of procedural matters;
(12) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by these rules, HRS Chapters 91 and 281, or any other related laws; and
(13) To examine, after notice to all parties, any site or tangible evidence relevant to the proceeding.

§3-81-19.12. Disqualification of member of commission. (a) No matter shall be heard by a member of the commission who:

(1) Has any direct or indirect pecuniary interest in the matter being heard;
(2) Has participated in the investigation preceding the institution of the proceeding or has participated in the development of the evidence to be introduced in the proceeding; or
(3) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the commission.

(b) Any member of the commission may be disqualified from hearing the matter upon motion of any party. Any motion to disqualify a member of the commission shall be filed and decided before the evidentiary portion of the hearing.

§3-81-19.13. Ex parte communications. In any proceeding before the commission:

(a) No person shall communicate privately on the merits of the case with any member of the commission or the commission's staff unless specifically provided for by law; and

(b) No member of the commission's staff or any other government agency who participates in the proceeding as a witness or counsel shall communicate privately on the merits of the case with any member of the commission, unless specifically provided for by law.

§3-81-19.14. Decisions, generally. (a) Unless otherwise provided, every decision and order issued by the commission shall be in writing or stated on the record.

(b) The commission shall cause a certified copy of the decision and order together with any findings of fact and conclusions of law to be personally served or by certified or registered mail, return receipt requested, to the licensee, the party's attorney of record, an authorized agent, or **[~~officer or director of the corporation~~]** **other individual or entity identified in HRS §281-53**.

(c) Where a party has failed to appear at an adjudication hearing, service of the commission's decision and order to the party is complete upon transmission by registered or certified mail, return receipt requested, to the party's last known address.

§3-81-20. GENERAL RIGHT OF INSPECTION.

§3-81-20.01. Access, examination, and inspection. Without notice, search warrant, or other legal process, a licensee shall provide an investigator **and/or an auditor** immediate access to every part of the licensed premises for the purpose of making an examination or inspection thereof of items related to the licensee's compliance with the liquor laws or rules. Except as prohibited by laws governing confidential or protected information, said examination or inspection shall include, but not be limited to, any books and records of the licensee kept on the licensed premises which relate to the licensee's compliance with the liquor laws or rules. Items discovered during such examination or inspection shall be used for the purpose of enforcement of the liquor laws or rules.

§3-81-21. SERVICE OF SUBPOENAS BY INVESTIGATORS, POLICE OFFICEDRS, OR OTHER LAW ENFORCEMENT OFFICERS; WITNESSES' FEES. Reserved.

§3-81-22. POLITICAL ACTIVITIES OF COMMISSION EMPLOYEES. Reserved.

PART III. LICENSES AND PERMITS, GENERAL PROVISIONS
CHAPTER 82

§3-82-31. LICENSES, CLASSES.

§3-82-31.01. Determination of classification for licensed premises. Upon submission of an application for a license on the form prescribed by the commission, the administrator shall appropriately classify and categorize said application based upon the class and category as defined by HRS §281-31.

§3-82-31.02. Conduct of business. (a) Licensees are prohibited from conducting any business except as authorized by the commission. Any licensee desiring a change of class or category shall apply to the commission on a form prescribed by the commission and comply with HRS §§281-51 to 281-60.

(b) Any licensee failing to operate its business in compliance with its authorized class or category or ceasing to provide an activity permitted by its class or category **will be in violation of this rule and** may be reclassified or re-categorized by the commission after notice and hearing in conformance with HRS Chapter 91.

§3-82-31.03. Determination of nudity in cabarets. (a) The administrator shall classify each cabaret license to determine whether the cabaret licensee is permitted to provide professional entertainment by a dancer pursuant to HRS §281-31(k).

(b) Any cabaret licensee aggrieved by the decision of the administrator may file a written notice of appeal to the commission within thirty (30) days after receipt of the notice of classification. The commission shall hold a hearing and issue a final decision on the matter.

(c) A cabaret licensee seeking to provide professional entertainment by a dancer shall file an application on a form prescribed by the commission and comply with HRS §§281-51 to 281-60.

§3-82-31.04. Sales and service on vessels while docked. Class 9 tour or cruise vessels **[~~(class 9)~~]** may, with approval from the commission, sell and serve liquor to ticketed passengers within the vessel before scheduled departure and after docking of the vessel for the period of time as determined by the commission.

§3-82-31.05. Brewpub licenses. (a) Brewpub categories shall only be as follows:

(1) A standard bar; or

(2) A premise in which live entertainment or recorded music is provided. Facilities for dancing may be permitted as provided by commission rules.

(b) All brewpub licensees shall file a report as directed by the commission showing the total number of barrels of malt beverages manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. **Any outstanding refund to the revoked, canceled, or expired license shall be held until the final report is filed and paid.** All reports shall be filed on or before the required filing dates by delivering them to the office of the commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

(c) Any brewpub licensee **[~~is~~]** **may be** permitted to conduct the activities described in paragraphs (1) through **[~~(8)~~]** **(6)** of HRS §281-31(n), **[~~upon written approval of the commission~~]**, **other than at the licensee's primary manufacturing premises, [~~subject to the following conditions~~]** **provided**:

[~~(1) An application for the designation of a second location other than the licensed premises shall be submitted by the licensee on a form prescribed by the Commission.~~]

(1) The licensee shall submit a new application, under the same ownership, and using the same trade name for the designation of a satellite location under proper the classification of its operation of a class 1 manufacturer licensee, class 2 restaurant licensee, class 4 retail dealer licensee, class 5 dispenser licensee, class 12 hotel licensee, class 14 brewpub licensee, or class 18 small craft producer pub licensee;

[~~(2) The designated second location shall be in an area zoned for the proposed activity.~~]

(2) The new application for the satellite location shall include all documents and requirements under rule §3-83-53.01 and shall be treated as a new application and shall be subject to all requirements of a new license application.

[~~(3) An application for the designation of a second location shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, and a floor plan of the premises drawn to scale.~~]

[~~(4)~~] **(3)** Invoices for all malt beverages manufactured and/or sold at the designated second location shall be kept on the premises. All such records shall be kept for not less than three (3) years.

§3-82-31.06. Special licenses by for profit organizations. (a) Any for profit organization may apply for special licenses in increments up to three (3) days on any occasion per license, not to exceed twelve (12) days per calendar quarter, with commission approval.

[~~(b) An application for a For Profit special license must include a zoning clearance from the City and County Department of Planning and Permitting, the Hawaii Community Development Authority (HCDA) or the Aloha Tower Development Corporation.~~]

(b) Applications for special for profit organizations shall be submitted within established deadlines as prescribed by the commission.

§3-82-31.07. Catering by restaurant, hotel, or condominium hotel licensees. (a) Restaurant, hotel, and condominium hotel licensees may provide catering if that activity is directly related to the licensee's operation as a restaurant, hotel, or condominium hotel.

(b) **On-premises consumption businesses/Authorized licensees specified under HRS §281-31** that wish to provide **[~~on or~~]** off-premises catering service shall apply for a **class 2** restaurant **[~~(class 2)~~]**, **class 12** hotel **[~~(class 12)~~]**, or **class 15**

condominium hotel **[~~(class 15)~~]** license, as applicable by law and rule, which will permit the sale of liquor (other than alcohol) while performing food catering functions.

(c) Off-premises catering will only be authorized upon the issuance of a caterer (class 13(a)) license. A caterer event license is required for each off-premises catered event where liquor is served.

(d) For each off-premises catered event, the licensee shall submit an application for a caterer (class 13(a)) event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries **and dimensions** of the proposed catered licensed premises; **a menu;** a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and rules of the commission and open to inspection by the commission's investigators. **Applications shall be submitted within established deadlines prescribed by the commission.**

(e) For any off-premises catered event that is to be provided at a location contiguous to the premises of the restaurant, hotel, or condominium hotel licensee, and for which the premises of the restaurant, hotel, or condominium hotel are to be included within the boundaries of the catered event, the floor plan to be submitted as part of the application shall include the premises of the restaurant, hotel, or condominium hotel licensee.

(f) A caterer event license fee, as established by rule §3-81-17.501, shall be submitted with the application.

(g) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is **[~~open for business~~]** **permitted to by the terms of the catering license**. No other employees **besides a registered bartender** on the catered, licensed premises need to be registered with the commission.

(h) Gross sales from **[~~on- or~~]** off-premises catering shall be included in the gross **liquor** sales report of the restaurant, hotel, or condominium hotel licensee. Each catered event must include food **prepared by the licensee** and liquor. At least thirty (30) per cent of the establishment's gross **[~~revenue~~]** **sales** from **[~~all catered events~~]** **each catered event** must come from the sale of foods.

(i) The licensee shall clearly post the issued license at the catered premises.

(j) A catering licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

§3-82-31.08. Restrictions on vessels. (a) A tour or cruise vessel licensee shall obtain written approval from the commission regarding the vessel's berth location. Prior written approval from the commission is required for a change of berth.

(b) In the event of an emergency or inclement weather conditions which force a transient vessel into the port of Honolulu, that vessel shall be allowed to serve liquor while in port if a license from another county has been obtained.

§3-82-31.09. Catering by food service businesses. (a) Food service businesses may provide liquor service if that activity is directly related to the business's operation as a food service provider or food catering service.

(b) Minimum requirements of a caterer (class 13(b)) license shall be that it is an enterprise which is regularly and in a bona fide manner in the business of preparing

meals for patrons for compensation, and which has kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for meals, and operated in compliance with State department of health laws and regulations.

(c) If liquor for catered events will be stored other than at the kitchen facilities identified in (b), approval for outside warehousing must be obtained in accordance with rule §3-82-39.01.

(d) A per-event caterer license is required for each catered event where liquor is served.

(e) For each catered event, the caterer (class 13(b)) licensee shall submit an application for a caterer event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; **a menu;** a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and rules of the commission and open to inspection by the commission's investigators.

(f) A per-event caterer license fee, as established by rule §3-81-17.501, shall be submitted with the application.

(g) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business and licensed. No other employees on the catered, licensed premises need to be registered with the commission.

(h) The licensee shall clearly post the issued license at the catered premises.

(i) A caterer (class (b)) licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

(j) Liquor sales, service, and consumption shall be limited to the catered event. Each catered event must include food and liquor. At least thirty (30) percent of the establishment's gross **[~~revenue~~]** **sales** from all catered events must come from the sale of foods.

(k) Retail dealer (class 3), dispenser (class 5), club (class 6), cabaret (class 11), brewpub (class 15), winery (class 16), and small craft producer pub (class 18) licensees may not apply for a caterer (class 13(b)) license.

§3-82-31.10. Winery Licenses. All winery licensees shall file a report as directed by the commission showing the total number of barrels of wine manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. **Any outstanding refund to the revoked, canceled, or expired license shall be held until the final report is filed and paid.** All reports shall be filed on or before the required filing dates by delivering them to the office of the commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the

mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

§3-82-31.11. Manufacturer licenses. If on-premises sampling of beer, wine, or other specified liquor manufactured or distilled from fruits or other products grown in the State has been approved by the commission, manufacturer licensees may charge for sampling to offset costs. The value of the charges for the samples shall be reported in the licensee's annual gross sales report.

§3-82-31.12. Display of prices in retail dealer premises. Every retail dealer licensee shall display, within the liquor sales area of the licensed premises, a shelf price for or price tags on each container or bottle of each size of each brand of liquor sold.

§3-82-31.13. Liquor on retail dealer premises during prohibited sales hours. If a retail dealer's licensed premises are open to the public during hours when the sale of liquor is not permitted, the licensee shall post signs in the area or areas where liquor sales are usually made, giving notice to customers that the sale of liquor is prohibited during that time.

§3-82-31.14. Drive-in retail dealer sales prohibited. Customers making purchases at retail dealer premises must enter the licensed premises to purchase liquor. **Except as approved by the commission,** the drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift, or carry purchases of liquor because of a disability. **Notwithstanding the above, any liquor purchased by a customer that complies with rule §3-82-31.15 may be delivered to a customer in a vehicle at a curbside or other designated location.**

*****Multiple Proposed Versions*****

§3-82-31.15. Deliveries. (a) **Class 4** retail dealer licensees may make deliveries of liquor to **[~~private residences or businesses~~] a person who is twenty-one (21) years of age or older [~~with~~] pursuant to** a bona fide order **(which can be taken by telephone, [~~mail,~~] fax, [~~catalog,~~] through the internet[~~, or by other means~~]) [~~from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point~~] subject to the following restrictions:**

(1) Orders shall be placed and delivery shall be made within the permitted hours of business for a retail dealer licensee and within the limits of the city and county of Honolulu;

(2) The order may be submitted directly to the retail dealer licensee through a technology provider that connects consumers and

licensed retailers using the internet, mobile application, or other similar technology;

(2) The order shall be submitted directly to the retail dealer licensee. The purchaser may be directed to the retail dealer through a technology provider that connects consumers and licensed retailers using the internet, mobile application, or other similar technology;

(3) Payment for orders of liquor may only be processed by a licensed retailer dealer and an independent contractor may not take possession of funds used to purchase liquor, but an independent contractor may facilitate the sales transaction, such as through the collection of credit card information or the securing of payment authorization from the purchaser;

(3) Payment for orders of liquor shall only be accepted and processed by a licensed retail dealer;

(4) The person accepting delivery of liquor must be at least twenty-one (21) years old and must display identification at the time of delivery that complies with rule §3-86-101.501(b). No liquor shall be delivered to a person who appears to be intoxicated as prescribed in rule §3-84-78.501;

(4) The person accepting delivery of and signing for the liquor shall be the same person who placed the order. The person of liquor [sic] shall be at least twenty-one (21) years old and must display identification at the time of delivery that complies with rule §3-86-101.501(b). The type of ID presented (e.g., driver's license with state, passport with country, etc.), the full name shown on the ID, the date of birth on the ID must be recorded on the receipt by the person delivering the liquor. No liquor shall be delivered to:

(A) Any minor;

(B) Any person at the time under the influence of liquor;

(C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor;

(5) The retail dealer licensee must maintain a record of the receipt of delivery signed by the person accepting the delivery of liquor;

(6) The retail dealer licensee may facilitate the delivery, including preparing the order for delivery, by contracting with one or more independent contractors, that may also contract with one or more independent contractors, or by contracting with a common carrier for delivery of liquor, provided the person delivering the order is at least twenty-one (21) years old;

(6) The delivery, including preparing the order for delivery, shall be made by the licensee, the licensee's employee, or the licensee's

agent, provided the person delivering the order is at least twenty-one (21) years old;

(7) For purposes of this rule, an independent contractor, an independent contractor of an independent contractor, the employee of an independent contractor, or a common carrier is deemed to be acting on behalf of the retail dealer licensee when making a delivery of liquor, and the retail dealer licensee shall be held liable for any violation of this rule during any delivery of liquor made on behalf of such retail dealer licensee;

(7) The agent or employee shall at all times be acting on behalf and for the benefit of the retail dealer licensee, and is considered an on-duty employee of the licensee when making a delivery of liquor, and the retail dealer licensee and the person making such delivery shall be held liable for any violation of law or rule during any such delivery of liquor made on behalf of such retail dealer licensee;

(8) Independent contractors, an independent contractor of an independent contractor, or the employee of an independent contractor shall comply with an inquiry or investigation by the commission if requested;

(8) The licensee's employee or agent shall comply with an inquiry or investigation by the commission. In addition, any investigator may, at all times, without notice and without any search warrant or other legal process, visit and have immediate access to every part of the licensee employee's or agent's vehicle, to include any bags, containers, storage area, or any other means utilized for necessitation of delivery; also of every part of business of the licensee's agent's books and records therein, financial records, bank statements to ascertain whether all conditions of the license and all provisions of HRS Chapter 281 and HRS Chapter 244D and the rules of the commission are being complied with by licensee, its agent, and its employees;

(9) Bona fide orders can only be processed, and deliveries can only be made, during permitted hours of business as prescribed in rule §3-82-38.19. Any electronic orders received outside permitted hours of business can be maintained in a virtual queue and processed during permitted hours of business; and

(10) Retail dealer licensees may pay a fee to an independent contractor for the services permitted herein so long as the fee is not based on a percentage of profits received from the sale of liquor.

(10) Retail dealer licensees may pay a fee to an agent for the delivery services permitted herein so long as the fee is not based on a

percentage of profits received from the sale of liquor, the cost of the liquor order to the purchaser, or the quantity of liquor delivered; and

(11) An executed copy of the contract or agreement between the retail dealer licensee and any agent shall be provided to the commission prior to the start of any such delivery. Any acts or terms found to be in violation of any liquor laws or rules will be subject to the penalties as prescribed by law or rules.

(12) For purposes of this rule, an "agent" is defined as one who acts for or in place of another by authority of that individual or entity. An independent contractor providing delivery services for a retail dealer licensee within the meaning of HRS Chapter 281 shall be deemed an "agent" of the retail dealer licensee.

(13) If an agent, servant, employee, independent contractor, or common carrier commits a substantiated violation of this rule during any delivery of liquor made on behalf of a retail dealer licensee, the licensee shall be prohibited from using said agent, servant, employee, independent contractor, or common carrier for delivery of liquor on its behalf without commission approval.

(b) Deliveries of liquor by licensed wholesaler dealers or distributors shall only be made to a licensee's premises. With commission prior approval, deliveries to a licensee's catered or other location shall be permitted.

(c) A retail **[~~(class 4)~~]** dealer licensee must have received an order for the type and quantity of liquor to be removed from the licensee's premises before removing said liquor for delivery to a customer. Peddling in any sense of the term is prohibited.

§3-82-31.16. Reserved.

§3-82-31.17. Small craft producer pub licenses. (a) Small craft producer pub categories shall only be as follows:

(1) A standard bar; or

(2) A premise in which live entertainment or recorded music is provided. Facilities for dancing may be permitted as provided by commission rules.

(b) All small craft producer pub licensees shall file a report as directed by the commission showing the total number of barrels of malt beverages, wine, or alcohol manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. Any outstanding refund to the revoked, canceled, or

expired license shall be held until the final report is filed and paid. All reports shall be filed on or before the required filing dates by delivering them to the office of the commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

(c) Any small craft producer pub licensee may be permitted to conduct the activities described in paragraphs (1) through (8) of HRS §281-31(r), other than at the licensee's primary manufacturing premises, provided:

(1) The licensee shall submit a new application, under the same ownership, and using the same trade name for the designation of a satellite location under proper the classification of its operation of a class 1 manufacturer licensee, class 2 restaurant licensee, class 4 retail dealer licensee, class 5 dispenser licensee, class 12 hotel licensee, class 14 brewpub licensee, or class 18 small craft producer pub licensee;

(2) The new application for the satellite location shall include all documents and requirements under rule §3-83-53.01 and shall be treated as a new application and shall be subject to all requirements of a new license application.

(3) Invoices for all malt beverages, wine, or alcohol manufactured and/or sold at the designated second location shall be kept on the premises. All such records shall be kept for not less than three (3) years.

§3-82-31.18. One-day special licenses for fund-raising events by not for profit organizations. A one-day special license for fund-raising events by not for profit organizations, not to exceed twelve (12) days per calendar quarter, shall be reviewed and approved by the administrator or designee. If the application is submitted fifteen (15) or more days prior to the proposed event, the license may be issued through the mail, provided the cost of mailing is submitted with the application.

§3-82-31.19. Exemption for not for profit organizations. The one-day special license for fund-raising events by not for profit organizations shall not be subject to a hearing, fees, and notarizing of documents. **For cause, the administrator has the discretion to refer the license application to the commission for disposition at a hearing.**

§3-82-31.20. Requirements of a hotel license. (a) Minimum requirements for a hotel license shall be an establishment consisting of one or more buildings containing at least fifty (50) hotel guest rooms. Hotel licensees providing off-premises catering services shall have a kitchen approved by the commission and located within the hotel property. Room service, self-service, and service at private parties in areas which are the property of and contiguous to the hotel are permitted.

(b) Upon the opening or closing of any section within the hotel licensed premises which serves alcoholic beverages, the licensee must notify the commission with details and floor plan changes in writing not less than thirty (30) days prior to the commencement of such event.

§3-82-31.21. Restrictions on hotel and condominium hotel licenses. Unless otherwise authorized by law, hotel and condominium hotel licensees shall not sell liquor in the manner authorized by a retail dealer's license.

§3-82-31.22. Requirements of a restaurant license. (a) Minimum requirements of a class 2 restaurant licensed establishment shall be that it is a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has kitchen facilities approved by the commission connected therewith, containing the necessary equipment and supplies for **[~~cooking~~]** **preparing** an assortment of foods which may be required for ordinary meals.

(b) "Meals" means the usual assortment of foods commonly ordered at various hours of the day (i.e. breakfast, lunch, or dinner) that is prepared within the licensee's premises; the service of any prepackaged food not prepared on the licensed premises shall not be deemed in compliance with this requirement.

(c) At least thirty per cent (30%) of the establishment's gross revenue must come from the sale of foods.

(d) Failure to meet these minimums will result in a reclassification of the liquor license by the commission in accordance with rule §3-82-31.02.

§3-82-31.23. Requirements of a condominium hotel license. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS §281-1, containing at least fifty (50) condominium hotel guest rooms. Condominium hotel licensees providing off-premises catering services shall have a kitchen approved by the commission and located within the condominium hotel property. Room service, self-service, and service at private parties in areas which are within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises; and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty per cent (50%) of the total number of guest rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subsection (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee must notify the commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

§3-82-31.24. Entertainment in cabarets. A cabaret licensee shall provide no less than a total of four (4) hours of dancing or professional entertainment between 9:00 p.m. and 4:00 a.m. Within this period, either live or amplified recorded music for dancing, professional entertainment which has received prior written approval by the commission, or has met the requirements of HRS §281-31, or any combination of the foregoing shall be provided.

§3-82-32. LICENSES, TEMPORARY.

§3-82-32.01. Temporary license. (a) The issuance of a temporary license shall be based upon a transfer or new license application as stated in HRS §281-32 and shall be effective for not in excess of one hundred twenty (120) days, renewable for not more than one additional **[~~sixty (60)~~]** **one hundred twenty (120)** day period. Unless otherwise approved by the commission, a temporary license shall be effective seven (7) calendar days after approval by the commission or upon issuance of the physical temporary license, whichever occurs first. There will be no refund of temporary license **[~~application~~]** fees for temporary licenses not issued within seven (7) calendar days after approval by the commission. The license application must be filed within five (5) working days of the surrender of the previous license or the closing of the business.

(b) An activated or issued temporary license shall terminate upon the issuance of the transferred or new license, denial, or withdrawal of the transfer or new application, failure of the licensee to timely effect a renewable license, or at midnight of the one hundred twentieth (120^{th}) day after being effected or issued.

(c) No temporary license, under HRS §281-32, will be issued before:

(1) Any pending fines which have been imposed upon the transferor are paid;

(2) The surrender to the commission of the existing license by the current holder;

(3) The applicant for a temporary license has provided proof of landlord's and transferor's consent to the new license.

(d) The premises under a temporary license shall be the same premises (i.e., same boundary) that was previously licensed if based on a new license application, or the premises that is currently licensed under the existing license being transferred if based on a transfer of license application.

(e) The premises shall have been operated for at least one (1) year immediately prior to the date of filing of the application for a temporary license, except as otherwise approved by the commission.

(f) The temporary license shall be the same class, kind, and category that was previously in effect for the premises if based on a new license application, or the same class, kind, and category that is currently in effect for the premises if based on a transfer of license application, in conformance with HRS §281-32. Unless removal is expressly approved by the commission, any restrictions or

conditions previously imposed on the license or the premises pursuant to rule §3-82-38.25 shall be imposed on the temporary license.

§3-82.32.3. REPEALED.

§3-82-32.5. PERMITS FOR TRADE SHOWS OR OTHER EXHIBITIONS.
§3-82-32.501. Sampling at trade shows and exhibitions. All exhibitors desiring to have a promotional sampling at a trade show or exhibition shall submit a written application to the administrator prior to permitting liquor consumption. The application shall be submitted by the exhibitor and clearly state and identify the type of liquor to be sampled, the date, location and hours sampling is to take place, and the name of the person in charge of the sampling. No minors shall be permitted to sample liquor, and no person under the age of eighteen (18) years shall serve liquor. A copy of the approval form from the administrator shall be posted in the vicinity of the sampling area.

§3-82-33. SPECIAL POWERS, PRIVILEGES, AND RIGHTS. Reserved.

§3-82-33.1. INDIVIDUAL PERMITS TO RECEIVE SHIPMENTS OF LIQUOR.
§3-82-33.101. Applications for individual permits to receive shipments of liquor.
(a) Any person twenty-one (21) years of age or older may apply to the commission, on the form prescribed by the commission and upon payment of a permit fee **[~~of $18.00~~] in such amount as shall be established by the commission**, for a permit to receive a shipment of liquor from outside the State, within the limits allowed by HRS Chapter 281.

(b) The application form shall include the following information:

(1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity.

(2) Whether the liquor is an unsolicited gift unavailable in the State, or part of the applicant's household goods.

§3-82-33.5. REPEALED.

§3-82-33.6. DIRECT SHIPMENT OF WINE BY WINERIES.
§3-82-33.601. Direct shipment of wine by wineries. (a) Any manufacturer of wine who desires to ship wines to **[~~residents of~~] persons in** the County of Honolulu shall obtain a direct wine shipper permit from the commission. The permit may be granted by the administrator to any person holding:

(1) A general excise tax license from the State of Hawaii department of taxation; and

(2) Either:

(A) A class 1 license to manufacturer wine under HRS §281-31; or

(B) A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one (1) calendar year. The applicant for a permit shall submit:

(1) An application form;

(2) Copy of the State of Hawaii department of taxation general excise tax license;

(3) Copy of the class 1 license to manufacture wine under HRS §281-31, or the license to manufacture wine issued by another state; and

(4) Payment of an annual permit fee **[~~of $180.00~~]** **in such amount as shall be established by the commission**; provided, that the annual permit fee for a manufacturer of wine licensed under HRS §281-31 shall be inclusive and part of its annual license fee. For purposes of this rule, permit fees shall be prorated.

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one (21) years of age or older in this county no more than six (6) nine-liter (9-liter) cases of wine per household for personal use only and not for resale, and shall:

(1) Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to:

"CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(2) Require that the carrier of the shipment obtain the signature of any person twenty-one (21) years of age or older before delivering the shipment;

(3) Report no later than January 31 of each year to the commission the total amount of wine shipped to persons in this county during the preceding calendar year;

(4) Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the State; and

(5) Be subject to audit by the commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a direct wine shipper permit by providing the commission with a renewal application, a copy of the current license to manufacture wine, and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

§3-82-34. SHAM OPERATION UNDER CLUB LICENSE; SUPERVISION. Reserved**.**

§3-82-35. SPECIAL CONDITIONS; CLUB LICENSES.

§3-82-35.01. Club membership list. Club licensees shall keep a complete, current list of members, which shall be readily available for inspection on the licensed premises.

[~~§3-82-35.02. Club guests. Any person enjoying the guest privileges of a club and to whom liquor may be sold shall be a guest of the club. Clubs shall keep records as to registration of such guest for at least one (1) year. These records shall be produced whenever required by the commission. Guest privileges shall not be extended to a guest for more than four (4) weeks within twelve (12) consecutive months.~~]

§3-82-35.5. SPECIAL CONDITIONS; CONDOMINIUM HOTEL LICENSES. Reserved.

§3-82-36. REPEALED.

§3-82-37. SALES OF ALCOHOL.

§3-82-37.01. Retail alcohol sales; records. Alcohol may be sold for non-beverage purposes by any person holding a retail alcohol license only upon the prescription of a duly licensed physician. Such sale shall be in a maximum quantity of one (1) quart at any time, and the alcohol must be in a standard original package. Each such prescription shall be preserved by the seller for four (4) years, including the name of the prescribing physician and of the person to whom the alcohol was sold and delivered, and the quantity so sold and delivered.

§3-82-38. CONDITIONS OF LICENSES.

§3-82-38.01. Familiarity with liquor laws and rules. Licensees and their employees shall familiarize themselves with the liquor laws and the rules of the commission.

§3-82-38.02. Liquor laws and rules on licensed premises. Every licensee (except special, transient vessel per day, and caterer licensees) shall have a current copy of the statutes relating to intoxicating liquor and the rules of the commission in English available at all times on the licensed premises. Customers shall be entitled to examine the statutes and rules upon request.

§3-82-38.03. Preparation of drinks at open bars. If the portion of the licensed premises open to customers is equipped with a bar, the preparation of drinks shall be on the top surface of the bar and in such a manner as to permit an interested customer to have a clear and unobstructed view of the bartender's operations.

§3-82-38.04. Employee records. (a) All **[~~dispenser, cabaret, hotel, club, restaurant, brewpub, condominium hotel, winery, bring-your-own-beverage, and small craft producer pub~~]** **on-premises consumption** licensees, including temporary licenses, shall have available on the licensed premises a time card or other adequate record showing in English the month, day, year, and time, indicating a.m. or p.m., and the legal first name and surname of each employee when that employee is on duty. This rule also applies to managers but does not apply to entertainers or kitchen staff who do not handle, serve, or sell liquor.

(b) Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty. If the employee is a minor, the licensee shall print on the time record below the employee's name that said employee is a minor. Employee time records shall be preserved for at least six (6) months.

(c) Electronic or otherwise recorded payroll registration may be used for the purposes of this rule with the administrator's approval.

§3-82-38.05. Registration of employees. (a) All on-premises consumption licensees, except class 8(a) per day transient vessels, shall employ only persons in that section of the licensed premises where liquor is sold, served, or

consumed who are registered with the commission prior to the start of employment.

(1) For restaurant, annual transient vessel, tour or cruise vessel, and caterer licensees, only managers and bartenders are required to be registered.

(2) For hotel and condominium hotel licensees, only managers, bartenders, and staff who handle, serve, or sell liquor are required to be registered.

(3) An employee need not obtain a new certificate of registration because of a trade name change only.

(4) An employee registered under a temporary license based upon a new license application, as stated in rule §3-82-32.01, must obtain a new certificate of registration once the new license is approved.

(b) Class 4 retail dealer licensees shall have a duly registered manager assigned to each licensed premises or to a group of premises if ownership has multiple licenses. Although not required for the manager to be present at all times, the manager shall assume responsibility for training and monitoring the employees at their assigned stores.

(c) Certificates of registration issued by the commission shall be valid only for the licensed premises for which the employee registers, and the license number of the premises shall be printed on the certificate of registration. Employees may be employed to work at more than one (1) licensed premises; however, a separate certificate of registration shall be required for each licensed premises. Class 4 retail dealer licensees shall be exempt from the "one certificate-one premises" limitation.

(d) Licensees shall ensure that all employees who are required to register with the commission have their certificate of registration for the licensed premises readily available for inspection while on duty at that licensed premises.

(e) Persons who apply to the commission for registration shall present:

(1) A valid, unexpired government-issued photo ID, listing the registrant's name and date of birth (e.g., driver's license, state ID, US passport, or military ID);

(2) An original social security card or a wage and tax statement form W-2, provided the social security number is printed on the document. A printed electronically transmitted copy is acceptable; and

(3) For managers [~~or bartenders~~] only, a letter from the holder of the liquor license, principal of the licensee entity, or authorized agent of the licensee entity certifying that the applicant will be or is a manager of the licensed premises.

(f) Each person registered shall be photographed and issued a certificate of registration, which shall be valid until the expiration date indicated thereon or when recalled, suspended, or revoked by the commission. The certificate of registration shall be retained by each employee and not surrendered to or held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.

(g) Certificates of registration for employees, except for dancers, bartenders, or managers, shall be valid for four (4) years from the date of issue.

(h) Certificates of registration for a minor 16-20 years of age, with proper notification, shall be valid for four (4) years, pursuant to rule §3-86-101.502.

(i) Certificates of registration for a dancer shall be valid for one (1) year from the date of issue. A person seeking to register as a dancer shall be at least twenty-one (21) years of age and shall be subject to the same requirements as all other employees of licensed premises, including but not limited to, time card and registration requirements.

(j) Certificates of registration for a host or hostess shall be valid for four (4) years, and only issued to an employee who performs the duties of a host or hostess, as defined in rule §3-80-1.01. The host or hostess shall only be allowed to be employed or utilized under a class 5 dispenser, category 4 hostess license. A host or hostess employed under any other class of license shall not have employees registered or performing duties as a host or hostess, except as defined in rule §3-80-1.01.

(k) Certificates of registration for a manager or a bartender shall be valid for four (4) years from the date of successful completion of the server-training program administered by the commission, which includes an examination and instruction in the following areas: Identifying and dealing with intoxicated persons; reviewing liquor laws and rules; and dangers of driving while intoxicated. A person seeking to register as a manager shall be at least twenty-one (21) years of age. A person seeking to register as a bartender shall be at least eighteen (18) years of age.

(1) A manager or bartender for the same or another licensed premises need not retake the server-training program if that person successfully completed the server-training program within the past four (4) years.

(2) Certificates of registration shall be valid only for the licensed premises in which the manager or bartender is registered. A person may be employed to work as a manager at more than one licensed premises, however, that person shall have a manager's certificate of registration for each licensed premises. Class 4 retail dealer licensees shall be exempt from the "one certificate-one premises" limitation.

(3) Any person registered as a manager for a licensed premises may also perform any other duties; provided, however, a registered manager may not perform as a dancer, or a host or hostess as defined in rule §3-80-1.01, unless separately registered for those duties. [~~at the same premises, except for performing as a dancer, which requires a separate registration.~~] Managers of [~~licensed~~] class 11 cabarets are not permitted to sit with customers during hours of operation.

(l) Entertainers are not required to be registered as employees pursuant to this rule.

§3-82-38.06. ~~**[Registration of dancers. (a) Any dancer shall be subject to the same requirements as all other employees of licensed premises including, but not limited to, time card and registration requirements pursuant to rule §3-82-38.04 and rule §3-82-38.05.**~~

~~**(b) A person seeking to register as a dancer shall be at least twenty-one (21) years of age, in addition to all other requirements provided for in rule §3-82-38.05.**~~

~~**(c) Certificates of registration for dancers shall be valid for one (1) year from the date of issue. The certificate of registration for a dancer shall be valid only for purposes of being a dancer. For example: a dancer who also performs as a bartender must be registered with the Commission as a dancer and a bartender.]**~~ **Reserved.**

§3-82-38.07. Refusal or revocation of employee's registration, and proof of registration. (a) The commission may, for good and sufficient reason, refuse to register an applicant for a certificate of registration or suspend or revoke a certificate of registration which has been issued.

(b) Except as provided in rule §3-82-38.08, in every case where it is proposed to refuse to register an applicant or to suspend or revoke the registration of an employee, that applicant or employee shall be entitled to notice and hearing in conformance with HRS Chapter 91.

§3-82-38.08. **[**~~**Semi-Annual**~~**]** **Annual** **Submission of employee list.** All licensees required to register employees pursuant to rule §3-82-38.05 shall submit to the commission, annually on a date and in such manner as the commission may direct, and on such other dates as may be required by the commission, the name of every person then employed on the licensed premises who is registered with the commission or who is subject to registration. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's annual list of employees shall be considered terminated and the registration of that person shall be voided. A person whose registration with the commission for a particular premises has expired and who then applies for re-registration shall be considered an original applicant and shall appear in person at the commission's office to complete this registration. It shall be presumed evidence of a violation of rule §3-82-38.05 (registration of employees)~~**[, rule §3-82-38.06 (registration of dancers), and rule §3-82-38.09 (licensee and manager in charge of premises)]**~~ that an unregistered employee's name appears on any employee time card or employment records.

§3-82-38.09. Licensee and manager in charge of premises. (a) All classes of licensees, excluding class 1 manufacturer, class 3 wholesale dealer, and [~~**class 10 special**~~**] class 8(a) per day transient vessel, shall have a duly registered manager in active charge of the licensed premises during the time the establishment is open for business.**

(1) Managers on catered premises shall be registered with the hotel, restaurant, or condominium hotel licensee performing the catering.

(2) Class 4 retail dealer licensees shall have a duly registered manager assigned to each licensed premises or to a group of premises if ownership has multiple licenses, in part to ensure employees are knowledgeable in applicable state laws and commission rules. Although not required for the manager to be present at all times, the manager shall assume responsibility for training and monitoring the employees at their assigned stores.

(3) Class 17 bring-your-own-beverage licensees shall have a duly registered manager in charge of the licensed premises during the time the establishment is licensed to permit consumption on the premises by patrons.

(b) Licensees shall ensure all managers have a certificate of registration for the licensed premises readily available for inspection while on duty at that premises. All managers shall properly register, pursuant to rule §3-82-38.05.

§3-82-38.10. Compliance with any other applicable laws. (a) Licensees are subject to and must be in compliance with any other laws applicable to the business of the licensee, whether in existence at the time the license is issued or enacted or amended thereafter.

(b) Failure to comply with any such other laws applicable to the business of the licensee which results in a citation or other notice of violation issued to the licensee will constitute a violation of this rule.

(c) Violation by a licensee of an emergency order, proclamation, rule, or similar statement pursuant to HRS Chapter 127A, and unless the licensee immediately corrects the violative conduct, will result in the immediate closure of the licensed premises and suspension of the license for a period of twenty-four (24) hours, without prior notice and hearing.

§3-82-38.11. Price list to be posted. (a) Current prices of all liquor and any other services shall, at all times, be posted and exposed to view of patrons within the interior of the licensed premises authorized to sell liquor for consumption on the premises. For the purpose of this rule, legible signs, menus, or table tents are acceptable. If there is a price range for certain types of liquor, the licensee shall post the minimum price and the maximum price of the liquor.

(b) All price lists and menus displayed pursuant to subsection (a) of this rule shall state whether or not a service charge is included in the total amount charged to the customer and the amount of said charge, if any.

(c) All price lists and menus displayed pursuant to subsection (a) of this rule shall state whether any tax is added to the total amount charged to the customer for liquor, other beverages, and/or services provided.

§3-82-38.12. Music, dancing, entertainment. (a) All forms of live/professional music, dancing, and entertainment, including but not limited to electronic gaming devices, card playing and table games, are prohibited in premises licensed to sell liquor **[~~for consumption thereon~~]** except where authorized by law**, for amusement purposes only,** or where prior commission approval has been obtained.

(b) Any electronic gaming device, card playing, and table games approved by the commission are limited to amusement purposes only, and any form of gambling is strictly prohibited.

(c) Any licensee may install and operate television sets, radios, **and** jukeboxes**[~~, and any other system of providing recorded music in the premises,~~]** without written permission of the commission, except that the licensee shall obtain written permission from the commission prior to installing or operating any system which provides music and enables customers to sing along with that music (i.e., "karaoke machines").

(d) Any dancing by or with customers is permitted only on a designated dance floor approved by the commission. Licensees shall not allow any form of lap dancing by customers or employees.

§3-82-38.13. Dance floor. In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than 150 square feet suitable for dancing. When used for dancing, the designated area shall be totally free from all obstructions. The designated area may, however, be used for other purposes when not used for dancing.

§3-82-38.14. Term of license. (a) With the exception of transient vessel **[~~(per day)~~]**, special, and temporary licenses of any class or kind, every license shall expire at twelve o'clock midnight on June 30, notwithstanding when the license was issued.

(b) No license shall be renewed unless the fee applicable thereto and an application for renewal of such license has been submitted to the commission not later than June 30 of each year and the applicant presents signed certificates from the applicable tax services as required by HRS §281-45. These certificates shall be presented not later than July 31 of the year for which the applicant seeks renewal of a license, unless the commission waives this requirement for good cause.

(c) Upon the expiration of the license and until that license is renewed and issued, the sale of liquor on the premises is prohibited. The expiration date of a transient vessel (per day), special, caterer, or temporary license shall be determined by the commission and stated on the license at the time it is issued and that license shall expire at midnight on the date so determined or on June 30 if the primary license is not renewed.

(d) Unless the commission waives the application of this subsection for good cause, no license shall be renewed:

(1) While the commission is withholding issuance of a renewed license pursuant to rule §3-83-61.01; or

(2) While there are ongoing commission proceedings (i) to revoke, suspend, or deny renewal of the license; or (ii) to consider notices of violation issued to the licensee; or both.

§3-82-38.15. Unlawful discrimination. (a) No licensee whose premises are open for business to the general public shall refuse, withhold from, or deny to any person, the full and equal enjoyment of any of the licensee's accommodations, advantages, facilities, goods, privileges, or services on the basis of that person's race, color, disability, religion, sex, sexual orientation, or ancestry.

(b) For purposes of this rule, any licensee that caters, sells, serves, extends, offers, or otherwise makes available to the general public its accommodations, advantages, facilities, goods, privileges, or services for a fee or charge shall be deemed to be open for business to the general public.

(c) This rule shall not apply to clubs that are not open to the general public, except to the extent that the accommodations, advantages, facilities, goods, privileges, or services of the club are made available to the general public.

(d) Nothing in this rule shall be construed or interpreted to prohibit a licensee from the right to deny service to any person for failure to conform to the usual and regular requirements, standards, and regulations for the licensed premises so long as the denial, requirements, standards, and regulations are uniformly applied to all persons without regard to race, color, disability, religion, sex, sexual orientation, or ancestry.

§3-82-38.16. Trade name; change; fee. A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State department of commerce and consumer affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the commission a certificate of registration of trade name issued by the State department of commerce and consumer affairs, showing approval of that registration. A processing fee **[~~of $45.00~~] in such amount as shall be established by the commission** shall be assessed **[~~by the Commission~~]** for any change of existing trade name to include a license transfer.

§3-82-38.17. Use of unauthorized trade name prohibited. Use of any trade name without prior approval of the commission is prohibited. Any publication or advertising or sign with an unauthorized trade name will be considered presumed evidence of use of that trade name.

§3-82-38.18. Sampling on licensed premises. (a) Licensees desiring to have a promotional sampling on their premises shall apply to the administrator prior to permitting such sampling on the premises. The application shall clearly state and identify the **[~~type~~] brand** of liquor to be sampled, **where the liquor was acquired from,** the date and hours sampling is to take place, and the name of the person in charge of sampling.

(b) Samples of beer or wine will be limited to one (1) three-ounce (3 oz.) sample of each item per person. Distilled spirits will be limited to a single one-ounce (1 oz.) sample of each item per person. **Ready-to-drink cocktails, herein defined as a mixed drink or cocktail that is premixed and packaged in a metal can or other factory-sealed container, will be limited to one (1) three-ounce (3 oz.) sample of each item per person.**

(c) Unless premixed and packaged in a metal can or other factory-sealed container, samples of beer, wine, or distilled spirits shall not be mixed with any other liquor.

(d) No minors shall be permitted to sample liquor.

(e) No person under the age of eighteen (18) years shall serve liquor.

(f) A copy of the approval form shall be posted in the vicinity of the sampling area.

(g) Wholesale dealer licensees are exempt from obtaining prior approval for sampling on the premises but will be required to file monthly reports on a form prescribed by the commission.

§3-82-38.19. Hours of business. A licensee shall be authorized to sell, serve, or allow consumption of liquor based upon its class of license during the hours specified as follows:

(a) Dispenser, club, restaurant, brewpub, caterer, transient vessel, tour or cruise vessel, special, winery, and small craft producer pub: From 6:00 a.m. to 2:00 a.m. the following day.

(b) Cabaret: From 10:00 a.m. to 4:00 a.m. the following day. Liquor may be dispensed during the prescribed hours only when service is confined to customers within the area where live or amplified recorded music for dancing is provided for patrons, including a dance floor, or professional entertainment as permitted by HRS §281-31, or authorized by the commission, is both visible and audible to customers. In areas that do not comply with the foregoing requirement, liquor may be sold, served, or consumed no later than the closing hour prescribed for dispenser premises.

(c) Retail dealer: From 6:00 a.m. to 12:00 midnight.

(d) Manufacturer and wholesale dealer: 24 hours a day; sampling shall be limited to from 6:00 a.m. to **[~~2:00 a.m. the following day~~]** **12:00 midnight**.

(e) Hotel: From 6:00 a.m. to 4:00 a.m. the following day.

(f) Temporary: The hours of the class of the license for which the application has been submitted.

(g) Condominium hotel: From 6:00 a.m. to 2:00 a.m. the following day.

(h) Class 17 bring-your-own-beverage: From 6:00 a.m. to 2:00 a.m. the following day.

(i) Manufacturers, restaurants, retail dealers, brewpubs, wineries, and small craft producer pubs for product sold for off-premises consumption: From 6:00 a.m. to 12:00 midnight.

§3-82-38.20. Sale, service, or consumption before or after hours of business. (a) No sale, service, or consumption of liquor on or within the licensed premises shall be provided before or after the hours established by the commission.

(b) No liquor, whether in bottle, glass, or other container, shall be open and readily consumable within the licensed premises before or after the authorized hours as provided by these rules.

§3-82-38.21. Extension or curtailment of hours of business. The commission shall have the authority to extend or curtail hours of business of any license class on a holiday or other occasion when such action is deemed advisable by the commission.

§3-82-38.22. Recorking. Unless inconsistent with HRS Chapter 281 or the rules, any licensee engaged in meal service may allow a patron who has purchased or brought onto the licensed premises wine, liquor, or beer for consumption with a meal to remove

the partially consumed product from the licensed premises, which shall be recorked or resealed in its original container.

§3-82-38.23. Compliance with allowable noise levels. (a) No licensee shall make or permit to be made from its licensed premises or any adjacent area under the licensee's control any noise which results in a complaint from one or more resident(s) or tenant(s) in the vicinity and exceeds the maximum permissible sound levels (MPSL) as set forth in this rule.

Maximum Permissible Sound Levels in dBA

Zoning Districts	Daytime	Nighttime
	7 a.m. – 10 p.m.	10 p.m. – 7 a.m.
Class A	55	45
Class B	60	50
Class C	70	70

(b) There shall be a violation of this rule when: by measurement by sound level meter at or within the property lines of the complainant, or if unavailable, from a position most practical, for a combined total of two (2) minutes in any twenty (20) minute period, noise levels exceed the pertinent MPSL for the complainant's zoning and exceed the ambient noise level by three (3) or more decibels.

(c) In mixed zoning districts, the lowest MPSL shall apply. For any area not zoned or interim zoned, the comparable state land use classification shall apply.

(d) The commission may, by a majority vote, set a lower MPSL for a license upon finding that the location of the licensed premises and the unusual nature of the pre-existing surrounding uses are such that the standard MPSL are insufficient to permit reasonable conduct of the pre-existing uses. This standard shall include, but not be limited to, hospitals, nursing homes, residential health care, or other facilities that are care providers and that without such lower MPSL, the license application or renewal will more likely than not be denied.

§3-82-38.24. Liquor display and storage. The display or storage of liquor by a licensee on other than the licensed premises is prohibited, except that the display of liquor at a fair, product show, or similar exhibition by the holder of a manufacturer or wholesale dealer license is permissible. An approved outside warehouse or storage, in accordance with rule §3-82-39.01, is permissible.

§3-82-38.25. Restrictions or conditions on licenses. (a) Pursuant to HRS §281-61(b), the commission may, at any time, fine, suspend, revoke, or place restrictions or conditions on any license issued under HRS Chapter 281 and the rules for the purpose of preventing activities within the licensed premises or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public. Such adjacent areas include areas such as, but not limited to, stages, entertainment areas, lanais, **sidewalks,** and parking areas.

(b) The commission may place such restrictions or conditions on any license issued or transferred pursuant to HRS Chapter 281 or these rules (i) at the time the

license is initially issued**, (ii) at the time the license is renewed,** or **[~~(ii)~~] (iii)** at any other time upon petition of the administrator to the commission and after notice and hearing in accordance with HRS Chapter 281 and these rules.

(c) Licensee shall comply with any restrictions or conditions placed on the license by the commission pursuant to this rule.

§3-82-38.26. Bottle service for on-premises consumption. Service of wine or distilled spirits in its original container is permitted at premises licensed for on-premises consumption. The seal of the original container shall be broken at the time of service. **Licensees are prohibited from storing any unused portion of the bottle purchased by the customer on the licensed premises, pursuant to the terms of its license.**

§3-82-38.27. "Growlers" or containers used for off-premises consumption. A growler or other glass, ceramic, or metal container used by manufacturers, restaurants, retail dealers, brewpubs, wineries, and small craft producer pubs for sale of product for off-premises consumption by patrons shall be a single-use container that is filled on-premises or a container that is re-sealable once opened, and intended for multiple fills and use.

§3-82-38.28. Liquor in authorized areas. No liquor for sale, service, or consumption shall be removed from the licensed premises, except as authorized and as permitted by the terms of the license.

§3-82-39. PLACE OF BUSINESS; EXCEPTION; SOLICITORS' AND REPRESENTATIVES' PERMITS.

§3-82-39.01. Warehousing. Any licensee may be permitted outside warehousing upon written approval of the commission, subject to the following conditions:

(1) An application for the use of a warehouse outside of the licensed premises shall be submitted by the licensee on a form prescribed by the commission.

(2) The designated building shall be in an area zoned for warehousing.

(3) Warehouse space used for the storage of liquor shall be completely enclosed and separated from other merchandise.

(4) An application for outside warehousing shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, a floor plan of the premises drawn to scale, and a list of all licensed premises sharing the same warehouse, if the applicant is the holder of more than one license. The joint use of an outside warehouse space by more than one licensee at the same time is prohibited.

(5) Invoices for all liquor received at the warehouse and a record of all liquor removed from the warehouse shall be kept within the warehouse. All such records shall be kept for not less than three (3) years.

(6) No liquor shall be distributed or sold from the outside warehouse. However, this restriction shall not apply to the delivery of liquor from the outside warehouse of a wholesale dealer licensee. Liquor imported into the State may come to rest at an outside warehouse by being unloaded into such warehouse.

(7) Any investigator may without notice and without any search warrant or other legal process, visit and have immediate access to every part of the warehouse premises of any licensee for the purpose of making any examination.

§3-82-39.5. LIQUOR LICENSE PROHIBITED, WHERE. Reserved.

§3-82-40. UNLICENSED LIQUOR.

§3-82-40.01. Unauthorized liquor. A licensee is prohibited from possessing on the licensed premises any liquor other than the kind authorized by its license. The presence of such unauthorized liquor on the licensed premises shall be presumed evidence of illegal possession thereof by the licensee.

§3-82-41. TRANSFER OF LICENSES; NOTICE OF CHANGE IN OFFICERS, DIRECTORS AND STOCKHOLDERS OF CORPORATE LICENSES; PARTNERS OF A PARTNERSHIP LICENSE, AND MEMBERS OR MANAGERS OF A LIMITED LIABILITY COMPLANY LICENSE; PENALTY.

§3-82-41.01. Transfer of license. (a) No license shall be transferred while an adjudication hearing **or violations** against the licensee is pending, and/or there are any outstanding assessments and/or penalties for liquor law or rule violations.

[(b) Dispenser (class 5) and cabaret (class 11) licensees shall comply with the requirements in HRS §281-57.]

[(c)] (b) The transferee is responsible for payment of any violations or penalties that might be due or levied against the transferor.

[(d)] (c) The transferee shall include with any transfer application a detailed and current eight and one-half (8-1/2) by eleven (11) inch floor plan of the premises.

§3-82-41.02. Transfer of corporate stock; notification regarding limited partners, limited liability company managers or members; notification of merger or conversion. (a) **[Prior to the date of transfer or] Within thirty (30) days from a** change in ownership of a corporation, the corporate licensee shall submit an application for stock transfer **[and secure the approval, in writing,]** of such transfer or change of ownership from the commission. The request for approval shall include the following:

(1) **[The stock purchase offer or similar document] Executed copy of the stock purchase agreement**;

(2) Information regarding the consideration to be paid for the transfer and the effective date of the transfer of stock;

(3) Personal history, FBI fingerprint card, and criminal history record clearance, **[as explained in] in accordance with** rule §3-82-45.01, on forms prescribed by the commission, of each new stockholder holding twenty-five per cent (25%) or more of corporate stock, officer, or director**. If the new stockholder is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals**; and

(4) **[Upon the approval of the proposed transfer of stock by the Commission, the corporate licensee shall submit an executed copy**

~~of the stock purchase agreement to the Commission not more than fifteen days after the effective date of the transfer of stock or approval by the Commission, whichever is earlier.~~] Documentation from the department of commerce and consumer affairs of proof of the existence of a valid corporation in good standing.

(b) If the commission finds that the transferee is an unfit or improper person to hold a license in the transferee's own right pursuant to HRS §281-45, it shall not approve the transfer and may in its discretion revoke or suspend the license until a retransfer or new transfer of the capital stock is made to a fit and proper person.

(c) If any transfer is made without an application being submitted within thirty (30) days from the date of transfer, the commission may in its discretion revoke or suspend the license until it determines that the transferee is a fit and proper person.

[~~(b)~~] (d) Corporate licensees shall notify the commission, in writing, within thirty (30) days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the commission. Limited liability company licensees shall notify the commission, in writing, **[~~prior to~~] within thirty (30) days of** any change of managers of manager-managed limited liability companies or of any change of members in member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the commission. **Licensees making notification under this section shall submit company documents (e.g., corporate minutes, resolutions, etc.) reflecting the change with the request.** All newly appointed or elected principals, who are natural persons, of any class license, except as exempted by rule §3-82-45.01, must be fingerprinted **[~~or submit fingerprints on a commission fingerprint card~~] as prescribed by the commission** and submit a personal history and affidavit, and must **[~~request~~] submit** a criminal history clearance **[~~from the Hawaii criminal justice data center~~]** within thirty (30) days of appointment or election, unless the period is extended or the requirement is waived by the commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (for example, articles of incorporation or organization, or partnership agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the commission, in writing, within thirty (30) days of any change of limited partners **or members** holding twenty-five per cent (25%) or more interest **[~~or members~~]** and submit a personal history of the new limited partner **or member** holding twenty-five per cent (25%) or more interest **[~~or member~~]**, on forms prescribed by the commission.

[~~(c)~~] (e) The transfer of an aggregate of fifty-one per cent (51%) of the stock of cabaret licenses which, pursuant to HRS §281-31(l), are permitted to have entertainment by dancers, shall be considered a transfer of the license for purposes of determining whether the licensee may continue to have such entertainment.

~~[(d) Stock transfer applicants shall provide documentation from the department of commerce and consumer affairs of proof of the existence of a valid corporation.~~]

(f) Prior to the date of conversion of a licensee entity into any other form of entity, the licensee shall notify in writing, and submit such forms prescribed by the commission and secure the approval the Commission. The request for approval for a conversion shall include the following:

(1) The proposed conversion document shall contain the licensee and the description of converted entity and its principals and ownership;

(2) A statement describing the organizational form of the converted entity, and the state or country under the laws to be incorporated, formed, or organized and;

(3) Documentation from the State of Hawaii Department of Commerce and Consumer Affairs of proof of the licensee's valid existence and is in good standing.

(4) If the proposed conversion has been filed within the state or in another state or country under the laws it is incorporated, formed, or organized in, a copy of the duly filed document.

(5) Upon the approval of the proposed conversion by the Commission, the corporate licensee shall submit a filed State of Hawaii Department of Commerce and Consumer Affairs copy of the articles of conversion, and the converted corporate entity's articles of incorporation, formation, or organization to the Commission not more than fifteen days after the effective date of the conversion or approval by the Commission, whichever is earlier.

(6) The foregoing shall not preclude compliance of HRS §281-41(e) or (i).

(g) Prior to the date of the merger of a licensee entity with any other entity, the request for approval for a merger shall include the following:

(1) The proposed merger documents shall contain the names and incorporation, organization, formation documents of each entity that is a party to the merger, including the lists of principals;

(2) A statement describing the organizational form of the surviving entity, and the state or country under the laws it is to be incorporated, formed, or organized in.

(3) If the proposed merger has been filed within the state or in another state or country under the laws it is incorporated, formed, or organized in, a copy of the duly filed document.

(4) Upon the approval of the proposed merger by the Commission, the licensee shall submit a filed State of Hawaii Department of Commerce and Consumer Affairs copy of the articles of merger, and surviving corporate entity articles of incorporation, formation, or organization to the Commission not more than fifteen days after the effective date of the conversion or approval by the Commission, whichever is earlier.

(5) The foregoing shall not preclude compliance of HRS §281-41 (e) or (i).

§3-82-41.03. Payment of fees upon transfer of license. A transferor shall pay in full any additional fee which may have accrued through the exercise of the license by the

transferor prior to the transfer of a license. Upon transfer of the license, the transferee shall be responsible for any additional fee based on the total gross liquor sales for the entire term for which the license was issued, including the period during which the license was exercised by the transferor; provided that any payment made by the transferor during the term of the license on account of the accrual shall be considered payment toward any additional fee that may be chargeable against the transferee upon expiration or termination of such license.

§3-82-41.04. Management [~~or operating~~] agreements. Prior to any management [~~or operating~~] agreement taking effect, an existing licensee shall notify the commission, in writing, about such agreement [~~and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person's or principal's own right in conformance with HRS §281-45~~].

(a) The signed notice shall include [~~the following:~~] a copy of the executed management agreement.

[~~(1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.01(a)(1)(i)-(iv), substituting the manager, operator, or entity for "applicant" in submitting documents under those sections; and~~

~~(2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.~~]

(b) [~~The signed notice shall constitute certification by the licensee that the following is true:~~

~~(1)~~] The agreement is restricted to permitting the [~~operator~~] management company to manage [~~and operate~~] the licensed [~~premises~~] business on behalf of and for the benefit of the licensee, and the licensee shall [~~remain in~~] have and maintain possession and control of the licensed [~~premises~~] business.

[~~(2)~~] (c) Except in the case of a management [~~or operating~~] agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.

[~~(3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with HRS §281-45.~~]

[~~(c) If the commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person's or principal's own right pursuant to HRS §281-45, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within thirty (30) days of the written notification to the licensee of the commission's aforementioned finding, that such management or operating agreement has been terminated.~~]

[~~(c)~~] **(d)** In addition to the documents required under subsection (a), the licensee will provide any additional documents or information related to the arrangement contemplated by the management **[~~or operating~~]** agreement upon request.

[~~(d)~~] **(e)** If at any time the commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed **[~~premises~~]** **business**, or the entire premises is not being **managed [~~and operated~~]** by the manager **[~~or operator~~]**, the commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.

(f) Management agreements shall not be utilized to allow a person to sell liquor utilizing another person's license or to effectively take possession or control over a licensed business.

The term "management agreement" **[~~or "operating agreement"~~]** shall include any agreement, verbal or written, where through such agreement the licensee allows a manager **[~~or operator~~]** to manage **[~~and operate~~]** the licensed **[~~premises~~]** **business** on behalf of **and for the benefit of** the licensee.

§3-82-41.05. Surrender of license upon suspension, revocation or closing of business. Every licensee shall immediately surrender the license to the commission for appropriate action upon suspension or revocation thereof, or within five (5) days after permanent closing of the business or loss of lease or bona fide premises. A letter of explanation signed by a corporate officer, partner, or other authorized person shall accompany any license surrendered for commission action.

§3-82-41.06. Licenses [~~under~~] held in safekeeping. (a) Any license held in safekeeping by the commission shall be considered an active license, and the licensee must continue to comply with all commission laws and rules unless otherwise directed by the commission. Any license held in safekeeping beyond June 30 of a license year must receive commission approval to remain in safekeeping and as otherwise directed by the commission.

(b) Licenses held in safekeeping shall file a partial report within thirty-one (31) days from the date the license is placed in safekeeping. The licensee is exempt from filing a gross liquor sales report while the license is held in safekeeping.

§3-82-42. MANUFACTURERS AND WHOLESALE DEALER LICENSES, SPECIAL RESTRICTIONS.

§3-82-42.01. Trade practices. (a) While reasonable marketing techniques are acceptable in the liquor industry, activities which impact adversely on open competition within the industry are prohibited.

(b) No manufacturer or wholesale dealer shall induce the purchases of a retail licensee by any trade practice which is prohibited by section 5(b) of the federal alcohol administration act and the rules, regulations, and decisions of the alcohol and tobacco tax and trade bureau, as the same may be changed from time to time.

(c) Retail licensees are prohibited from soliciting or receiving any items which a manufacturer or wholesale dealer is prohibited from giving to a retailer.

§3-82-43. REPEALED.

§3-82-44. ADVERTISEMENTS AND SIGNS UPON LICENSED PREMISES.

§3-82-44.01. Advertisements and signs. (a) No licensee shall permit lewd or obscene advertising matter to be distributed or displayed in connection with the exercise of its license.

(b) Any exterior signs which contain liquor advertising, either in whole or in part, shall conform to the sign regulations of the land use ordinance and this rule and have prior approval of the city department of planning and permitting.

(c) All licensees shall post a sign on the licensed premises stating:

"IT IS ILLEGAL:

- ♦ FOR A PERSON UNDER 21 YEARS OLD TO PURCHASE, POSSESS, OR CONSUME LIQUOR
- ♦ TO USE FALSE IDENTIFICATION TO OBTAIN LIQUOR
- ♦ TO USE ANOTHER PERSON'S IDENTIFICATION TO OBTAIN LIQUOR, OR
- ♦ TO PURCHASE LIQUOR FOR A PERSON UNDER 21 YEARS OLD Sections 281-78 & 101.5, Hawaii Revised Statutes."

The sign shall be clearly legible from a distance of ten (10) feet to a person with normal vision and shall contain this exact wording.

(d) All licensees shall display in and around the premises signs notifying all customers of the penalties of driving under the influence of intoxicating liquor under HRS §291-4. These signs are available from the commission at no charge **and on the commission's website**.

§3-82-45. NO LICENSE ISSUED, WHEN.

§3-82-45.01. Requirement for criminal history and fingerprint card. (a) Applicants for all licenses except renewal applications and applications for daily transient vessel **[~~and caterer class~~]** licenses shall submit with each license application a form requesting criminal history clearance **[~~directly to the criminal justice data center~~]** for each of the principals of the applicant who are natural persons. The form will be available at the commission. Applicants for other than club**[~~,~~]** **and** daily transient vessel **[~~and caterer class~~]** licenses will also be required to submit fingerprints of the principals who are natural persons to the commission on an FBI fingerprint card bearing the commission's identification. Fingerprints may be taken at the commission by appointment, **[~~or they may be taken by legal or other authority in jurisdictions [off] outside of Oahu, in which case a letter citing the processor's competence and the means by which the principal was identified must accompany the completed fingerprint card~~]** **or any duly authorized vendor or method approved by the**

commission and the Hawaii criminal justice data center. Clearances issued as a result of these fingerprintings shall be valid for license application or reapplication for up to two (2) years from the clearance date. Charges for these clearances will be determined and assessed upon the applicant by the **Hawaii criminal justice data** center.

(b) Applicants may still be scheduled for a hearing. However, no license will be issued until all clearance forms have been submitted by the applicant, unless waived by the commission for just cause.

(c) All new principals (officers, directors, **general partners,** limited partners, managers of manager-managed limited liability companies, members of member-managed limited liability companies, owners of a twenty-five per cent (25%) or greater interest in the licensee)**, or primary decision makers of publicly-traded corporations or limited liability companies or corporations or limited liability companies ultimately solely-owned by a publicly-traded corporation or limited liability company** who are natural persons must submit fingerprints to the commission and a request for criminal history clearance to the Hawaii criminal justice data center within thirty (30) days of appointment or election, unless the period is extended or the requirement is waived by the commission, for just cause.

~~[§3-82-45.2. Requirements Applicable to Late Night Cabarets, Establishments Where Entertainment is Provided by a Dancer and Hostess Bars. (a) Except as provided in subsection (b), no license of a class or category permitting the licensee to provide entertainment by an exotic dancer; no class 5 category 4 (hostess) license; and no class 11 (cabaret) license permitting operation until 4:00 a.m., may be issued to an establishment located within 500 feet of any previously licensed establishment of any class or category subject to this section.~~

~~(b) This section shall not apply to any class 11 (cabaret) license in the resort commercial or resort mixed use precinct of the Waikiki Special District.~~

~~(c) This section shall apply only to the issuance of a new liquor license and not to the renewal of a license.~~]

§3-82-46. POOL BUYING.

§3-82-46.01. Time limitations for buying. Licensees desiring approval for pool buying shall submit the commission form to the administrator for consideration. The approval period shall be for the license year and must be renewed annually.

§3-82-47. STANDARD BAR; MUSIC AND DANCING AVAILABLE.

§3-82-47.01. Ninety-day trial entertainment. (a) Only licensees holding a valid on-premises license issued pursuant to HRS §281-31 and in good standing may apply for the ninety-day trial entertainment.

(b) If a premises has previously been the subject of a ninety-day trial entertainment period, a subsequent and different licensee on the same premises must receive commission approval to apply for the trial entertainment.

PART IV. PROCEDURE FOR OBTAINING LICENSE

CHAPTER 83

§3-83-51. PRIOR INSPECTION. Reserved.

§3-83-52. PUBLIC HEARING. Reserved.

§3-83-53. APPLICATION; PENALTY FOR FALSE STATEMENTS.

§3-83-53.01. License applications; notice of hearing; affidavits. (a) An applicant applying for a new license or for the transfer of an existing license of a manufacturer, restaurant, wholesale, retail, dispenser, club, **[~~annual transient vessel,~~]** tour or cruise vessel, cabaret, hotel, caterer class 13(b), brew pub, condominium hotel, winery, bring-your-own-beverage, or small craft producer pub shall file in support of the application:

(1) With the application:

(A) If the applicant is a sole proprietor or an unincorporated association, a personal history and affidavit for each natural person listed in the application on forms provided by the commission.

(B) If the applicant is a partnership, the partnership agreement, a certificate of good standing from the department of commerce and consumer affairs that is not more than sixty (60) days old, and a list of the current partners to the partnership. For each partner, a personal history and affidavit on a form provided by the commission or, if the partner is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that partner, and a list of current principals of that partner **and ownership percentage details**.

(C) If the applicant is a limited liability company, the articles of organization and operating agreement, a certificate of good standing from the department of commerce and consumer affairs that is not more than six (60) days old, and a list of the current managers and current members of the company with their percentage of ownership. For each manager and member, a personal history and affidavit on a form provided by the commission or, if the manager or member is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that manager or member, and a list of current principals of that manager or member **and ownership percentage details**.

(D) If the applicant is a corporation, the articles of incorporation, a certificate of good standing from the department of commerce and consumer affairs that is not more than sixty (60) days old, and a list of current officers, current directors, and current stockholders of twenty-five per cent (25%) or more of the outstanding capital stock of the corporation. For each officer, director, or stockholder of twenty-five per cent (25%) or more of the outstanding capital stock, a personal history and affidavit on a form provided by the commission or, if the stockholder is not a natural person, the

partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals of that stockholder **and ownership percentage details**. **The submission of a publicly-traded corporate or limited liability company applicant, or a corporate or limited liability company applicant ultimately solely owned by a publicly-traded company, shall be in accordance with HRS §281-53(1).**

(E) Except for a caterer **[~~class 13(b)~~]** or condominium hotel license, a **clear and accurate** floor plan to scale **(to wit, 1/8-1/4-3/16-3/32 inch equal to one (1) foot)** of the licensed premises or proposed licensed premises with the area to be licensed demarcated in red and showing all fixtures, a square footage calculation for the area to be licensed, and the scale **(to wit, 1/8-1/4-3/16-3/32 inch equal to one (1) foot)** and orientation of the plan, and, in the case of an application regarding a license for consumption on the premises, the restrooms for the premises **[~~and a preliminary approval stamp from the State Department of Health~~]**. If the applicant is applying for a class or category of license that permits dancing, the designated dance floor shall be shown on the floor plan.

(F) A copy of the floor plan required by sub-paragraph (E) on an 8-1/2 x 11-inch piece of paper.

(G) A copy of the deed, lease, sublease, assignment of lease, rental agreement, or other conveyance of the use of the property to the applicant permitting the activity for which the license is applied. A copy of the executed document with applicable consents shall be submitted before the license is issued and may be submitted in fulfillment of the requirement of this paragraph.

(H) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a tax map drawn to a scale of one (1) inch to each forty (40), fifty (50), or sixty (60) feet showing the area within five hundred (500) feet of the licensed area or proposed licensed area of the premises and also indicating one hundred (100) feet from the premises**, or as drawn to scale on county tax map records**. **All [~~tax map key numbers~~] parcels within five hundred (500) feet shall contain on the tax map an identification number.**

(I) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of names and addresses of all property owners, recorded lessees, condominium projects, and cooperative apartment projects within five hundred (500) feet of the premises, which list shall also designate those owners, lessees, condominiums, and cooperatives which are within one hundred (100) feet of the premises. **Each list shall contain a tax map identification number. Additional procedures, forms, and**

formatting of [~~documents~~] lists shall be as prescribed by the commission.

(J) Except in the matter of **[~~a hotel as defined in HRS §486K-1, a restaurant, or a convenience store, for~~]** applications for new **class 2, class 4, class 12, and class 15** licenses and for the transfer of an existing dispenser or cabaret license, a list of small businesses within five hundred (500) feet and of small businesses within one hundred (100) feet of the premises. **Additional procedures, forms, and formatting of [~~documents~~] lists shall be as prescribed by the commission.**

(K) A full, true, and accurate statement of the complete financial condition of the applicant, which shall not be over six (6) months old, or that is less than one (1) year old and certified by the applicant to be substantially correct.

(L) Documents substantiating the financial statement and showing sufficient finances to cover proposed expenditures related to the application and including initial operating expenses for the first six (6) months of operation.

(M) For the transfer of a license, an instrument documenting the consideration for the proposed transfer.

(N) Except when the applicant will do business under its own name, exactly, for an application for a new license, a certificate of registration of trade name from the department of commerce and consumer affairs or other sufficient documentation of the permitted use of the trade name in accordance with **[~~§3-81-17.58~~]** **rule §3-82-38.16**, or for an application for the transfer of a license, a statement of what trade name is proposed to be used, which shall be confirmed before the transfer is effected by a certificate of registration of trade name or other sufficient documentation.

(O) A description detailing the kind of business that the applicant proposes to operate. For applications for transferred restaurant licenses, a financial report of gross revenue for the year preceding the application demonstrating that at least thirty per cent (30%) of the establishment's gross revenue was derived from the sale of foods. For applications for new restaurant licenses if not previously operated as an establishment serving meals to patrons for compensation, a business plan demonstrating the applicant's ability to meet the minimum gross revenue from the sale of foods required of restaurant licensees.

(P) A 4 x 6-inch photoimage or photograph of the front of the licensed premises or proposed licensed premises and a 4 x 6-inch photoimage or photograph showing the licensed premises or proposed licensed premises street location.

(2) For applications for new condominium hotel licenses or for the transfer of an existing condominium hotel license:

(A) A list of the condominium hotel guest rooms within the proposed licensed premises as of the application date.

(B) A copy of the application for registration of the condominium hotel operator approved by the real estate commission, if applicable.

(C) A **clear and accurate** floor plan **drawn to scale (to wit, 1/8-1/4-3/16-3/32 inch equal to one (1) foot)** (which may be a copy of all or portions of the recorded condominium map) marked to show the following:

(i) The portion or portions of the licensed premises or proposed licensed premises in which **[~~alcoholic beverages~~] liquor** will be served, with such portion or portions marked in red and showing all fixtures and any designated dance floor in such portion or portions; a square footage calculation of such portion or portions; the scale of the map; and, if liquor will be consumed within such portion or portions, the restrooms for such portion or portions;

(ii) The locations of all condominium hotel guest rooms in the condominium hotel (which locations may be indicated by narrative description or coloring of the condominium map); and

(iii) The locations of the apartments, common elements and/or limited common elements over which access will be provided to and from the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served and the condominium hotel guest rooms (which locations may be indicated by narrative description or coloring of the condominium map).

[~~**d. A preliminary approval stamp from the State Department of Health for the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served.**~~]

(D) The identity of the AOAO manager and, if the applicant is not a rental program manager for condominium hotel guest rooms in the condominium hotel, the rental program manager that manages the most condominium hotel guest rooms in the condominium hotel.

(3) Concurrent with filing the application:

(A) A request for criminal history record clearance for liquor license, for each person required to submit a personal history and affidavit, with the Hawaii criminal justice data center.

(B) A request for zoning clearance with the department of planning and permitting, Aloha Tower development corporation, **[~~or~~] or** Hawaii community development authority, **[~~or other authorized governmental authority,~~]** as appropriate. **If the proposed premises is located outside of the authority or jurisdiction of the above mentioned agencies, a zoning clearance will be required from the appropriate governmental agency with the**

jurisdiction and which is authorized to issue such zoning clearance.

(C) A request for the required list of registered voters, if required, with the city clerk. A statement that each request has been made, with the date that it was made, shall accompany the application filed with the commission. **The required list of registered voters shall be submitted to the commission as soon as possible prior to the preliminary hearing.**

(4) During the processing of the application:

(A) Each person required to submit a personal history and affidavit is required to submit fingerprints on a fingerprint card provided by the commission. Fingerprints for those principals not fingerprinted by an investigator for the commission shall be submitted, with a letter of authority by the person who made the fingerprints, with the application or as soon after its submission as possible. The commission in its discretion may waive part or all of this requirement.

(B) Each applicant required to make a mailing of notification of public hearing following the preliminary hearing shall submit an affidavit of mailing on a form provided by the commission and the master mailing lists for the mailing as provided by law.

(C) Each applicant required to notify the registered voters in the area of the premises and each applicant who can be denied its application by a percentage of the voters shall submit the list of registered voters within five hundred (500) feet and within one hundred (100) feet to the commission with the affidavit of mailing and the master mailing lists. **Applicant shall identify all applicable registered voters within five hundred (500) feet and within one hundred (100) feet to the commission, pursuant to HRS §281-57. Procedures, forms, and formatting of [~~documents~~] lists shall be as prescribed by the commission.**

(D) The zoning clearance shall be submitted to the commission as soon as possible and **[~~before the license is issued or the transfer is effected~~] prior to the preliminary hearing**.

(E) Each applicant for a new license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing and delivered by certified mail, return receipt requested. The commission, for just cause, may waive this requirement.

(F) Each new or transfer applicant for a manufacturer, wholesale dealer, brewpub, winery, or small craft producer pub license shall submit the TTB federal basic permit /clearances from the United States department of treasury alcohol and tobacco tax and trade bureau before the license is issued or transfer is effected.

(b) Except as excused by HRS §§281-52 or 281-57, an application for a change of location, change of class, change of kind, or change of category will be treated as a new application.

(c) An applicant for a special license, other than a one-day special license for a fund raising event by a not for profit organization, shall fulfill the requirements of paragraphs (a)(1)(A)-(D) and (O), (a)(3)(A) and (B), and (a)(4)(A), (D), and (E). Additionally, the applicant shall submit a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.

(d) An applicant for a transient vessel license shall file in or with the application:

(1) If the application is made by an agent for the owner, a copy of **[~~a~~] the** contract or other document establishing the agent's relationship with the vessel's owner and a document establishing the identity of the agent.

(2) The pier and port at which the vessel will berth and the times and dates of arrival and departure.

(3) The name, city, and state or country of the vessel's fee titled owner.

(4) A personal history and affidavit, partnership agreement, articles of organization, articles of incorporation, or other organizational document of the proposed licensee.

(5) If the proposed licensee is not a sole proprietor, a list of the principals of the proposed licensee.

(6) A current financial statement of the proposed licensee.

(7) A photograph of the vessel.

(8) A description of the vessel and deck plans showing proposed liquor outlets, dance floors, and so forth.

(e) An applicant for a caterer license shall file with the application a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.

(f) After granting of a new license or the transfer of an existing license other than for special license, transient vessel license, or caterer license and before the license is issued or transferred, the applicant shall request a final inspection of the proposed licensed premises by commission staff. Before the issuance of a license allowing live music or other entertainment, commission staff will evaluate the premises regarding its suitability for live music or other entertainment.

(g) If a new license is not issued or the transfer of a license is not effected within six (6) months from the date of granting, the commission will review the granting. The applicant may show good cause why the license has not been effected, and the commission may, at the hearing, reconsider its granting.

(h) **All applications, forms, or documents, and any information submitted to the Commission shall be true and accurate and shall not contain any false or misleading information. Applicants shall provide any documentation requested**

by the Commission to verify any information submitted on any application, form, or document. If the commission finds that the applicant has made a false statement as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty. **The applicant and persons signing the application will be subject to the penalties for false statements as prescribed in HRS §281-53 Application; penalty for false statements.**

§3-83-53.02. License applicant background verification. The license applicant shall ensure that every person named in an application discloses to the commission any felony convictions. The obligation to disclose such information shall be continuing even after the license is issued.

§3-83-53.03. Primary decision makers. (a) If the licensee is a publicly-traded corporation or limited liability company, or if the licensee is a corporation or limited liability company that is ultimately solely-owned by a publicly-traded corporation or limited liability company, it shall designate a primary decision maker regarding the purchase and sale of liquor, in accordance with HRS §§281-41(i) and -53(1).

(b) The corporate or limited liability company licensee shall notify the commission within thirty (30) days of any changes to its company structure regarding its standing as a publicly-traded company or the appointment or replacement of any primary decision maker.

(c) The primary decision maker shall be a current or new officer, director, manager, or member of the corporate or limited liability company licensee and shall be subject to the requirements stated in rule §3-82-45.01 for all principals.

§3-83-53.04. Notarial act performed using audio-visual communication technology; electronic or digital signatures. (a) Applications and any related documents bearing a notarized signature that was obtained using audio-visual communication technology and performed in compliance with state law may be submitted and accepted for processing.

(b) Applications and any related documents may be submitted and accepted for processing with an electronic or digital signature in accordance with procedures established by the commission.

§3-83-53.5. COUNTY LIQUOR COMMISSIONS; CRIMINAL HISTORY RECORD CHECK. Reserved.

§3-83-54. FILING FEES WITH APPLICATION.

§3-83-54.01. Filing fees. A filing fee **[~~of $375~~] in such amount as shall be established by the commission** shall be paid with an application for a new license or the transfer of an existing license, as required by HRS §281-54. The filing fee shall be applied to the payment of the license fee required by rule §3-81-17.502 where the license is granted and shall become a realization of the city where the license is denied or the application is withdrawn.

§3-83-55. REFERENCE TO INVESTIGATOR. Reserved.

§3-83-56. REPORT BY INVESTIGATOR. Reserved.

§3-83-57. PRELIMINARY HEARING; NOTICE OF PUBLIC HEARING.
§3-83-57.01. Affidavits; forms. All applications for licenses, notices of public hearing, and affidavits filed by applicants shall be on forms prescribed by the commission.

§3-83-57.02. Change of class or category. Notices of public hearing for a license application or for any proposed change in class or category shall clearly state, in language set forth in HRS §281-31, the class and category(s) applied for or the change of class or category being sought. An applicant may not change the class or category applied for or the change being sought following publication of the notice of public hearing but must withdraw the application and resubmit with appropriate changes unless the change of application is considered a downgrade by the commission.

§3-83-57.03. Publication cost deposits. An applicant shall, at the time of application, submit a deposit to cover the cost of publishing the notice of public hearing. Any unused portion of this deposit shall be refunded.

§3-83-57.04. Neighborhood board notification. The applicant for a new **license** or change of location **of an existing** license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing as required in HRS §281-57(c) and delivered by certified mail, return receipt requested. At a minimum, the notification shall include the date and purpose of the public hearing, the class of license applied for, and the location of the proposed licensed premises. The commission, for just cause, may waive this requirement.

§3-83-58. PROTESTS.
§3-83-58.01. Time for filing protests. Protests against the granting of a license should be filed with the commission at least three (3) working days prior to the date of the public hearing on the application, provided the commission may in its discretion allow additional protests to be filed at the public hearing or any adjournment thereof. The deadline for filing protests shall be indicated in the applicant's notice of public hearing.

§3-83-59. HEARING; REHEARING.
§3-83-59.01. Procedures for applying for a license. Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, the following shall apply:

(1) The applicant shall be represented at the commission hearing only by the individual applicant, a general partner representing the partnership, an officer of a corporation, trust, or association representing the corporation, trust, or association, a licensed attorney, or an agent authorized in writing by any of the above**[~~, to represent the applicant~~]**.

(2) If the commission approves an application for a license, the commission shall promptly notify the applicant of the decision. If the commission decides otherwise, it shall issue appropriate findings of fact, conclusions of law, and a decision and order. The commission shall, within a reasonable time, serve a certified copy thereof to the applicant.

(3) Any of the foregoing procedures may be modified or waived by stipulation of the parties.

(4) Judicial review shall be as provided by law.

§3-83-59.02. Petition for rehearing. A request for a reconsideration of the commission's decision shall be filed with the commission not later than fifteen (15) days after the date on which notice of the refusal is provided to the applicant, or the date of the hearing where no majority vote was taken.

§3-83-60. FURTHER APPLICATION.

§3-83-60.01. Denial of license. Any denial of a license pursuant to HRS §281-60(a) shall preclude the applicant from applying for a license of any class, kind, or category and pertaining to the same premises or building location for one (1) year from the denial.

§3-83-61. RENEWALS.

§3-83-61.01. Renewal of existing license. The commission may withhold the issuance of a renewed license for good and sufficient reason, which may include, but is not limited to:

(1) Failure to pay any outstanding penalties due the commission;

(2) Failure to file any outstanding gross liquor sales reports;

(3) Failure to pay any outstanding additional license fees;

(4) Failure to comply with any prior commission orders, which may include, but is not limited to, an order to update or keep current any and all license application documents contained in the commission's licensee file;

(5) Complaints from the public or reports from the commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the neighborhood;

(6) Complaints from the public or reports from the commission's investigators indicating that noise created by patrons departing the premises disturbs residents of the neighborhood in which the premises are located;

(7) Complaints from the public or reports from the commission's investigators indicating that behavior by patrons of the premises poses a threat to public safety and disturbs residents of the neighborhood in which the premises are located;

(8) A report, investigated and verified by the commission, indicating that sounds emanating from the premises exceed permissible levels **or any report from the commission's investigators for any non-compliance with proper conduct of the business.**

(9) For licensees who are corporations, limited partnerships, limited liability companies, or limited liability partnerships, failure to maintain the business

entity's good standing in the state of its organization. In this regard, business entity licensees shall submit with their license renewal documents a certificate of good standing from the state of its organization that is not more than sixty (60) days old to establish compliance with this requirement.

(10) All licensees shall certify all current officers, directors, managers, members, and partners and ownership/interest percentages. Corporate licensees who are publicly-traded companies are excluded from reporting only stockholder information.

§3-83-62. REDUCTION OR INCREASE IN AREA OF LICENSED PREMISES.

§3-83-62.01. Increase to licensed premises. (a) A licensee who applies for a permanent increase in the area of the licensed premises where the increase sought is equal to or greater than fifty per cent (50%) of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.

(b) As provided in HRS §281-62, if an increase in the premises may significantly impact the public, the commission may require hearings pursuant to HRS §§281-39.5 and 281-57 to -60.

(c) After granting an increase in the area of the existing licensed premises of a licensee, the licensee shall request and pass a final inspection of the premises by commission staff before the licensee is authorized to occupy and use the granted addition.

(d) Increases in the area of the licensed premises under a temporary license based on a new license application shall not be permitted. Increases, reductions, or alterations under a temporary license based on a transfer of an existing license must be to the permanent license and licensed premises being transferred.

PART V. DUTIES OF AND SUPERVISION OVER LICENSEE
CHAPTER 84

§3-84-71. POSTING OF LICENSE. Reserved.

§3-84-72. CONDITION OF PREMISES.

§3-84-72.01. Sanitation requirements. Licensed premises, including all furnishings, equipment, and paraphernalia on the premises, shall be kept in a clean and sanitary condition, and drinking glasses shall be effectively sanitized. The licensee shall also comply with all rules of the state department of health. Restaurant, hotel, condominium hotel, club, **catering, special,** cabaret, dispenser, brewpub, winery, bring-your-own-beverage, and small craft producer pub licensees shall also provide access to adequate toilet facilities **[~~which have been approved by the State Department of Health~~]** **in accordance with the following guidelines:**

Water-Closets	Urinals	Lavatories

No. of Each Sex	Male	Female	Total No. of Persons	Male	Total No. of Persons	No. of Fixtures per Toilet Room
1-50	1	1	1-150	1	1-150	1
51-150	2	2	Over 150	1 for each 150 additional persons	151-200	2
151-300	3	4			201-400	3
Over 300	1 for each 200 additional persons	1 for each 200 additional persons			Over 400	1 for each 400 additional persons

§3-84-72.02. Premises lighting; doors. Street or primary entrances to licensed premises shall be kept unlocked during all times that any person other than an on-duty employee is on the premises. Entrances to booths shall be open and unobstructed. The interior and exterior of the licensed premises shall be well and properly lighted.

§3-84-72.03. Windows on interior rooms. (a) All interior rooms or enclosed areas in **[~~restaurant,~~** ~~dispenser,~~ **[~~or]~~** ~~cabaret~~**, ~~brewpub, or small craft producer pub~~]** **on-premises consumption** licensed premises **(excluding hotels and condominium hotels)** where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. If the door or wall is constructed of transparent material and permits full view of the interior, then a window will not be required. Tinting of the glass on doors, walls, or windows is prohibited. **[~~Restaurant, brewpub, and small craft producer pub~~] All on-premises consumption licensees shall have ninety (90) days from the date of effectiveness of these rules in which to comply.**

(b) The commission may waive this requirement for good cause. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.

§3-84-72.04. Alterations. (a) Any physical alterations within a licensed premises shall only be made with the prior, written approval of the commission. Retail licensees are exempt from the prior approval requirement but are required to file an updated floor plan for the premises **[~~within five (5) business days of completion of the~~]** **prior to any commencement of any** alteration(s). Hotel licensees are required to obtain prior approval only for physical alterations made to **[~~(1)~~]** an area where alcoholic beverages are sold, served, or consumed **[~~or (2) common areas~~]**.

(b) No licensee that is authorized **for** on-premises consumption shall have an opening or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining, enclosed, unlicensed structure offering entertainment**, except as approved by the commission**.

(c) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (1) condominium hotel guest rooms or (2) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this rule.

§3-84-73. QUALITY OF LIQUOR; PENALTY.

§3-84-73.01. Liquor content of drinks. (a) A drink containing one (1) or more kinds of liquor and any non-alcoholic mixture which is served, sold, offered for sale, or prepared for such purpose by a licensee authorized to sell liquor for consumption on the licensed premises shall contain not less than one (1) fluid ounce or thirty (30) milliliters of liquor unless the customer requests the drink be mixed with a lesser amount of liquor.

(b) When liquor is poured into a glass or container by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the non-alcoholic mixture has not been added. This subsection shall not apply to a drink served as a straight drink with or without a "chaser."

(c) A straight drink shall contain not less than one (1) fluid ounce or thirty (30) milliliters of liquor unless the customer requests a lesser amount of liquor.

§3-84-73.02. Quality of liquor. Straight or unmixed distilled spirits shall only be dispensed from its original container. In the handling and storage of straight or unmixed distilled spirits, the transfer of product from its original container to any other storage container is prohibited.

§3-84-74. LABELS ON CONTAINERS.

§3-84-74.01. COLAs; labels. (a) No liquor shall be labeled, designated, or sold using the words "Hawaii", "Hawaiian", "Aloha State", "50th State", "Kauai", "Maui", "Oahu", or "Honolulu" unless such liquor is wholly or partially manufactured in the state or combined in the state in compliance with alcohol and tobacco tax and trade bureau standards.

(b) Every container containing liquor for sale by any wholesale dealer or retail licensee shall have a secure and permanently attached label that conforms in all respects to the then existing federal laws and regulations regarding liquor labeling.

(c) Filing of label facsimiles or copies of the certificate/exemption of label/bottle approval (COLA) is not required prior to the sale of the liquor product in Honolulu county.

§3-84-75. ANALYSES. Reserved.

§3-84-76. TAMPERING WITH SAMPLES; PENALTY. Reserved.

§3-84-77. REFUSAL OF SAMPLES; PENALTY. Reserved.

§3-84-78. PROHIBITIONS.

§3-84-78.01. Conduct of employees. (a) Licensees shall be strictly **[~~accountable~~] liable** for the conduct of all employees on the licensed premises. Any person who performs a service usually or normally done, **or acts in a capacity of any employee, on behalf of the licensee** on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or

not compensated, shall be subject to the constraints of these rules and shall be considered an on-duty employee of the licensee. This rule does not apply to vendors, tradesmen, or maintenance people who, in the normal course of their duties, service the licensed premises. For purposes of this rule, an entertainer shall be deemed to be an employee of the licensee during the time the entertainer is performing or while the entertainer is on the platform or stage or in any other area set aside for the performance.

(b) No employee while on duty shall consume liquor.

(c) No employee while on duty shall solicit or accept any food or beverage, alcoholic or otherwise, as a gift from or at the expense of a customer.

(d) Only registered hostesses **as defined in rule §3-80-1.01** **[~~and managers of licensed hostess bars~~]** **working at a class 5 dispenser, category 4 hostess licensed premises** are permitted to sit with customers during hours of operation. **[~~Registered managers and waitresses in licensed cabarets are not permitted to sit with customers during hours of operation.~~]**

§3-84-78.02. Restrictions on nudity; dancers. (a) No licensee shall permit any person, other than registered dancers during their performances, to be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitalia, or any portion of the female breast below the top of the areola in the licensed premises.

(b) No licensee shall permit dancers to perform in any licensed premises, unless the performance is on a permanently affixed stage at least eighteen (18) inches above the immediate floor level.

(c) Licensees shall erect barriers sufficient to prevent persons outside of the premises from viewing dancers while performing.

§3-84-78.03. Entertainment. (a) Entertainment which causes undue noise or disturbs the peace and quiet of the residents or tenants of the neighborhood is prohibited on licensed premises.

(b) Entertainment which causes complaints from the public or reports from the commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the residents or tenants of the neighborhood is prohibited.

(c) Entertainment which causes complaints from the public or reports by the commission's investigators indicating that noise created by patrons departing the premises disturbs residents or tenants of the neighborhood in which the premises are located is prohibited.

§3-84-78.04. Sexual acts and their simulations by persons. No licensee shall:

(a) Permit any person on the licensed premises to perform acts of or acts which simulate sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

(b) Permit any person on the licensed premises to use or wear artificial devices, inanimate objects, or other covering which, when exposed to view, depict:

(1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
(2) The touching, caressing, or fondling of the breasts, buttocks, anus, or genitalia.
(3) The displaying of the pubic hair, anus, genitalia, female breast, or any portion thereof.

§3-84-78.05. Visual reproductions of sexual acts and simulations. No licensee shall permit on the licensed premises the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:
(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
(2) Any person being touched, caressed or fondled on the breast, buttocks, anus, or genitalia.
(3) Scenes wherein a person displays the anus or genitalia.
(4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

§3-84-78.06. Fondling. No licensee shall encourage or permit any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitalia of themselves or any other person, whether directly or through the clothing or any other material.

§3-84-78.07. Drugs and other illegal activities. (a) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited. **Licensees shall be strictly liable under this rule for any illicit or illegal drugs or narcotics found on the licensed premises.**
(b) No licensee shall promote, encourage, or permit any person on the licensed premise to possess, distribute, or use illicit or illegal drugs.

§3-84-78.08. Solicitation of business outside of premises. No licensee authorized to sell liquor for consumption on the premises shall solicit business within a twenty (20) feet radius of the licensed premises.

§3-84-78.5. PRACTICES TO PROMOTE EXCESSIVE CONSUMPTION OF LIQUOR; PROHIBITED.
§3-84-78.501. Practices to promote consumption of liquor, prohibited. (a) No licensee shall promote the excessive consumption of liquor, or sell or offer to sell any liquor to any person who appears to be intoxicated from the excessive use of intoxicating liquor.
(b) No licensee of any premises licensed to sell liquor for consumption on the premises shall:
(1) Sell, advertise, or offer to sell “all the liquor you can drink” for a fixed price.

(2) Cause, encourage, or induce the consumption of liquor in excessive amounts or at an unduly rapid rate.

(3) Promote, sponsor, or conduct any event that is in any way conditional upon or requires the consumption of liquor.

(4) Encourage or permit any game or contest that involves the consumption of liquor or the awarding of liquor as a prize.

§3-84-79. ENTRY FOR EXAMINATION; OBSTRUCTING LIQUOR COMMISSION OPERATIONS; PENALTY.

§3-84-79.01. Obstructing commission operations. No licensee shall allow the obstruction, hampering, or interfering with investigations and inspections or commission operations in any way, including but not limited to the sounding of alarms, flashing of lights, or use of a public address system or other advance warning announcing the arrival of commission investigators.

§3-84-79.02. Improper influence. (a) Any licensee, employee of a licensee, or its agent **[~~who shall give, pay, or offer~~] is prohibited from giving, paying, or offering**, directly or indirectly, any pecuniary benefit to any **commissioner,** commission investigator**,** or staff member, with the intent to influence the **commissioner,** investigator**,** or staff member in the discharge of any duty herein provided for**[~~, shall be guilty of a violation~~]**.

(b) Any licensee, employee of a licensee or its agent **[~~who solicits, accepts, or agrees to accept~~] is prohibited from soliciting, accepting, or agreeing to accept**, directly or indirectly, any pecuniary benefit with the intent that such person's judgment, exercise of discretion, or other action as regards to compliance with any liquor law or rules will thereby be influenced**[~~, shall be guilty of a violation~~]**.

§3-84-80. ARREST. Reserved.

§3-84-81. REPEALED.

§3-84-82. NO ACTION FOR DEBT. Reserved.

§3-84-83. REPEALED.

§3-84-84. EXCLUSION OF INTOXICATED PERSON FROM PREMISES; PENALTY. Reserved.

§3-84-85. PRIZE, GIFT, PREMIUM, AND OTHER INDUCEMENT.

§3-84-85.01. Free goods prohibited. No licensee or employee of a licensee, except a manufacturer or wholesaler, shall directly or indirectly offer, furnish, deliver, or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer or customer in connection with the sale of liquor. Articles of nominal value, such as the drink glass or items necessary for the proper opening of containers, are exempt from this provision.

§3-84-85.02. Quantity discounts. A quantity discount shall be granted to a licensee only when a single delivery of an entire order is made to a buyer on the premises of the seller, or when delivery of an entire order to a buyer on the premises of the seller, or when delivery of an entire order to a single licensed premises or to a public carrier for delivery to the buyer, is begun and completed the same day.

PART VI. REVOCATION OF LICENSE
CHAPTER 85

§3-85-91. REVOCATION OR SUSPENSION OF LICENSE; HEARING.

§3-85-91.01. Notice of hearing and subpoena. (a) Where it is proposed to revoke or suspend a license, assess and collect a penalty, or reprimand a licensee for a violation of law or of these rules, the administrator shall schedule a hearing before the commission and issue a notice of hearing informing the licensee of the charge(s) and the date, time, and place of the hearing. The notice of hearing shall be issued to the licensee of record at the commission offices at the time of the violation.

(b) Subpoenas may be issued by the administrator or designee. Compliance with the subpoenas shall be enforced in the courts.

§3-85-91.02. Pre-hearing conference. (a) The commission may order that a pre-hearing conference be conducted and attended by all parties to an adjudication hearing. At the pre-hearing conference, the commission may require all parties to disclose to the other parties any information which may be requested pursuant to rule §3-85-91.06.

(b) If no pre-hearing conference is held, the commission may require each party to an adjudication hearing to submit a statement disclosing and identifying all witnesses to be called at the adjudication hearing, and all exhibits to be used at the adjudication hearing. A copy of the statement shall be served upon all other parties to the proceeding. The commission may require other relief in order to simplify the issues and facilitate the orderly progress of the adjudication hearing.

§3-85-91.03. Testimony and record; adjudication hearings. (a) All witnesses testifying at an adjudication hearing shall be administered an oath prior to their testimony. The commission's chairperson or designee shall administer the oath.

(b) A record shall be made of all oral testimony taken at the hearing. Testimony taken at the hearing may be electronically recorded by video or audio tape and need not be transcribed. The cost of copying any transcription shall be paid by the requesting party, unless otherwise provided. The commission shall make the written record of the testimony available to the parties for use in preparing exceptions to or statements in support of a recommended decision or recommended order.

(c) Unless otherwise provided by law, the record shall consist of the following:

(1) All pleadings, motions, and intermediate rulings;

(2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the commission;

(3) All offers of proof and rulings thereon; and

(4) All proposed findings and exceptions.

§3-85-91.04. Pleadings; adjudication hearings. (a) The first page of every pleading in an adjudication hearing shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the name of the proceeding and case number, if any.

(b) All pleadings in an adjudication hearing shall be signed in black or other photo-reproducible ink by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the person's knowledge, information, and belief, the pleading is true and correct and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(c) Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the commission.

§3-85-91.05. Evidence; adjudication hearings. (a) The admissibility of evidence at an adjudication hearing shall not be governed by the laws of evidence, and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The commission shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that upon request all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the non-availability of the original and the reasons therefore may be considered by the commission when considering the weight of the documentary evidence.

(c) The commission may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

§3-85-91.06. Disclosure; adjudication hearings. (a) Any party to an adjudication hearing may, by written demand timely filed with the commission and served upon any other party, request of any other party to the proceeding, the full disclosure of:

(1) The identity of all witnesses to be called by the other party, including their addresses and phone numbers, if known;

(2) The identity of all persons, including their addresses and phone numbers, known by the other party to have material knowledge relevant to the proceeding; and

(3) All exhibits, including but not limited to documents, photographs, and other tangible evidence to be introduced by the other party at the adjudication hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) In order to be admitted at the adjudication hearing, a copy of an investigative report shall be provided to all parties upon request not later than seven (7) days before such hearing. If a copy of the investigation report is not provided to all parties, the report shall not be permitted to be introduced at the adjudication hearing.

(c) All demands for disclosure shall continue in effect for the duration of the proceeding, and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested as and when it becomes available.

(d) The information requested shall be disclosed to the requesting party at the pre-hearing conference or at least seven (7) days before the adjudication hearing, whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to be introduced at the adjudication hearing.

§3-85-91.07. Procedures; adjudication hearings. Unless otherwise stipulated by the parties, all adjudication hearings shall proceed as follows:

(a) The licensee who has been notified to appear before the commission shall enter a plea admitting **or not contesting** or denying the allegations contained in the notice of hearing.

(b) If the licensee admits **or does not contest** the allegations contained in the notice of hearing, the commission shall determine what action, if any, should be taken against the licensee.

(c) If the licensee denies the allegations contained in the notice of hearing, the parties shall have the opportunity to present any facts tending to prove or disprove the allegations contained in the notice of hearing.

(1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
   (A) City's opening statement; and
   (B) Licensee's opening statement, unless licensee chooses to reserve same until after presentation of the city's evidence;
(2) City's evidence shall be presented first, and shall be followed by the presentation of the evidence in support of licensee's case;
(3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of the parties' respective cases;
(4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
(5) After all evidence **has been presented**, including rebuttal evidence, **[~~has been presented,~~]** the parties shall have the opportunity to make a final argument. Final argument shall proceed as follows:
   (A) City's final argument;
   (B) Licensee's final argument;
   (C) City's final argument in rebuttal, which shall be limited to countering matters raised in licensee's final argument.

(6) The adjudication hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to rule §3-85-91.09, whichever is later.

(d) Any party may file with the commission a statement in support of the recommended decision within fifteen (15) days after receipt of a copy of the recommended decision. The party filing the statement in support shall serve the statement upon all other parties.

(e) Whenever written exceptions have been timely filed and a party has requested oral argument, all parties to the proceedings shall be afforded the opportunity to present to the commission oral arguments concerning the recommended decision. Unless otherwise provided by law, all the parties shall be served with notice of the time and place of argument at least five (5) days prior to the hearing. Within a reasonable time after argument has been heard, the commission shall either issue its final decision and order adopting, modifying, or reversing, in whole or in part, the recommended decision, or set the matter for a further hearing before the commission. Before reaching a final decision, the commission shall personally consider the entire record or portions thereof which may have been cited by the parties.

(f) Where written exceptions to the recommended decision have not been timely filed, the commission shall issue, within a reasonable time after receipt of the recommended decision, a final written decision and order adopting, modifying, or reversing, in whole or in part, the recommended decision. If the recommended decision is modified or reversed, in whole or in part, the commission shall specifically state in its final decision the reasons for such modification or reversal.

§3-85-91.08. Motion to dismiss; adjudication hearings. (a) After all evidence has been presented by the city in support of the allegations contained in a notice of hearing, the licensee may move the commission for an order denying or dismissing the charges in the notice of hearing or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, licensee shall have the right to continue with the adjudication as fully as if the motion had never been made.

§3-85-91.09. Taking of further evidence; adjudication hearings. At any time before the commission's final decision, the commission, on its own or upon motion for good cause shown, may reopen an adjudication hearing for the purpose of taking further evidence. The reopening shall be at the sole discretion of the commission. Further evidence may be taken either through oral hearing or by certification of written questions to the parties.

§3-85-91.10. Reconsideration of decision and order; adjudication hearings. Any request or motion to reconsider a decision made by the commission or for a new hearing or for a stay of the decision or order shall be filed with the commission within fifteen (15) days from the date the decision and order is served. A suspension or revocation of license shall commence following the fifteenth (15^{th}) day after notification.

§3-85-92. APPEALS.

§3-85-92.01. Judicial review. (a) Any party aggrieved by the final decision and order of the commission or by a preliminary ruling or order of the commission of such a nature that deferral of review pending the entry of a subsequent final order would deprive that party of adequate relief is entitled to judicial review in accordance with HRS §91-14.

(b) Any party requesting judicial review shall serve a copy of the request upon the commission and all other parties in accordance with the Hawaii rules of civil procedure.

(c) Unless the commission has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the commission, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon such conditions that the court deems proper. The commission may modify its findings of facts, conclusions of law, decision and order by reason of the additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modifications or new findings, decision or order.

§3-85-93. REPORTS TO PROSECUTING OFFICERS. Reserved.

§3-85-94. FORFEITURE OF FEE PAID. Reserved.

§3-85-95. BANKRUPTCY, INSOLVENCY, DEATH. Reserved.

§3-85-96. CANCELLATION. Reserved.

§3-85-97. WHEN SALE WITHOUT LICENSE AUTHORIZED.

§3-85-97.01. Sale without license; conditions. (a) In case a license is revoked or canceled or not renewed, the licensee may, with the permission of and upon the conditions set by the commission, sell intoxicating liquors then in the licensee's possession from the previously licensed premises, in bulk form and in original containers, not for consumption on premises, within sixty (60) days, or within such additional time allowed by the commission.

(b) The commission may set other conditions on the sale as it sees fit.

PART VII. GENERAL VIOLATIONS AND PROSECUTIONS
CHAPTER 86

§3-86-101. MANUFACTURE OR SALE WITHOUT LICENSE; PENALTY. Reserved.

§3-86-101.4. HEARING, ILLEGAL MANUFACTURE, IMPORTATION, OR SALE OF LIQUOR. Reserved.

§3-86-101.5. PROHIBITIONS INVOLVING MINORS; PENALTY.

§3-86-101.501. Sale or service of liquor to minors, prohibited. (a) The sale or service of liquor to a minor or the consumption of liquor by a minor on any licensed or unlicensed premises, any off-premises catered event, or any other premises authorized by the commission is prohibited. Licensees **[~~are responsible for the proper checking of~~] shall check** the personal identification of any person wishing to purchase liquor prior to the selling or serving of liquor.

(b) Documents used for identification shall be an official state driver's license, a military identification card, other official government identification containing a photograph, or other form of identification document approved by the commission. Such documents shall be unaltered, undamaged, and laminated. At a minimum, non-government identification approved by the commission shall bear the name of the issuing entity, date of issuance, expiration date or date of departure from the State of Hawaii, date of birth, a photograph, signature, and a statement that the identification is valid only in the county of Honolulu. All documents should be examined carefully. School identification cards, expired documents of any kind, cards with such phrases as "information provided by applicant" or the like, identification cards issued for the purpose of check cashing, or other identification cards not issued by a government agency are unacceptable, unless approved by the commission.

§3-86-101.502. Minors Employed on Licensed Premises. (a) On licensed premises**, excluding class 1 manufacturer, class 3 wholesale dealer, and class 4 retail dealer licensees, and as permitted by HRS §281-78(b)(3) which allows any person eighteen (18) to twenty (20) years of age to sell or serve liquor as part of that person's employment,** no person under eighteen (18) years of age shall be employed in that section of the premises where liquor is sold, served or consumed, or allowed to entertain in said areas **[~~unless~~] until** the licensee has **[~~obtained written permission from~~] notified** the Commission **[~~for~~] of** the employment or the entertainment by such minor. **[~~The licensee, the person under eighteen (18) years old, and his/her parent or guardian shall be interviewed by an investigator, who shall submit a report to the administrator regarding the employment of the individual under the age of eighteen (18) years. If the standards set by the Commission are complied with, the administrator may approve the licensee's request and may include any condition which the administrator deems necessary for the protection of the person under eighteen (18) years of age. After employment approval has been obtained, the employee under the age of eighteen (18) shall be registered with the Commission pursuant to §3-82-38.5. Manufacturers, wholesalers and retail (class 4) licensees shall be excluded from this requirement.~~]**

(b) **[~~Applications for permission for persons under eighteen (18) years of age to work on licensed premises where liquor is sold or served shall be submitted by the licensee for whom the applicant will work and~~] Notification, on a form prescribed by the Commission,** shall include **[~~the following:~~**

~~(1) Proof that the proposed employee is at least sixteen (16) years of age;~~
~~(2) Written consent of a parent or guardian;~~
~~(3) A~~] [~~a copy of the certificate of~~ [~~employment and~~] ~~age~~ ~~work permit~~] [~~;~~
~~(4) A letter from a school counselor or other school official attesting to a satisfactory academic grade standing or graduation certificate~~].
a copy of a current valid minor's government-issued photo identification (ID) card indicating birthdate; the written consent of a parent or guardian; and a copy of the certificate of age work permit.

(c) The duties of a person under eighteen (18) years of age shall not include selling or serving liquor, unless that person is in an approved program under Section 281-78(4), Hawaii Revised Statutes.

(d) The licensee shall provide adequate supervision of any employee under eighteen (18) years of age while such employee is employed on the licensed premises.

(e) Minors under age sixteen (16) who perform as members of a choir, hula dance group, etc., may be permitted to perform by approval of the Administrator, provided they are under the supervision of an adult leader and have permission of parent or guardian. The licensee shall provide the Commission with a letter stating the date, time, purpose and activity of the entertainers.

§3-86-101.503. Minors on licensed premises with nude dancing. No licensee holding a dispenser general category 2 (nudity) license, or cabaret license which is permitted to have entertainment by a nude dancer pursuant to HRS §281-31(k), shall permit any person under twenty-one **(21)** years of age to enter or remain within the licensed premises, except as provided by HRS §281-78(b)(3), which allows employees age **eighteen** (18) and **[~~above~~] older**.

§3-86-102. THER OFFENSES; PENALTY. Reserved.

§3-86-102.5. PURCHASING FROM OTHER THAN PRIMARY SOURCE OF SUPPLY; PENALTY. Reserved.

§3-86-103. REPEALED.

§3-86-104. INVESTIGATORS, EMPLOYEES, COUNSEL FOR. Reserved.

§3-86-105. DETERMINATION WHETHER ACTS WERE IN SCOPE OF DUTY. Reserved.

§3-86-106. PROSECUTIONS NOT TO EXCLUDE OTHER REMEDIES AFFECTING LICENSE OR GOODS. Reserved.

§3-86-107. PRESUMPTIVE EVIDENCE. Reserved.

§3-86-108. SEARCH WARRANTS; SEIZURE. Reserved.

§3-86-109. SEIZURE WITHOUT WARRANT. Reserved.

§3-86-110. ARREST; ABETTERS. Reserved.

§3-86-111. CONDEMNATION OF PROPERTY OR LIQUOR; DISPOSITION. Reserved.

§3-86-112. REPEALED.

§3-86-113. CLAIMS. Reserved.

§3-86-114. APPEALS. Reserved.

* * * * * * * * * *

IV. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, **Registration of Family Child Care Homes**, promulgated by DHS

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17.891.2

Chapter Name: Registration of Family Child Care Homes

Contact Person/Title: Dayna Luka/Acting Child Care Program Administrator

Phone Number: (808) 586-7058

E-mail Address: dluka@dhs.hawaii.gov **Date:** 12/2/21

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

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

☐ **Yes** ☑ **No**

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

I. Rule Description: ☑ **New** ☑ **Repeal** ☐ **Amendment** ☐ **Compilation**

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

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

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

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

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

☐ **Yes** ☑ **No**

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

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

☐ **Yes** ☑ **No**

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

* * *

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

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

Please refer to Attachment 1

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

There were no testimonies or comments on the proposed chapter on the Registration of Family Child Care Homes.

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

There were no testimonies or comments on the proposed chapter on the Registration of Family Child Care Homes.

4. The number of persons who:
   (i) Attended the public hearing: 30

   (ii) Testified at the hearing: 0

   (iii) Submitted written comments: 0

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

   ☑ **Yes** ☐ **No**

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

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

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By SBRRB at 12:06 pm, Dec 02, 2021

V. In 2018, DHS held about 6 different listening sessions to review the proposed changes that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care Development Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are family child care providers, are child care businesses or work with child care providers, about the listening sessions.

DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held quarterly during DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019 for FCC providers.

V. a. The recommendation that substitutes should not be required to complete on-going training hours annually was partially incorporated into the proposed rule. The number of on-going training hours for substitutes to complete on an annual basis was reduced from 16 hours to 10 hours. The requirement for a substitute to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Since the substitute is a replacement of the primary caregiver and is left alone with children in care, completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

VI.1. The Public Notice was published in the newspapers statewide on Wednesday, June 30, 2021, to inform the public of the opportunity to provide their comments for the proposed rule chapter at the public hearing scheduled for July 30, 2021. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.

2. No comments were received from the public and small businesses for the proposed rule chapter.

3. Since no comments were received from the public and small businesses, no responses from the agency are provided.

Approved: 5-20-2021

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING
April 15, 2021

I. CALL TO ORDER: Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:
- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:
- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT
Dori Palcovich
Jet'aime Alcos

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF March 18, 2021 MINUTES

Mr. Ritchie made a motion to accept the March 18, 2021 meeting minutes, as presented. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS – Before Public Hearing April 2021 Minutes

A. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, Licensing of Group Day Care Centers and Group Child Care Homes, promulgated by DHS

Discussion leader Mr. Nakamoto explained that the proposed rules will be presented in a different order than the order on the agenda in order to present the rules in a more logical format. He has asked that DHS explain the reason behind the June 2020 date on the impact statements.

Ms. Dana Balansag, Child Care Program Administrator from DHS's Benefit, Employment & Support Service Division, explained that she and Ms. Dayna Luka at DHS's Child Care Program oversee the statewide childcare facilities licensed by the state.

DHS has been working on several different sets of chapters within the childcare facilities; three of the chapters were reviewed by this Board in September 2020. However, due to the COVID response, DHS was dealing with other matters along with drafting the seven

rules, which is why the small business impact statements were not submitted to this Board until recently.

In November 2014, the federal grant law was enacted which entitles the State of Hawaii to approximately $30 million; DHS has been working hard at becoming compliant with this law. The four chapters presented today are the complement to the prior three chapters this Board previously approved for public hearings. While childcare providers are already required to have minimum health and safety standards, the proposals are adding the federal standards, which are required for DHS to continue to receive federal funds.

Changes to Chapter 892.2 will allow Hawaii to be compliant with the federal Child Care and Development Block Grant (CCDBG) Act. The $30 million funds from this grant are needed to help support the state's childcare program and staff that regulate 850 child care facilities and homes statewide as well as the childcare subsidy program that annually provides over 3,300 low-income families access to childcare options and additional support of services to promote and ensure childcare for families and children.

Overall, the federal changes will strengthen the requirements to help protect the health and safety of children in childcare and to help parents make informed choices and gain access to information for child development.

Regarding the potential impact on small business, DHS established annual training requirements for all caregivers, substitutes, and volunteers in licensed and registered homes and childcare centers. These providers are required to create policies for suspension and expulsion of children from the facilities or home. This is because providers of licensed and registered homes and centers are required to have written procedures and plans for emergency preparedness and responses for relocations, sheltered place, lockdown, training and practice skills for staff, communication and reunification with family continuity of operations, and accommodations for infants and toddlers, and children with chronic medical conditions.

In addition, DHS established requirements for maximum group sizes of children which were not previously established. All of these changes will allow DHS and the State of Hawaii to follow federal requirements of the CCDBG. The requirement of completing the initial ongoing training for caregivers, substitutes, volunteers, and licensed and registered homes and centers is expected to help improve the ability to provide the children physical well-being, health, safety, supervision and guidance of children in care.

By expanding the existing requirements for licensed and registered providers to have written procedures and plans for emergency preparedness, it will provide the needs of children with disabilities and special needs as well as when an emergency or disaster occurs. Also, having written policies on suspension and expulsion of children from licensed care homes and centers ensures that parents and providers understand what the suspension and expulsion policies are. It encourages childcare providers to have prevention policies and strategies to reduce the number of suspensions and expulsions that are due to the behavior of children.

Lastly, establishing group-size limits in accordance with the ages of children will ensure they are adequately being supervised at all times and it creates a safe environment for them.

Having group-size limits also will assist in meeting children developmental needs as limiting group sizes may strengthen the relationship between caregivers and their children.

For possible financial impacts to small business, Ms. Luka explained that licensed and registered childcare providers may experience additional operating costs in order to comply with the extra health and safety training requirements. Thus, if the provider decides to pay for the training hours of their staff, it may cost roughly $160 per individual (16 hours of training x salary of $10.00 per hour). However, some employee policies incorporate staff training as part of their contract without additional compensation.

There could also be added costs for reporting of staff training certificates to DHS's contractor who handles the recordkeeping of staff training certificates. Additional expenses may include $20 to $40 for a multi-purpose fire extinguisher in the childcare area and between $50 and $60 for a smoke detector.

Ms. Luka stated that from 2015 through 2019, there have been many discussions and concerns with the stakeholders about the training requirements; one concern involved the required training hours for substitutes. The recommendation that substitutes not be required to complete on-going training hours annually was taken into consideration by DHS. As a result, the number of on-going training hours for substitutes to complete on an annual basis was reduced from 16 hours, which is the requirement for regular staff members, to 10 hours. Training requirements were also reduced to 8 hours for volunteers.

Ms. Luka further stated that the requirement for a substitute to complete an annual on-going health and safety training is to comply with CCDBG. Since the substitute is a replacement of the primary caregiver and he/she is left alone with children in care, completion of ongoing health and safety training hours increases the health and safety of children and the quality of care. In addition, for maximum group-size limits, the requirement to allow more children to be grouped together during specific events or times, i.e., performances, assemblies, and meal and snack times, was incorporated into the rules.

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

B. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, Licensing of Infant and Toddler Child Care Centers, promulgated by DHS

Chair Cundiff indicated that specific information on these rules is reflected in the previous discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; Ms. Luka stated that there are no other differences than those already discussed.

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

C. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, Licensing of Before and After School Child Care Facilities, promulgated by DHS

Chair Cundiff, again, indicated that specific information on these rules is reflected in the discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; no further comments were noted.

Mr. Nakamoto made a motion to move the proposed chapter to public hearing.
Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, Registration of Family Child Care Homes, promulgated by Department of Human Services (DHS)

Ms. Luka stated that in addition to the specific information discussed in HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes, under the training requirement for Chapter 891.2, the feedback from the registered childcare providers was that it would be very difficult to find a substitute provider.

Therefore, DHS removed the requirement of two substitutes and changed it to when a substitute is called in an emergency, the substitute would only have to comply with the health and safety training. Further, there would be a timeframe in which to complete the training, i.e., within 45 days of being contracted for the specific service.

Overall, both Chair Cundiff and Mr. Nakamoto expressed appreciation for DHS's preparation work on these new chapters. The work performed provided this Board with a much clearer understanding and efficiency of the process. Above all, the great work performed by DHS is key in terms of small business advocacy by listening to the stakeholders and understanding their needs and compassion to the key services provided to the community.

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

IV. LEGISLATIVE MATTERS

A. Discussion and Update on the following:

a. Update on Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Chair Cundiff explained that due to scheduling issues and a shortened legislative session this year, the Board's two nominations will most likely not make it to the Senate floor. However, an interim session is expected to take place where House Speaker's nominations for this board and other boards will be addressed.

RECEIVED
By SBRRB at 12:12 pm, Dec 02, 2021

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-891.2
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-891.2 Hawaii Administrative Rules, entitled "Registration of Family Child Care Homes" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 891.2

REGISTRATION OF FAMILY CHILD CARE HOMES

Subchapter 1 Registration Procedure

§17-891.2-1 Definitions
§17-891.2-2 Application
§17-891.2-3 Inspection and issuance of certificate of registration
§17-891.2-4 Fines
§17-891.2-5 Denial, suspension, revocation of certificate of registration, and hearings
§§17-891.2-6 to 17-891.2-9 (Reserved)

Subchapter 2 Administration Requirements

§17-891.2-10 Number and age of children in care
§17-891.2-11 Statement of operation policies
§17-891.2-12 Liability insurance
§17-891.2-13 Information on owner or operator
§17-891.2-14 Change in services and staff members
§17-891.2-15 Information and records on each child
§17-891.2-16 Disclosure of information on the child
§17-891.2-17 Information and records on facility
§17-891.2-18 Transportation provisions
§§17-891.2-19 to 17-891.2-24 (Reserved)

Subchapter 3 Program Requirements

§17-891.2-25 Program provisions
§17-891.2-26 Communication with parents
§17-891.2-27 Program materials and equipment
§17-891.2-28 Transition to a new facility or school setting
§§17-891.2-29 to 17-891.2-34 (Reserved)

Subchapter 4 Staffing Requirements

§17-891.2-35 Staff training, experience, and personal qualifications
§17-891.2-36 Staff-child ratio
§§17-891.2-37 to 17-891.2-39 (Reserved)

Subchapter 5 Health Standards for Children

§17-891.2-40 Health consultation provisions
§17-891.2-41 Evidence of child's health
§17-891.2-42 Emergency care provisions
§17-891.2-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR)
§17-891.2-44 Admission of ill children

§17-891.2-45 Admission of children with special needs
§17-891.2-46 Daily nutritional needs
§17-891.2-47 Drinking water provisions
§17-891.2-48 Integration of mental health Concepts
§§17-891.2-49 to 17-891.2-54 (Reserved)

Subchapter 6 Health Standards for Provider and Others in the Home

§17-891.2-55 Providers' health standards
§17-891.2-56 Personal health habits of provider
§§17-891.2-57 to 17-891.2-60 (Reserved)

Subchapter 7 Sanitation Standards

§17-891.2-61 Handling of diapers and training pants
§17-891.2-62 Handwashing
§§17-891.2-63 to 17-891.2-65 (Reserved)

Subchapter 8 Environmental Health Standards

§17-891.2-66 Disaster plan for emergencies
§17-891.2-67 Accidental injury precautions
§17-891.2-68 Environmental hazards
§17-891.2-69 Water supply
§17-891.2-70 Toilet and lavatory facilities
§17-891.2-71 Food preparation and food protection
§17-891.2-72 Cleaning of premises
§17-891.2-73 Swimming activities and wading pools
§§17-891.2-74 to 17-891.2-79 (Reserved)

Subchapter 9 Physical Facility Standards

§17-891.2-80 Building codes and space requirements
§§17-891.2-81 to 17-891.2-84 (Reserved)

Subchapter 10 Program Modifications

§17-891.2-85 Program modifications for night care
§17-891.2-86 Program modifications for demonstration projects
§§17-891.2-87 to 17-891.2-89 (Reserved)

Subchapter 11 Safe Sleep

§17-891.2-90 Program requirements
§17-891.2-91 Sleep environment

Historical Note: This chapter is based substantially upon Chapter 17-891.1, Hawaii Administrative Rules. [Eff 6/18/87; am and comp 12/19/02; R]

SUBCHAPTER 1

REGISTRATION PROCEDURE

§17-891.2-1 Definitions. For the purpose of this chapter:

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Applicant" means the person who applied for registration of their family child care home and includes this person's spouse.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for eligible children kindergarten and

above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Certificate of Registration" means a certificate of approval issued by the state department of human services authorizing the operation of a family child care facility.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection, apart from the parent or guardian, for any part of a twenty-four hour day.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific registration rules.

"Drop in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop in child care center" means a facility which accepts children for drop in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or certificate of registration for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" or "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during

any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means children who are newborn up to age one (through the twelfth month).

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the special rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permit quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual 18 years or older, caregiver, child care facility, agency, or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" "provisional certificate of registration," or "temporary permit" means a temporary certificate of registration issued at the discretion of the department up to a period of six months to any child care facility which is unable to conform to all the rules at the time the certificate of registration is issued.

"Qualified nutrition consultant" means a dietician or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regular license" means a certificate of approval issued by the state department of human services to the registered family child care facility which conforms to all the rules at the time the certificate is issued.

"Regularly" means the typical or normal pattern of the child care center or family home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

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"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, adult household members, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement when another caregiver is absent.

"Supervision" means the act of being within sight or hearing distance of the children to insure the safety and protection of the children.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-151, 346-172)

§17-891.2-2 Application. (a) A completed family child care home application shall include the following:

(1) A signed departmental application form;

(2) Evidence of satisfactory physical examination and TB clearance for all household members;

(3) Two letters of reference, as specified in section 17-891.2-35(c);

(4) Results of the background checks as described in section 17-801-4, and as indicated in sections (A) and (B) below.

(A) Applicants, their staff members, and

prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.

(B) The department shall conduct the background checks in accordance with chapter 17-801;

(5) Verification that the condominium or townhome association allows the applicant to operate a family child care home.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date of the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-154, 346-172; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-891.2-3 Inspection and issuance of certificate of registration. (a) In exercising its authority to register family child care homes or renew, suspend, or revoke the certificate of registration, the department shall analyze the qualifications of providers of child care, review the home's written policies and program provisions, and inspect the home. Authorized representatives of the department and parents or guardians of children in care may visit a family child care home at any time

during the hours of child care operation for purposes of observing, monitoring and inspecting the facilities, activities, staffing, and during investigations of complaints against the facility, and other aspects of the child care home. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or registrant shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of the certificate of registration.

(c) After the initial registration, the registrant shall ensure that staff members comply with section 17-891.2-2(a)(4) within five working days of hire by the family child care home or residence in the family child care home.

(1) New staff members shall meet the conditions in section 17-801-5 prior to starting employment or volunteering in the family child care home.

(2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b) and 17-801-5(c).

(3) New household members of family child care homes shall meet the conditions in section 17-801-5.

(d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(e) The department shall request the applicant or registrant to terminate the employment or residence of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(f) The applicant or registrant shall comply with the conditions set forth in section 17-801-6(b)(2).

(g) The department shall request the applicant or registrant to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(h) The applicant or registrant shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed in this chapter are minimum standards. The department shall issue a certificate of registration under the following conditions:

(1) A regular certificate of registration shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional certificate of registration shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations do not threaten the health or safety of the children.

(j) The length of the registration period shall be as follows:

(1) For new applicants and those providers who have been registered for less than four years, the registration period is one year, and for all other providers the registration period may be two years, unless subsequently suspended or revoked.

(2) During a registration period, a provider may be issued more than one certificate of registration which may include a provisional certificate of registration followed by a regular certificate of registration. When this occurs, the total length of a registration period shall be according to paragraph (1).

(3) A provisional certificate of registration may be issued for six months; and

(4) A certificate of registration shall be renewed for a new registration period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the registration period.

(k) Each regular certificate of registration and provisional certificate of registration shall clearly state the kind of program the registrant is permitted to operate, the address of the registrant, and the number and types of children who can be cared for at the facility.

(l) A certificate of registration shall be valid for:

(1) One year for new applicants and for those who have been registered for less than four years; and

(2) Two years for those who have been registered for four years or more;

unless sooner revoked. [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-154, 346-156, 346-171, 346-172, 346-173, 346-175; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-891.2-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

(1) Caring for more children than allowed by the facility’s license;

(2) Violation of the staff-child ratio;

(3) Failure to comply with timely request for background check as required in chapter 17-801;

(4) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
(5) Failure to report suspected child abuse or neglect that has occurred or will occur;
(6) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff] (Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-5 Denial, suspension, revocation of certificate of registration, and hearings. (a) The conditions for denial, suspension, or revocation of a certificate of registration and the action to be taken by the department are as follows:

(1) The department shall deny, suspend, or revoke a regular or provisional certificate of registration if:
    (A) An applicant or registrant does not comply with the applicable statues and rules of the department respecting child care facilities; or
    (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.
(2) The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and does not warrant revocation.
(3) The department shall revoke the registration if the provider has violated any minimum requirement to such an extent or of a nature that the provider is unfit to be trusted with the care of children, or if the provider's registration has been suspended

at least once previously.

(4) An applicant or registrant whose certificate of registration is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the certificate of registration or application;

(5) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or registrant of the right to appeal the decision to the director of the department in accordance with Hawaii Revised Statute, chapter 91, not later than ten working days after the mailing of the notice of the proposed action.

(6) Upon receiving a timely written appeal, the director of the department shall give written notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or certificate of registration shall be denied, suspended, or revoked; and

(7) If no timely written appeal is made, processing of the application shall end or the certificate of registration shall be suspended or revoked as of the termination of the ten day period.

(b) The certificate of registration shall be immediately suspended when:

(1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the

premises, or unsafe facility conditions that cannot be immediately abated;

(3) The provider refuses to terminate a staff member as specified in chapter 17-801; or

(4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.

(c) Upon immediate suspension pursuant to (b), the department shall take the following actions:

(1) Provide the registrant written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the certificate of registration;

(2) Provide a statement of the reasons for the suspension in the notice and inform the registrant of the right to petition the department to reconsider the order not later than ten working days after mailing of the notice;

(3) Declare that all operations shall cease as of the date of receipt of the notice, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the certificate of registration. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed; and

(4) Notify the parent or legal guardian of each child who is provided care in the family child care home of the suspension or revocation.

(d) At any hearing provided for by this section, the applicant or registrant may be represented by counsel and has the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties

to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the certificate of registration, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or registrant to continue to care for children under this chapter.

(f) If an applicant or registrant has their regular or provisional certificate of registration revoked, they shall be unable to apply for another certificate of registration for:

(1) A ninety-day period from the date that the certificate of registration was revoked if the revocation was their first offense; and

(2) One year from the date that the certificate of registration was revoked if the revocation was their second offense. [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-154, 346-175; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-6 to 17-891.2-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-891.2-10 Number and age of children in care. A family child care home shall provide care for no more than six children at the same time. The following provider's children are not included in this total:

(1) Children six years of age or older; and

(2) Children under six years of age who are not in the care of the provider. [Eff] (Auth: HRS §§346-172, 346-14) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-11 Statement of operation policies. (a) A child care facility shall have written operation policies. Family child care home policies shall include:

(1) Ages of children accepted;
(2) Maximum number of children permitted by certificate of registration;
(3) Specific hours of day, night, holiday, and vacation operation;
(4) Whether or not meals are served;
(5) Fees and the plan for payment, including fees for different types of child care services and refund policy;
(6) Plan for emergency medical care;
(7) Insurance coverage – each provider shall inform parents or guardians in writing of its policy relating to liability insurance;
(8) Transportation arrangements;
(9) Parental permission for trips and related activities outside the facility;
(10) Admission of ill children, or children with special needs;
(11) Administering medication;
(12) Grievances which shall include the department's information for parents to file a complaint;
(13) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
(14) Regular communication between caregivers and parents or guardians to relay information about the child;
(15) Suspension and expulsion of children which includes the following:
    (A) The conditions under which a child may be suspended or expelled, if applicable;
    (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care

arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in (14)(C) below;

(C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;

Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and

(D) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and

(16) Other policies that may be required by the department.

(b) Written operation policies shall be reviewed with each caregiver in the facility.

(c) The policies shall be reviewed by the provider with each parent or guardian at the time of enrollment of a child and when changes are made. [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-157, 346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-12 Liability insurance. (a) A child care facility shall:

(1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;

(2) Provide to the department evidence of liability insurance coverage; and

(3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-891.2-13 Information on owner or operator. (a) The name, address, and telephone number of the facility shall be provided to the department.

(b) The name of any sponsoring agency shall be provided to the department. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-14 Change in services and staff members. (a) A facility shall notify parents or guardians and the department of any changes in the child care services it provides. Notification of any changes in service shall be made no later than thirty days before the date of the change, and the changes shall be included in the facility's operating policies.

(b) The provider shall inform the department in writing of changes in staff members who provide direct care to children within five working days after the change. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-15 Information and records on each child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the provider to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain the following information from the child's parents or guardians:

(1) The child's full legal name, birth date, current address, and preferred names;
(2) The name and home address of the parents or guardians who are legally responsible for the child;
(3) Telephone numbers or instructions as to how the parents or guardians may be reached

during the hours the child is in the facility; and

(4) Health information concerning the child, including any allergies as required by sections 17-891.2-41 and 17-891.2-42.

(c) The information shall be maintained in writing and shall be kept current. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-16 Disclosure of information on the child. Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility personnel unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-17 Information and records on facility. (a) Written information and records on the facility shall be maintained and made available to the department. Current records and information shall include:

(1) Roster of enrolled children;

(2) Daily attendance record by names of children;

(3) Written permission from the parent to allow the child to have contact with pets or other animals; and

(4) Log of emergency preparedness drills.

(b) The provider shall report to the department, within one working day of occurrence, the death of a child, employee, or household member, and any illness or injury received at the child care facility that results in a child's hospitalization. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-18 Transportation provisions. When transportation is provided, children shall be protected by adequate supervision and safety precautions as follows:

(1) The vehicle and driver providing transportation shall satisfy all relevant motor carrier safety rules and traffic laws of the state;

(2) No more than six children under the age of six years shall be transported when only one adult is in the vehicle;

(3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;

(4) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;

(5) Prior to transporting children, the provider shall obtain written permission from the parent or guardian that each child is allowed to be transported by the provider in a personal vehicle or by public bus;

(6) A child shall not be left unattended in a vehicle;

(7) The provider shall take a head count or attendance record check before and after transportation is provided; and

(8) During any field trip or excursion, the provider shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-19 to 17-891.2-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-891.2-25 Program provisions. There shall be a provider or a responsible adult, designated by the provider, supervising the children at all times. The provider or responsible adult shall always be within sight or hearing distance to provide for the needs of the children and to respond to an emergency. The program shall also provide an environment and experiences which are aimed at promoting the individual child's physical, intellectual, emotional, and social well-being and growth. This shall be done in the following ways:

(1) Activities that promote physical development shall include:
   (A) Daily opportunities for running, climbing, and other vigorous and varied physical activities; and
   (B) Opportunities for children to learn about the health, development, and care of the children's bodies, including exercise, nutrition, and hygiene;

(2) Programs to promote intellectual development shall:
   (A) Provide that a variety of learning materials are introduced and are available to the children; and
   (B) Include first-hand experiences for children to learn about the world; and

(3) Programs to promote emotional development shall provide that:
   (A) There are opportunities for individual self-expression;
   (B) Each child is recognized as an individual;

(C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's own ability to be self-disciplined;
(D) Each child's personal privacy is respected;
(E) Providers shall not use:
(i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking, or
(ii) Methods of influencing behavior which are frightening, humiliating, injurious, neglectful, or damaging to the child's health or self-esteem; and
(F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;

(4) Programs to promote social development shall provide that:
(A) Children are guided in learning to get along with each other;
(B) Providers interact with children in ways which promote mutual respect between adults and children; and
(C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of ethnic and cultural diversity;

(5) The activities and experiences provided by the program shall be appropriate to the developmental level of the children;

(6) The program shall encourage the development of the children's special interests and abilities;

(7) The program shall provide a balance of active and quiet activities; and

(8) The program shall provide for the self-direction of the children by:

(A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
(B) Encouraging children to do things independently; and
(C) Providing children opportunities to be involved in decision making about group and individual activities. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-26 Communication with parents. (a) Providers shall obtain from the parent or guardian a description of the child's daily routine and behavior patterns prior to enrollment.

(b) Caregivers shall relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-27 Program materials and equipment. (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:
(1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and
(2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept in good repair, not be recalled, and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Provision for individual storage of children's clothing and personal belongings shall be available.

(h) Storage space for play materials and equipment used by the children shall be made available.

(i) Sleeping materials and equipment for children less than one year of age shall meet the safe sleep requirements in subchapter 11. For children ages one year and older, the following sleeping equipment shall be available:

(1) Individual bed, crib, cot, mat, or rug for each child who rests; and

(2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-28 Transition to a new facility or school setting. (a) The provider shall assist the child in making the transition from the child care setting to a new child care, a kindergarten, or a school setting.

(b) The provider shall cooperate with parents, guardians, or kindergarten school staff when information is requested which may assist a child to adjust to a new environment, as allowed by section 17-891.2-16 [Eff] (Auth: HRS §346-172)

(Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-29 to 17-891.2-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-891.2-35 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) All providers other than volunteers assisting providers shall be at least eighteen years old.

(c) Written references from two of the following categories of persons shall be submitted to the department with an application:

(1) A neighbor or personal friend;

(2) A person in a professional capacity such as a teacher, doctor, minister, or social worker;

(3) The parent of any child who has previously been in the provider's care, if applicable.

(d) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

(1) Prevention and control of infectious diseases (including immunizations);

(2) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(3) Administration of medication, consistent with standards for parental consent;

(4) Prevention and response to emergencies due

to food and allergic reactions;

(5) Building and physical premises safety;

(6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;

(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(9) Appropriate precautions in transporting children;

(10) Pediatric first aid and child cardiopulmonary resuscitation; and

(11) Recognition and reporting of child abuse and neglect.

(e) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (d) shall be repeated.

(f) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

(1) Each caregiver shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (g).

(2) Substitutes shall complete at least ten hours of department-approved training in at least two of the topic areas in subsection (g).

(3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topics areas in subsection (g).

(4) When an individual does not meet the requirements in subsection (f) or does not

provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with section 17-891.2-36(d).

(g) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

(1) Physical care of the young child;
(2) Care of the sick child;
(3) Child nutrition;
(4) Child growth and development;
(5) Children with special needs;
(6) Learning activities and play;
(7) Family engagement;
(8) Managing challenging behaviors;
(9) Prevention of child maltreatment and abuse;
(10) Pediatric first aid and child cardiopulmonary resuscitation;
(11) Physical environment;
(12) Health and safety;
(13) Child care business or program management; or
(14) Community resources; and
(15) Safe sleep if permitted to care for children less than 1 year of age.

(h) Applicants and staff members shall be of reputable and responsible character and shall not have the following:

(1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or
(2) Any other situations that poses a risk to the health, safety, or well-being of children in care. [Eff] (Auth: HRS §346-172, 346-154) (Imp: HRS

§346-154; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-891.2-36 Staff-child ratio. (a) A family child care home shall provide care for no more than six children at the same time during any part of a twenty-four hour day. The provider's children that are six years of age or older are not included in this total.

(b) No more than two children under eighteen months of age shall be permitted in the family child care home at the same time. Should there be additional adult help in the home, there may be up to four children under eighteen months of age, and parents shall be provided with the names of the additional adults who help.

(c) Restrictions as to the number of children permitted shall be made under the following conditions:

(1) Space is unusually limited;

(2) Provider has personal, physical, or psychological limitations;

(3) There is an unusually wide range of ages of the children;

(4) There are children with special needs requiring unusual amounts of special care; or

(5) Provider is dually licensed as a foster home.

(d) When a substitute is called during an emergency or other time when the regular provider is unable to provide care, the name, address, and telephone number of the substitute shall be provided to the department and parent or guardian and meet the following conditions:

(1) A substitute shall meet the requirements in section 17-891.2-35.

(2) When substitute care is provided, except during an emergency, parents or guardians shall be notified at least ten days prior to the use of a substitute. [Eff] (Auth: HRS §346-172) (Imp: HRS §§346-

151, 346-154, 346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-37 to 891.2-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-891.2-40 Health consultation provisions. The facility shall make provision for health consultation to assist in developing health policies and keeping the policies current. The provider shall contact a local health resource for consultation in setting up and maintaining health standards. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-41 Evidence of child's health. (a) The child care facility shall require and obtain from the parent or guardian of each child entering child care, a health record of the child which complies with the provisions of chapter 11-157, which relate to the immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance which shall include the following:

(1) Child’s record of immunizations, or a written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health, or a written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bonafide religious tenets and

practices, in accordance with chapter 11-157.

(2) Evidence of tuberculosis clearance in accordance with chapter 11-164.2;

(3) Evidence of the child's physical examination; and

(4) The signature of a physician or health agency, signed within one year prior to admission.

(b) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care.

(c) School aged children in before or after school care only, who satisfy health requirements for enrollment in school, are not required to furnish the material specified in subsection (a) above. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-42 Emergency care provisions. Every child care facility shall have the following provisions for emergency care of any child requiring treatment at a hospital or clinic away from the child care setting and for care of a child who becomes ill after arrival as follows:

(1) The provider shall obtain the name of a physician or nearest hospital or clinic where care can be provided to the child;

(2) The provider shall obtain written permission from the parents or guardians to allow the child to receive emergency care;

(3) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for

the child's care. The selection of the adult shall not compromise the supervision of the other children in the program;

(4) An operating telephone that is available and is easily accessible to the provider to be used in case of an emergency;

(5) A first aid kit, emergency contact phone numbers, and medical treatment release forms on field trips; and

(6) A plan for accessing a telephone when not in the usual location where care is being provided. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

(1) There shall be at least one adult provider who is trained in observation of symptoms of illness and with a current certificate in pediatric first aid at all times during the operational day when children are in care.

(2) A current certificate means a certificate that has not expired.

(3) The current pediatric first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose child first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(4) A first aid kit shall be available in the child care setting at all times.

(b) The child CPR requirement shall be as follows:

(1) There shall be at least one adult provider who is trained in child CPR and with a current certificate at all times during the operational day when children are in care.

(2) A current certificate means a certificate that has not expired.

(3) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(4) When the provider accepts infant children, the CPR course shall include training in infant CPR. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-44 Admission of ill children. (a) When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, health consultation shall be available regarding special care and medication.

(b) When medication prescribed by a physician is administered at the facility:

(1) Written permission from the child's parent or guardian to administer medication is on file;

(2) The medication shall be kept in the original container bearing the prescription label which shows a current date, the physician's directions for use, and the child's name; and

(3) Medication shall be kept out of the reach of the children and shall be returned to parents or guardians when no longer in use.

(c) When over the counter medication is recommended by the child or family's doctor, medication shall be administered at the child care facility as directed by the doctor or parent or guardian in writing.

(d) Both the provider and the parents or guardians shall be familiar with special policies of the facility relevant to ill children. Special

policies regarding illnesses are to be explained to the parent or guardian at the time of enrollment of the child.

(e) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until the parents or guardians can be notified to provide alternative arrangements. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-45 Admission of children with special needs. (a) When children with special needs are admitted into a family child care home, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care, the parent or guardian, and the provider occurs. The consultation shall include written recommendations from the health source to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the provider shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, additional adults and equipment shall be available to cover these requirements.

(e) When additional adults assist with care for children with special needs as set out in subsection (d), the adults shall be subject to the same requirements for health and personal habits as the provider. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-46 Daily nutritional needs. (a) To the extent possible, information provided by parents or guardians concerning the child's eating habits, food preferences, or special needs shall be considered in child care feeding schedules and menus. Children shall be encouraged but shall not be required to eat the food offered at the home.

(b) The home shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resource approved by the state department of health.

(c) In a home providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The home shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - - - - one snack;

(2) Four to eight hours - - - one snack or breakfast and lunch or supper;

(3) Eight hours or more - - - one snack or breakfast and lunch or supper and one additional snack (unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in (3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, provider shall consult with the USDA).

(d) In a home where parents or guardians are allowed to provide food (i.e. sack lunches or snacks) the home, in addition to food the child brings, shall meet the minimum amounts required by the USDA child

care food program by offering and providing children in care:

(1) Four to eight hours - - - morning snack or breakfast or afternoon snack;

(2) Eight hours or more - - - morning snack or breakfast and afternoon snack. (unless the eight hours or more extend into the evening hours when the child may be asleep);

(3) When two snacks are required as in (2) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(4) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(e) Children shall not be offered foods to which they are allergic or, for religious reasons, cannot consume. Provisions shall be made to secure such information from the parent or guardian, and the parent or guardian of the child shall arrange for nutritious substitute foods.

(f) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(g) Infants shall be personally attended while being fed.

(1) Infants unable to hold bottles shall have bottles held, not propped, by the caregiver.

(2) Parents or guardians may assume full responsibility for the infants' diet.

(h) School aged children in before or after school care for two or more hours shall be offered a nutritious snack which may be provided by the facility or brought from home.

(i) Food shall not be used as a punishment or reward. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-47 Drinking water provisions. Potable drinking water shall be available and accessible to all children. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-48 Integration of mental health concepts. Mental health aspects of child development shall be integrated as follows:

(1) The child and at least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to a family child care home. The personal interview shall be conducted to secure pertinent information on the child's overall behavior and to acquaint the parent or guardian with the child care home's policies;

(2) The provider shall regularly communicate with the parents or guardians about the child's development; and

(3) The providers shall be aware of community resources, such as children's mental health teams in the state department of health, to help recognize and foster age appropriate behavioral development in children and shall share this information with the parents or guardians. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-49 to 17-891.2-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR PROVIDER AND OTHERS IN THE HOME

§17-891.2-55 Providers' health standards. Evidence that providers are free from health problems which would have a harmful effect on the children or which would interfere with effective functioning shall be maintained at the child care home as follows:

(1) The results of employment physical examinations for the provider, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to beginning family child care which indicates the provider and each staff member who works ten or more hours a week is in adequate physical, and if needed, mental health to care for children;

(2) Any other person living in the home shall have a written report of a physical examination on file which was obtained within one year prior to the provider beginning child care or prior to the person's occupancy in the home. For school aged children, this requirement is fulfilled by meeting the rules for school attendance;

(3) Written evidence that each adult in the home is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care shall be on file at the facility. The tests shall be repeated in compliance with chapter 11-164; and

(4) Volunteers or other caregivers, paid or not, who provide direct child care shall be subject to the same requirements for health and personal habits as the provider.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-56 Personal health habits of provider. The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

(1) The use of medications other than over-the-counter medication is permitted only when authorized by a physician;
(2) Medication that impairs or limits the caregiver's ability to provide care shall not be consumed prior to or during the hours of child care;
(3) All medication is stored out of the reach of children;
(4) The provider shall inform parents or guardians if any member of the household smokes;
(5) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children; and
(6) Alcoholic beverages shall be stored out of the reach of children and shall not be consumed during hours of the facility's child care operation. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005,9833)

§§17-891.2-57 to 17-891.2-60 (Reserved)

SUBCHAPTER 7

SANITATION STANDARDS

§17-891.2-61 Handling of diapers and training

pants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

(1) Use a clean non-porous surface for changing diapers;

(2) Use a space set aside for diapering that is separate from eating and food preparation areas;

(3) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.

(4) Soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, shall be placed in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach. The soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-62 Handwashing. (a) The provider and children shall wash hands with water and soap:

(1) Before and after preparing food or beverages;

(2) Before and after drinking, eating meals and snacks, handling food or feeding a child;

(3) Before and after diapering;

(4) After using the toilet or helping a child in toileting;

(5) After handling bodily fluids or items containing bodily fluids;

(6) After handling pets or animals; or

(7) After outdoor play.

(b) Paper towels or separate cloth towels for each child shall be used for drying hands after handwashing. [Eff] (Auth: HRS §346-

172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-63 to 17-891.2-65 (Reserved)

SUBCHAPTER 8

ENVIRONMENTAL HEALTH STANDARDS

§17-891.2-66 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall be posted in a prominent place in the facility.

(b) The plan shall be practiced at regular intervals and include written procedures for:

(1) Evacuation;
(2) Relocation of the child care facility if facility becomes uninhabitable, or if the facility is ordered to evacuate;
(3) Sheltering in place at the child care facility;
(4) Lock-down of the child care facility;
(5) Communication and reunification with families during and after an emergency;
(6) Continuity of operations during and after an emergency;
(7) Accommodation of children, including infants and toddlers during an emergency;
(8) Providing for the needs of children with disabilities and children with special needs during an emergency; and
(9) Providing for the needs of children with chronic medical conditions during an emergency.

(c) Each child care facility shall provide emergency preparedness training to staff members.

(d) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added. A log of the practice drills shall be maintained and made readily available for inspection by the department.

(e) Monthly fire drills shall be conducted and a written fire drill log shall be maintained and made readily available for inspection by the department.

(f) Emergency evacuation exits are kept clear of obstructions.

(g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each stairway or hall in the facility.

(h) There shall be an unexpired ABC multi-purpose type fire extinguisher in the child care area.

(i) Parents or guardians shall be informed of the disaster plans at the time of enrollment.

(j) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-67 Accidental injury precautions. The provider shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

(1) Ensuring that child care activities and premises do not expose children to situations which may be hazardous to the particular age or capacity of the child;

(2) Helping increase the children's awareness of safety practices and accident hazards, as appropriate to their age and level of development and helping the children to learn how to avoid such hazards;

(3) Ensuring that materials and equipment have not been recalled by the consumer product safety commission; and

(4) Following procedures for infection control, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids that might contain blood. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-68 Environmental hazards. The premises, both indoor and outdoor, in which a child care program is carried out shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(1) The provider shall control rodents and insects;
(2) All entrances and exits shall be secured;
(3) The outdoor space shall be fenced or shall have natural barriers or other protective conditions to deter children from getting into unsafe areas;
(4) There shall be no open drainage ditches, wells, or holes into which children may fall;
(5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;
(6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisances;
(7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;
(8) Poisons, drugs, harmful chemicals, and other dangerous articles such as cleaning fluid, matches, and firearms, shall be kept in a safe location, out of reach of children;
(9) Hazardous substances, including cleaning solutions, alcohol, and medication are inaccessible to children and in a closed

container which are clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times;

(10) All rooms used for child care shall be lighted and ventilated;

(11) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;

(12) Children shall be supervised when using hot water taps;

(13) Stove top controls shall not be accessible to children;

(14) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;

(15) Indoor and outdoor structures, equipment and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;

(16) Lead based paint shall not be used on surfaces accessible to children;

(17) Provision shall be made to eliminate the hazard of electrical outlets;

(18) Electrical cords shall not cross pathways, and long cords are wrapped and secured;

(19) Poisonous plants shall be kept out of the reach of children;

(20) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;

(21) If a lodging house, boarding house, or other business conflicts with child care hours and responsibilities, the lodging house, the boarding house, or other business shall not be operated on the premises of the child care home.

(22) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured

and locked in a separate place; provided that a law enforcement officer, who is trained and certified to carry a firearm and ammunition, shall not be subject to this subsection for a law enforcement agency-issued firearm when the officer is acting in an official or authorized capacity. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-69 Water supply. (a) The water supply shall be from a source approved by the health authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-70 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following shall apply:

(1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;
(2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
(3) Where water carried sewage disposal means

are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;

(4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating;

(5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with risers and holes sized to the age group;

(6) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;

(7) Lavatories shall be available and small children shall be assisted in washing to prevent accidental scalding;

(8) Safe, sturdy step stools shall be provided to allow the use of standard sized toilets and lavatories; and

(9) Children shall not share towels, toothbrushes, combs, and other necessary toilet articles. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172;42 U.S.C. §§2002, 2005, 9833)

§17-891.2-71 Food preparation and protection. Food preparation and protection shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

(1) All food shall be protected from contamination during storage, preparation, and service;

(2) All dishwashing shall be performed in a sanitary manner;

(3) An adequate number of eating and drinking

utensils shall be available for each child;

(4) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use;

(5) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner; and

(5) Food protection policies shall comply with accepted practices of local sanitary codes in chapter 11-50, and shall be adapted to fit the needs of the program except as indicated in these rules.

[Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-72 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and provisions shall be made for regular cleaning of the premises to protect the health of the children and provider.

(b) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the children.

(c) There shall be a plan for regular cleaning of toys, table tops, furniture, and other similar equipment used by the children.

(d) Areas designated for eating and food preparation are cleaned before and after meals and snacks. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-73 Swimming Activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a

part of the child care program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming activities or swimming pools or beaches are in use;

(2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b)(1). However, children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and

(3) Legible safety rules for the use of all types of pools, excepting for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of the children. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-74 to 17-891.2-79 (Reserved)

SUBCHAPTER 9

PHYSICAL FACILITY STANDARDS

§17-891.2-80 Building codes and space requirements. Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county in which the facility is located, to state rules as may be applicable to the facility, and the following:

(1) The department shall be notified of changes or renovations in the home;

(2) Space requirements shall be as follows:

(A) For daytime care, there shall be a

minimum of thirty-five square feet of indoor area per child, excluding bathrooms, closets, and hallways. Covered lanai area may be counted for not more than thirty per cent of the required area;

(B) For nighttime care, each room used for sleeping purposes for children in care shall have a minimum of fifty square feet per child, excluding kitchen, bathroom, closets, hallways, and lanai area;

(C) For outdoor space, there shall be easy accessibility to adequate outdoor space and in all cases, a minimum of one hundred fifty square feet. For children twelve months or older there shall be a minimum of seventy-five square feet per child;

(3) All parts of the building, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times; and

(4) There shall be written evidence that the condominium or townhome association allows the applicant to operate a family child care home. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-81 to 17-891.2-84 (Reserved)

SUBCHAPTER 10

PROGRAM MODIFICATIONS

§17-891.2-85 Program modifications for night care. A child care facility offering night care shall meet the requirements of this chapter in addition to the following requirements:

(1) In consultation with parents, special attention shall be given to provide for a transition into night care;
(2) Toys for quiet activities shall be available;
(3) Comfortable beds or cots, complete with bedding, and night clothes shall be available or supplied by the parents;
(4) The provider shall be available to assist children during eating and pre-bedtime hours and during the morning period when dressing. During sleeping hours, the provider shall always be within hearing distance to provide for the needs of children and to respond to an emergency;
(5) A child shall not sleep in a building detached from the main facility; and
(6) Night care facilities shall include at least one shower, bathtub, or bathing facility for young children. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-86 Program modifications for demonstration projects. (a) A child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The child care facility shall submit a written proposal to the department indicating the following:

(1) Purpose of the project;
(2) Description of the project;
(3) Length of the project;
(4) Specific child care rules that shall be exempted by the project; and
(5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the department's designated representatives if requested by the department.

(d) A demonstration project which has been approved in writing by the department shall comply with all requirements imposed by the department at the time of its approval as follows:

(1) The name or description of the project shall include the words "registered demonstration project";

(2) Providers shall be able to show that at all times the demonstration project is in compliance with the child care rules, except as specifically exempted or modified in the department's written approval; and

(3) Within the last quarter of the time specified for the demonstration project, a written report shall be submitted to the department which includes:

(A) Developments, findings, recommendations, and suggestions for further study; and

(B) Any proposed recommendations related to the demonstration project for changing or modifying child care rules with justification therefore.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "registered demonstration project" in the identifying title, logo, or material. [Eff] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

§§17-891.2-87 to 17-891.2-89 (Reserved)

SUBCHAPTER 11

SAFE SLEEP

§17-891.2-90 Program requirements. (a) A child care facility shall have a written operation policy regarding safe sleep.

(b) All staff members of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall ensure the following for sleeping children less than one year of age:

(1) Children shall be placed on their backs to sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;

(2) Sleeping children are physically monitored and periodically checked; and

(3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap. [Eff] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

§17-891.2-91 Sleep environment. (a) A child care facility shall use cribs and playpens that have not been recalled by the consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen.

(c) A clean, tightly fitted crib sheet shall be used to cover the crib or playpen for children less than one year of age.

(d) Sleeping areas shall be well-ventilated.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair." [Eff] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

2. The adoption of chapter 17-891.2, 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 Statues, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.

_____
CATHY BETTS
Director of Human Services

APPROVED AS TO FORM:

_____
Deputy Attorney General

IV. Old Business – After Public Hearing

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, **Licensing of Group Day Care Centers and Group Child Care Homes**, promulgated by DHS

RECEIVED
By SBRRB at 12:01 pm, Dec 02, 2021

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17.892.2

Chapter Name: Licensing of Group Child Care Centers and Group Child Care Homes

Contact Person/Title: Dayna Luka/Acting Child Care Program Administrator

Phone Number: (808) 586-7058

E-mail Address: dluka@dhs.hawaii.gov **Date:** 12/2/21

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

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

☐ **Yes** ☑ **No**

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

I. Rule Description: ☐ **New** ☐ **Repeal** ☑ **Amendment** ☐ **Compilation**

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

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

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

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

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

☐ **Yes** ☑ **No**

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

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

☐ **Yes** ☑ **No**

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

* * *

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

Please refer to Attachment 1

4. The number of persons who:
   (i) Attended the public hearing: 30

   (ii) Testified at the hearing: 3

   (iii) Submitted written comments: 10

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

   ☑ **Yes** ☐ **No**

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

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

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By SBRRB at 12:08 pm, Dec 02, 2021

V. In 2018, DHS held about 6 different listening sessions to review the proposed changes that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care Development Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019.

V.a. Preschools agreed that the 16 hours of on-going health and safety training over a 12 month period was a reasonable amount. The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

For maximum group size limits, the recommendation to allow for more children to be grouped together during specific events or times was incorporated into the proposed rule.

VI.1. The Public Notice was published in the newspapers statewide on Wednesday, June 30, 2021, to inform the public of the opportunity to provide their comments for the proposed rule chapter at the public hearing scheduled for July 30, 2021. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.

VI.2 Written testimonies were submitted; and comments were overwhelmingly in support of reinserting the language pertaining to the use of lanai space to be used in calculating the maximum number of children allowed on the license. Businesses testified as to how the removal of the language to allow for lanai space to be counted as usable space would negatively affect their operations.

VI.3 The department acknowledges that while we had been applying the rule regarding the use of lanai space in the calculation for license maximum incorrectly, we will need time to rewrite it so that the language is clear. The rule has been reinserted into the proposed rules that enclosed lanai space will be counted in the license maximum until we are able to rewrite the rule in concise language.

RECEIVED
By SBRRB at 12:13 pm, Dec 02, 2021

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-892.2
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-892.2, Hawaii Administrative Rules, entitled "Licensing of Group Child Care Centers and Group Child Care Homes is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 892.2

LICENSING OF GROUP CHILD CARE CENTERS AND GROUP CHILD CARE HOMES

Subchapter 1 Licensing Procedure

§17-892.2-1 Definitions
§17-892.2-2 Application
§17-892.2-3 Inspection and issuance of license
§17-892.2-4 Fines
§17-892.2-5 Denial, suspension, revocation of license, and hearings
§§17-892.2-6 to 17-892.2-9(Reserved)

Subchapter 2 Administration Requirements

§17-892.2-10 Age of children in care
§17-892.2-11 Statement of operation policies
§17-892.2-12 Liability insurance
§17-892.2-13 Information on owner or operator
§17-892.2-14 Change in services and staff members
§17-892.2-15 Information and records on each child
§17-892.2-16 Disclosure of information on the child
§17-892.2-17 Information and records on facility
§17-892.2-18 Transportation provisions
§§17-892.2-19 to 17-892.2-24(Reserved)

Subchapter 3 Program Requirements

§17-892.2-25 Program provisions
§17-892.2-26 Communication with parents
§17-892.2-27 Program materials and equipment
§17-892.2-28 Transition to a new facility or school setting
§§17-892.2-29 to 17-892.2-34(Reserved)

Subchapter 4 Staffing Requirements

§17-892.2-35 Staff training, experience, and personal qualifications
§17-892.2-36 Staff-child ratio
§§17-892.2-37 to 17-892.2-39(Reserved)

Subchapter 5 Health Standards for Children

§17-892.2-40 Health consultation provisions
§17-892.2-41 Evidence of child's health
§17-892.2-42 Emergency care provisions
§17-892.2-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR)

§17-892.2-44 Admission of ill children
§17-892.2-44.01 Administration of medication
§17-892.2-45 Non-admission of ill children
§17-892.2-46 Admission of children with special needs
§17-892.2-47 Daily nutritional needs
§17-892.2-48 Drinking water provisions
§17-892.2-49 Integration of mental health concepts
§§17-892.2-50 to 17-892.2-54(Reserved)

Subchapter 6 Health Standards for Staff

§17-892.2-55 Providers' health standards
§17-892.2-56 Personal health habits of staff
§§17-892.2-57 to 17-892.2-60(Reserved)

Subchapter 7 Environmental Health Standards

§17-892.2-61 Disaster plan for emergencies
§17-892.2-62 Accidental injury precautions
§17-892.2-63 Environmental hazards
§17-892.2-64 Water supply
§17-892.2-65 Toilet and lavatory facilities
§17-892.2-66 Food preparation
§17-892.2-67 Food protection
§17-892.2-68 Cleaning of premises
§17-892.2-69 Public beaches, swimming activities, and wading pools
§§17-892.2-70 to 17-892.2-74(Reserved)

Subchapter 8 Sanitation Standards

§17-892.2-75 Handling of diapers and training pants
§17-892.2-76 Handwashing
§§17-892.2-77 to 17-892.2-79(Reserved)

Subchapter 9 Physical Facility Standards

§17-892.2-80 Building codes and space requirements
§§17-892.2-81 to 17-892.2-84(Reserved)

Subchapter 10 Program Modifications

§17-892.2-85 Program modifications for drop-in care
§17-892.2-86 Program modifications for night care
§17-892.2-87 Program modifications for demonstration projects

Historical Note: The chapter is based substantially upon 17-892.1, Hawaii Administrative Rules. [Eff 4/11/92, am and comp 12/19/02; R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-892.2-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Approved child development or early childhood training courses" means child development or early childhood courses taken from accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars shall be subject to approval by the department.

"Assistant teacher" means any person who works with the guidance of the teacher and director to carry out the program of the center.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for children kindergarten age and above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian for any part of a twenty-four hour day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a family child care home, in a group child care home, or in a group child care center.

"Child care aide" or "aide" or "child care assistant" means any person who helps the teacher or assistant teacher with all aspects of the planned program.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery

school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific licensing rules.

"Director" or "principal" or "head teacher" or "operator" means the person at the facility having responsibility for the administration of a child care center and its program.

"Drop-in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop-in child care center" means a facility which accepts children for drop-in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or license certificate for child

care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to a specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means a child who is newborn up to age one (through the twelfth month).

"Intersession care" means child care provided during the breaks within the academic school year for children who are enrolled in public or private elementary school.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permits quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual eighteen years or older, caregiver, child care facility, agency or organization, exempt care providers, and adult

employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department up to a period of six months to any child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietician or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

(1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
(2) Northwest Commission on Colleges & Universities;
(3) North Central Association of Colleges and Schools-the Higher Learning Commissions
(4) New England Association of Schools and Colleges-New England Commission of Higher Education;
(5) Southern Association of Colleges and Schools Commission on Colleges; or
Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of the child care center or family home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, adult household members, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Summer care" means care that is provided after the end of the academic year and occurs during the summer months.

"Supervision" means to be within sight and hearing distance of the children to insure the safety and protection of the children.

"Teacher," "teacher-director," "head teacher," or "lead teacher" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, supervising, and training other staff.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-151, 346-162)

§17-892.2-2 Application. (a) A completed application to operate a group child care center or group child care home must include the following:

(1) A signed department application form;

(2) A written statement of operation policies;

(3) Verification that the facility meets the applicable county codes;

(4) Results of the background checks as described in section 17-801-4, and as indicated in (A) and (B) below:

(A) Applicants, staff members, and prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.

(B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-892.2-3 Inspection and issuance of license. (a) In exercising its authority to license child care centers or renew, suspend, or revoke a license, the department shall analyze the qualifications of providers of child care, review the facility's written policies and program provisions, and inspect the child care facility. Authorized representatives of the department and parents or guardians of children in care may visit a child care facility at any time during the hours of operation for purposes of monitoring and inspecting the facilities, activities, staffing, and other aspects of the child care center. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(c) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-892.2-2(a)(4) within five working days of hire by the child care facility or residence in the group home.

(1) New staff members shall meet the conditions in sections 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering at the child care facility.

(2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).

(3) New household members of group child care homes shall meet the conditions in section 17-801-5.

(d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(e) The department shall request the applicant or licensee to terminate the employment or residence of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(f) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).

(g) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed herein are minimum standards. The department shall issue a license certificate under the following conditions:

(1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations do not threaten the health or safety of the children.

(j) The length of the licensing period shall be as follows:

(1) For new applicants and those providers licensed for less than four years, the licensing period is one year, and for all other providers the licensing period may be two years, unless subsequently suspended or revoked.

(2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to paragraph (1).

(3) A provisional license may be issued for up to six months; and

(4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.

(k) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.

(l) A license certificate shall be valid for:

(1) One year for new applicants and for those who have been licensed for less than four years; and

(2) Two years for those who have been licensed for four years or more,

unless sooner revoked. [Eff] (Auth:

HRS §346-162) (Imp: HRS §§346-154, 346-156, 346-163, 346-161, 346-165, 346-166; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-892.2-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension, or revocation of a license:

(1) Caring for more children than allowed by the facility's license;
(2) Violation of the staff-child ratios;
(3) Improperly certifying staff credentials;
(4) Failure to comply with timely request for background check as required in chapter 801;
(5) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
(6) Failure to report suspected child abuse or neglect that has occurred or will occur;
(7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff] (Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-892.2-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action taken by the department shall be as follows:

(1) The department shall deny, suspend, or revoke a regular license or a provisional license if:

(A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or

(B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.

(2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the license application;

(3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice of the proposed action;

(4) Upon receiving a timely written appeal the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and

(5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.

(b) The license certificate shall be immediately suspended when:

(1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(3) The provider refuses to terminate a staff member as specified in chapter 17-801; or

(4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.

(c) Upon immediate suspension pursuant to (b), the department shall take the following actions:

(1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;

(2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order within ten working days after mailing of the notice; and

(3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.

(d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence

applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.

(f) If an applicant or licensee has their regular license or provisional license revoked, they shall be unable to apply for another license for:

(1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and

(2) One year from the date that the license was revoked if the revocation was their second offense. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005)

§§17-892.2-6 to 17-892.2-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-892.2-10 Age of children in care. A group child care center or group child care home may provide care to children aged two years (twenty-four months) and older. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-162, 346-14; 42 U.S.C. §§2002, 2005)

§17-892.2-11 Statement of operation policies.

(a) A child care facility shall have written operation policies. Written policies shall be available to the department, caregiver staff, and parents or guardians of children for whom care is, or may be, available, and shall cover the following areas:

(1) Ages of children accepted;
(2) Maximum number of children permitted by license;
(3) Specific hours of day, night, holiday, and vacation operation;
(4) Type of child care services to be offered;
(5) Whether or not meals are served;
(6) Admission requirements and enrollment procedures;
(7) Provisions which may be made for special needs of individual children;
(8) Fees and the plan for payment, including fees for different types of service and refund policy;
(9) Plan for emergency medical care;
(10) Insurance coverage - each facility shall inform parents or relatives in writing of its policy relating to liability insurance;
(11) Personal belongings brought to the facility;
(12) Transportation arrangements;
(13) Parental permission for trips and related activities outside the facility;
(14) Admission of ill children;
(15) Administering medication;
(16) Provision and management of diapers and other toddler supplies, if applicable;
(17) Sanitation practices;
(18) Grievances which shall include the department's information for parents to file a complaint;
(19) Fundraising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;

(20) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350,HRS;

(21) Regular communication between caregivers and parents or guardians to relay information about the child;

(22) Suspension and expulsion of children which includes the following:

(A) The conditions under which a child may be suspended or expelled, if applicable;

(B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in paragraph (22)(C) below;

(C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;

(D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and

(E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and

(23) Other policies that may be required by the department.

(b) Written operation policies shall be reviewed with each caregiver in the facility.

(c) Written policies shall be made available for review by parents or guardians at the time of enrollment of a child. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-891.2-12 Liability insurance. A child care facility shall:

(1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;

(2) Provide to the department evidence of liability insurance coverage; and

(3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-892.2-13 Information on owner or operator. (a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the child care facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name of the owner or sponsoring agency (privately owned, church or agency owned, etc.) of the facility shall be supplied to the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-14 Change in services and staff. (a) A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

(1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of children enrolled in the facility; and

(2) Notification of any changes in service shall be made no later than thirty days before the date of the change and all changes shall be included in the facility's operating policies.

(b) A facility shall provide to the department written notification of changes in staff members who provide direct care to children within five working days after the change. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-15 Information and records on each child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The name and address of the parents or guardians who are legally responsible for child;

(3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care center;

(4) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;

(5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and

(6) Health information concerning the child, including any allergies, as required by sections 17-892.2-41 and 17-892.2-42.

(c) The information shall be available on facility forms and shall be kept current. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-16 Disclosure of information on the child. (a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff and the department unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The facility shall have release of information forms available for parents or guardians to sign.

(c) The facility shall provide the parents or guardians with written notification of the facility's policy regarding disclosure of information. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-17 Information and records on facility. (a) The facility shall maintain, and make available to the department current records and information including:

(1) Roster of enrolled children;

(2) Daily attendance records by names of children;

(3) Daily menu;

(4) Daily schedule of activities; and

(5) A list of staff members including each staff member's training, position or title, experience, and health records;

(6) Written permission from the parent to allow the child to have contact with pets or other animals; and

(7) Log of emergency preparedness drills practiced in accordance with section 17-892.2-61.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child, employee, or household member, and any illness or injury received at the child care facility that results in a child's hospitalization. [Eff] (Auth: HRS §346-162) Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-892.2-18 Transportation provisions. When transportation is provided by a facility, children shall be protected by adequate supervision, safety precautions, and liability and medical insurance coverage as follows:

(1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;

(2) During any field trip or excursion operated or planned by the facility, the staff-child ratios as provided in section 17-892.2-36 shall apply;

(3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;

(4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;

(5) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;

(6) A child shall not be left unattended in a vehicle;
(7) Staff members shall take a head count or attendance record check before and after transportation is provided; and
(8) During any field trip or excursion, staff members shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-19 to 17-892.2-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-892.2-25 Program provisions. The program conducted in the facility shall provide for staff supervision at all times and an environment and experiences which are aimed at promoting the individual child's physical, intellectual, emotional, and social well-being and growth. This shall be done in the following ways:

(1) The child care director shall provide the department with a brief written description of the facility's program goals and how the daily activities of the center satisfy the physical, intellectual, emotional, social development, and well-being of the child;
(2) Activities which promote physical development shall include:
    (A) Daily opportunities for running, climbing, and other vigorous physical

activities;

(B) Varied physical activities; and

(C) Opportunities for children to learn about the health, development, and care of the children's bodies, including exercise, nutrition, and hygiene;

(3) Programs to promote intellectual development shall:

(A) Provide that a variety of learning materials are introduced and are available to the children; and

(B) Include first-hand experiences for children to learn about the world;

(4) Programs to promote emotional development shall provide that:

(A) There are opportunities for individual self-expression;

(B) Each child is recognized as an individual;

(C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's ability to be self-disciplined;

(D) Each child's personal privacy is respected;

(E) Providers shall not use:

(i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or

(ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the child's health or self-esteem; and

(F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;

(5) Programs to promote social development shall provide that:

(A) Children are guided in developing and working out ways of getting along with each other;
(B) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and
(C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity;

(6) The activities and experiences provided by the program are appropriate to the developmental level of the children;
(7) The program encourages the development of the children's special interests and abilities;
(8) The program provides a balance of active and quiet activities; and
(9) The program shall provide for the self-direction of the children by:
(A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
(B) Encouraging children to do things independently; and
(C) Providing children opportunities to be involved in decision making about group and individual activities. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-26 Communication with parents. Caregivers shall relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-27 Program materials and equipment. (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

(1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and

(2) Provide for a variety of experiences and appeal to the individual interests of the children

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept in good repair, not be recalled, and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Provision for individual storage of children's clothing and personal belongings shall be available.

(h) Storage space for play materials and equipment used by the children shall be available.

(i) The following sleeping equipment shall be available:

(1) Individual bed, cot, mat, or rug for each child who rests; and

(2) A clean sheet or cover to be used on the bed cot, mat, or rug for each child. [Eff

] (Auth: HRS §346-162)
(Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-28 Transition to a new facility or school setting. (a) The provider shall assist the child in making the transition from the child care setting to a new child care, a kindergarten, or school setting.

(b) The provider shall cooperate with parents, guardians, new providers, or kindergartens when information is requested which may assist a child to adjust to a new environment, as allowed by section 17-892.2-16. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-29 to 17-892.2-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-892.2-35 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions or courses available to all staff and volunteers.

(c) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health

and safety standards which addresses the following areas:

(1) Prevention and control of infectious diseases (including immunizations);
(2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
(3) Administration of medication, consistent with standards for parental consent;
(4) Prevention and response to emergencies due to food and allergic reactions;
(5) Building and physical premises safety;
(6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
(9) Appropriate precautions in transporting children, if applicable;
(10) Pediatric first aid and child cardiopulmonary resuscitation; and
(11) Recognition and reporting of child abuse and neglect.

(d) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (c) shall be repeated.

(e) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

(1) Each caregiver staff member shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (f).

(2) Substitutes shall complete at least ten hours of department-approved training annually in at least two of the topic areas in subsection (f).

(3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topic areas in subsection (f).

(4) When an individual does not meet the requirements in subsection (e) and does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-892.2-36(d) and (e).

(f) Each caregiver shall provide written evidence to the department to show completion of on-going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

(1) Physical care of the young child;
(2) Care of the sick child;
(3) Child nutrition;
(4) Child growth and development;
(5) Children with special needs;
(6) Learning activities and play;
(7) Family engagement;
(8) Managing challenging behaviors;
(9) Community resources;
(10) Prevention of child maltreatment and abuse;
(11) Pediatric first aid and child cardiopulmonary resuscitation;
(12) Health and safety;
(13) Child care business or program management; or
(14) Physical environment.

(g) Applicants and staff members shall be of

reputable and responsible character and shall not have the following:

(1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or

(2) Any other situations that poses a risk to the health, safety or well-being of children in care.

(h) Directors, teachers, assistant teachers, and aides employed in a licensed facility on January 25, 1982, shall be deemed to have adequate minimum qualifications for the type of staff position occupied and to maintain this status when shifting employment to another licensed facility.

(i) The age requirements for staff shall be as follows:

(1) All staff in positions other than child care aide, volunteer, clerical, or maintenance personnel shall be at least eighteen years old; and

(2) A child care aide shall be at least sixteen years old to be counted in the staff-child ratio.

(j) The director of a facility licensed for seven or more children shall have the following qualifications:

(1) A bachelor's degree or higher from a regionally accredited college or university or transferable to a regionally accredited college or university preferably with courses in early childhood education, child development, or related fields, and two years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed; or

(2) Two years of college education (sixty semester credits) preferably with courses in early childhood education, child development, or related fields, and four

years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed; or

(3) A child development associate credential, and four years of experience working with children of which at least one year of experience with children of the appropriate age for the child care center being directed.

(k) A teacher shall meet one of the following qualifications:

(1) A degree in child development or early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and six months of experience working in an early childhood program; or

(2) A child development associate credential, and one year of supervised teaching experience in an early childhood program; or

(3) An organized two-year (sixty semester credit) college program with a certificate in early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and one year of supervised teaching experience in an early childhood program; or

(4) A bachelor's degree in elementary education from a regionally accredited college or university or transferable to a regionally accredited college or university, six months working in an early childhood program, and six semester credits approved child development or early childhood courses, which may be included as part of a bachelor's degree and which shall be from a regionally accredited college or university or transferable to a regionally accredited college or university; or

(5) A bachelor's degree in any field from a regionally accredited college or university or transferable to a regionally accredited college or university, six months working in an early childhood program, and twelve semester credits approved child development or early childhood courses, which may be included as part of a bachelor’s degree and which shall be from a regionally accredited college or university or transferable to a regionally accredited college or university.

(l) An assistant teacher shall meet one of the following qualifications:

(1) A child development associate credential or an associate’s degree with a certificate in early childhood education from a regionally accredited college or university or transferable to a regionally accredited college or university, and six months of experience working in an early childhood program; or

(2) Two years (sixty semester credits) of postsecondary education, six months of working in an early childhood program, and nine semester credits approved child development or early childhood courses from a regionally accredited college or university or transferable to a regionally accredited college or university.

(m) Waivers for teacher or assistant teacher positions may be granted by the department if there are no qualified applicants available for the position, provided:

(1) The position vacancy has been advertised in the classified ad section of the largest newspaper in the county;

(2) The prospective employee meets the requirement for the next lower position;

(3) There is a written plan presented to the department's division administrator on the steps to be taken to bring the employee up

to the proper qualifications for the position; and

(4) Approval for a waiver has been received prior to the hiring of the non-qualified teacher or assistant teacher.

(n) A child care aide shall meet one of the following qualifications:

(1) High school vocational child care training course; or

(2) Orientation training course in the center.

(o) Volunteers shall:

(1) Participate in an orientation to the program; or

(2) Be a participant in a high school program which includes child care training; and

(3) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(p) Temporary hires shall meet qualifications of positions for which hired.

(q) Substitutes for teachers and assistant teachers shall be at least eighteen years of age and shall have participated in an orientation program of the facility. The curriculum, lesson plans, and daily activities assigned to the substitute shall be closely supervised by the center's director.

(r) Substitutes for director shall meet qualifications for director.

(s) Substitutes for aides shall meet the qualifications of an aide.

(t) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department. [Eff] (Auth: §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 5751, 9833)

§17-892.2-36 Staff-child ratio and group size.

(a) The staff-child ratio shall be met and maintained at all times by the facility.

(b) The staff-child ratio shall be in writing and shall be made available to the department. Distribution of staff may include a team comprised of teacher, assistant teacher, and child care aides. The staff members shall be on site and shall be assigned to a group of children to be included in the staff-child ratio. Custodians, cooks, and bus drivers shall not be counted in the staff-child ratio when performing regular duties.

(c) The director may teach and may be counted in the staff-child ratio as follows:

(1) In a center with less than fifty children, the director may teach and may be counted in the staff-child ratio; and

(2) In a center with fifty or more children the director may teach but shall not be included in the staff-child ratio.

(A) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. In any case this inclusion in the staff-child ratio may not exceed ten hours per week.

(B) Exception may be made and the director of a child care center, full day only, may be included in the staff-child ratio during the first and last hours of the regular operational day.

(d) The following staff-child ratio and maximum group size shall be implemented:

Ratio and Group Size Chart I

Age of Child	# of Children Per Staff Member	Maximum Group Size Permitted
0 - under 24 mo.	Not Permitted	Not Permitted
2 year olds	8	16
3 year olds	12	24
4 year olds	16	32
5 year and older	20	40

(1) Unless specific instructional curriculum and related provisions specify mixing the ages and excepting nap time, the number of children assigned to a staff member shall be determined by the age of the youngest child in the group (unit).

(2) In those facilities in which an instructional curriculum as well as classroom environment and teacher training specifically require mixing the ages, the number of children per staff member shall be determined by the average of the staff-child ratios according to the chart above. Such provision shall not apply to more than three hours of mixed instructional time during any operational day for the same child or group of children.

(3) During nap time or night care when children of various ages are mixed together:

(A) The number of children per staff member shall be determined by the average of the staff-child ratios according to the chart above;

(B) Non-teaching staff members at the center may be included in the staff ratios.

(4) Children ages two years eight months or older, who are enrolled in the center on or between September 1 and December 31 of any year and whose birthdays fall on or between these dates may be considered part of the next older age group when determining staff ratios.

(e) The maximum group size of the number of children in one group shall not be exceeded. Exceptions shall be made for special events such as but not limited to assemblies, performances, meal and snack time, and outdoor play area. When exceptions are made, the following shall apply:

(1) The staff-child ratio shall be determined by the age of the youngest child and shall be maintained at all times in accordance with

the Ratio and group size Chart I.

(2) The staff employment sequence shall be maintained at all times according to the Ratio Chart II.

(f) The following chart reflects minimum requirements for the grouping of children of a certain age in units so that one unit of two-year-olds will be eight children, one unit of three-year-olds will be twelve children, one unit of four-year-olds will be sixteen children, one unit of five-year-olds will be twenty children. One teacher shall be mandated for the first unit two units require the addition of an aide to meet the ratio.

Ratio Chart II
Minimum staff employment sequence

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 2 yr olds				
1-8	1			1
9-16	1		1	2
17-24	1	1	1	3
25-32	1	1	2	4
33-40	2	1	2	5
41-48	2	2	2	6
49-56	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 3 yr olds				
1-12	1			1
13-24	1		1	2
25-36	1	1	1	3
37-48	1	1	2	4
49-60	2	1	2	5
61-72	2	2	2	6
73-84	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 4 yr olds				
1-16	1			1
17-32	1		1	2
33-48	1	1	1	3
49-64	1	1	2	4
65-80	2	1	2	5
81-96	2	2	2	6
97-112	2	2	3	7

No. of Children	Teacher	Assistant Teacher	Aide	Total Staff
Children 5 yr olds				
1-20	1			1
21-40	1		1	2
41-60	1	1	1	3
61-80	1	1	2	4
81-100	2	1	2	5
101-120	2	1	3	6

(g) Exception: During the first and last hours of the regular operational day the staffing sequence may be adjusted so that the director, a teacher, or assistant teacher may be counted as fulfilling any position in this ratio chart. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-37 to 17-892.2-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-892.2-40 Health consultation provisions. All child care programs shall have one of the following provisions for health consultation to assist in developing health policies and in keeping them current:

(1) The child care center shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation, and that this arrangement is satisfactory with parents of the children;

(2) The child care center has made a contractual arrangement with a private physician or non-profit health organization in the community to provide health care for children in the program;

(3) There is already a procedure existing in the community for the provision of health consultation service and arrangements have been made for use of this service; or

(4) The child care program or resource has a health advisory group that may serve in such

a capacity. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-41 Evidence of child's health. (a) The child care facility shall require and obtain from the parent or guardian of each child entering child care, a health record of the child which complies with the provisions of chapter 11-157, which relate to the school entry examination requirements, immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance.

(b) The child care facility shall have in writing:

(1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; and

(2) Permission of the parent or guardian to call the stated physician or health resource, or another source of care if the parent or guardian cannot be reached in the case of a health emergency.

(c) The records of each child enrolled in the program shall include pertinent information about health status, developmental progress, and any special needs and efforts necessary to meet these needs.

(d) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-42 Emergency care provisions. (a) Every child care facility shall have the following provisions for emergency care of any child requiring treatment at a hospital or clinic away from the child care setting and for care of a child who becomes ill after arrival, as follows:

(1) The child care facility shall have one of the following written policies which indicate that:

(A) The responsible individual in the child care setting, director, child care provider, or health-trained caregiver, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care for the child;

(B) The child care facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian shall be on file in the child care setting.

(b) If health care is provided in the child care facility, the facility shall have on file a written permission from each parent or guardian covering all aspects of health care which is provided at the facility.

(c) An adult shall accompany the child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(d) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements.

(e) An operating telephone that is available and

is easily accessible to the staff members to be used in case of an emergency;

(f) A plan for accessing a telephone when the child care is provided somewhere other than when not in the usual location where care is regularly provided. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in pediatric first aid when children are present at the facility or at an off site group activity, such as during field trips and excursions.

(2) A current first aid certificate means a certificate that has not expired.

(3) The current pediatric first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department.

(4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in child CPR at the facility when children are present or at an off site group activity, such as during field trips and excursions.

(2) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart

Association standards and approved by the department.

(3) A current certificate means a certificate that has not expired. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-44 Admission of ill children. (a) When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, medical consultation shall be available regarding special care and medication.

(b) Both the provider and the parents or guardians shall be familiar with special policies of the child care facility relevant to ill children. Special policies regarding illnesses shall be explained to the parent or guardian at the time of enrollment of the child.

(c) Provisions shall be made to allow the facility's health consultant and the child's regular source of health care to communicate in order to preserve continuity and consistency of care.

(d) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called in case of emergency. Written permission of the parent or guardian to call upon the stated physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached, shall be required. [Eff] (Auth: HRS §346-162 (Imp: HRS §346-162; U.S.C. §§2002, 2005)

§17-892.2-44.01 Administration of medication. (a) When medication prescribed by a physician is administered in the facility:

(1) The medication shall be kept in the original container bearing the prescription label

which shows the date filled, the physician's directions for use, and the child's name;

(2) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and

(3) There shall be an authorization signed by the parent or guardian for the administration of medication by the facility.

(b) When over-the-counter medication is administered in the facility, the child's parent or guardian or physician shall provide to the child care facility written permission and written instructions to administer medication. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-45 Non-admission of ill children. If children with illness are not allowed admission into a group child care center or a group child care home, this policy shall be clearly stated in writing and made known to parent or guardian at the time of enrollment. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-20; U.S.C. §§2002, 2005)

§17-892.2-46 Admission of children with special needs. (a) When children with special needs are admitted into a group child care center or group child care home, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care and the program's health consultant occurs. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-47 Daily nutritional needs. (a) Meals and snacks of a quantity to supplement food served at home shall be available to meet the daily nutritional needs of the child. Foods related to the cultural and ethnic background of the children in the program and locality shall be part of meal planning.

(b) The child care facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health.

(c) To the extent possible, information provided by parents or guardians concerning the child's eating habits, food preferences, or special needs shall be considered in child care feeding schedules and menus. Children shall be encouraged but shall not be required to eat the food offered by the facility.

(d) In a facility providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - - - - - - one snack;

(2) Four to eight hours - - - - - one snack or breakfast and lunch or supper;

(3) Eight hours or more - - - - - one snack or breakfast and lunch or supper and one additional snack

(unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in section 17-892.2-26(d)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(e) In a facility where parents or guardians are allowed to provide food (i.e. sack lunches or snacks) the facility, in addition to food the child brings, shall provide the minimum amounts required by the USDA child care food program by offering and providing children in care:

(1) Two to four hours - - - - - - one snack;

(2) Four to eight hours - - - - - morning snack or breakfast or afternoon snack;

(3) Eight hours or more - - - - - morning snack or breakfast and afternoon snack

(unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in section 17-892.2-26(e)(2) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(f) Children shall not be offered foods to which they are allergic or, for religious reasons cannot consume. Provisions shall be made to secure such information from the parent or guardian and the parent or guardian of the child shall arrange for nutritious substitute foods.

(g) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(h) School aged children in after school care for two to four hours shall be offered a nutritious snack which may be provided by the child care facility or brought from home.

(i) Food shall not be used as a punishment or reward.

(j) The child care facility's food service shall be reviewed annually by a qualified nutrition consultant the center has chosen or provided by an appropriate community resource. [Eff] (Auth: HRS §342-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-48 Drinking water provisions. There shall be drinking fountains or another device or system whereby potable water shall be readily accessible to all children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-49 Integration of mental health concepts. Mental health aspects of child development shall be integrated into the child care program as follows:

(1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to the child care facility. The personal interview shall be conducted to secure pertinent information on the child's overall behavior and to acquaint the parent or guardian with the facility's policies. If the child is enrolled in a public or private school, the child shall also be interviewed when possible;

(2) The child care facility shall provide its staff members with annual orientation to state or other mental health service programs for children, or otherwise familiarize its staff with consultative and clinical services and programs for the early identification of social, emotional, intellectual, and behavioral problems of children; and

(3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians request or upon the recommendation of the staff or the facility's health consultant.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-50 to 17-892.2-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-892.2-55 Providers' health standards. Evidence that each caregiver staff member is free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the child care facility as follows:

(1) The results of employment physical examinations, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;

(2) Written evidence that each who works directly with children for any period of time is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care and shall be on file at the facility. Each shall complete updated clearances in compliance with chapter 11-164;

(3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able to care for young children;

(4) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility;

(5) Group child care home caregivers providing care in a residence shall have on file with the department written evidence that each member of the household, even though the member may not be a caregiver, is free from

communicable tuberculosis. Upon request of the department, additional reports with reference to the health of the other members of the household shall be made available to the department; and

(6) When volunteers provide direct care of ten hours or more per week, the volunteers shall be subject to the same requirements for health and personal habits as the provider.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-56 Personal health habits of staff. The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

(1) The facility shall have:
   (A) Health policies developed specifically for the child care setting which setout aspects of personal health care and control for the spread of communicable diseases;
   (B) Written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver; or
   (C) In-service training for the child care staff designed and presented by a health-trained individual which includes personal health care;

(2) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children;

(3) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, they

shall be locked up and inaccessible to children; and

(4) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-57 to 17-892.2-60 (Reserved)

SUBCHAPTER 7

ENVIRONMENTAL HEALTH STANDARDS

§17-892.2-61 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

(1) Evacuation;
(2) Relocation of the child care facility if the facility becomes uninhabitable, or if the facility is ordered to evacuate;
(3) Sheltering in place at the child care facility;
(4) Lock-down of the child care facility;
(5) Communication and reunification with families during and after an emergency;
(6) Continuity of operations during and after an emergency;
(7) Accommodation of children, including toddlers during an emergency;
(8) Providing for the needs of children with disabilities and children with special needs during an emergency;

(9) Providing for the needs of children with chronic medical conditions during an emergency.

(b) The plan relating to fire emergencies shall be approved by the fire inspector, and the facility's health consultant shall review the plan as related to subsections (a)(8)(9).

(c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.

(d) Each child care facility shall provide emergency preparedness training to staff members.

(e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.

(f) The diagram of emergency exits shall be posted in a prominent place in the facility.

(g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector, when applicable for group child care homes, shall be current and on file at the facility.

(h) There shall be an unexpired ABC multi-purpose type fire extinguisher in the child care area.

(i) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-62 Accidental injury precautions. The facility shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

(1) Child care activities and premises shall take precautions not to expose children to

situations which may be hazardous to the particular age or capacity of the child;

(2) The program shall help children to increase awareness of safety practices and accident hazards and to teach the children how to avoid such hazards;

(3) Accident prevention practices and policies shall be available in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices.

(4) The facility shall have written procedures for infection control, to use in all situations to prevent the transmission of blood-borne pathogens that may be spread through blood and body fluids.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-63 Environmental hazards. The indoor and outdoor premises of a child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(1) The child care facility shall be protected against rodents and insects;

(2) All entrances and exits shall be secured;

(3) The outdoor space shall be fenced or shall have natural barriers to deter children from getting into unsafe areas;

(4) There shall be no open drainage ditches, wells, or holes into which children may fall;

(5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;

(6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisance;

(7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;
(8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times;
(9) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
(10) Children shall be supervised when using hot water taps;
(11) Stove top controls shall not be accessible by children;
(12) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
(13) Emergency exits shall be clear of obstructions;
(14) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;
(15) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;
(16) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;
(17) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to children;
(18) Poisonous plants shall be out of reach of children on the premises;
(19) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;

(20) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, the boarding house, or other business shall not be conducted at the facility; and

(21) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-64 Water supply. (a) The water supply shall be from a source approved by the health authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination. [Eff] (Auth: HRS §346-162) (Imp: HRS §342-162; 42 U.S.C. §§2002, 2005)

§17-892.2-65 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

(1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;

(2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
(3) Where water sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;
(4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating;
(5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with holes sized to the age group;
(6) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;
(7) Lavatories shall be provided in quantities commensurate with toilet facilities. Hot water temperatures shall not exceed one hundred degrees fahrenheit, thirty eight degrees celsius, at outlets accessible to children; and
(8) Toilet facilities shall be child sized, or safe, sturdy step stools shall be provided to allow standard sized toilets and lavatories to be used. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-66 Food preparation. Food preparation shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

(1) All dishwashing shall be performed in a sanitary manner. A domestic dishwasher shall be acceptable, but if it is not available, the dishes shall be washed and rinsed in a sanitizing solution;
(2) In a child care facility caring for less than thirteen children, a family kitchen in good repair, separate from other rooms, shall be available;
(3) In a child care facility caring for thirteen or more children, where food is prepared on the premises, adequate sized equipment for the size of the program shall be available. An approved dishwasher or a three-compartment sink shall be used. Both the dishwasher and the three-compartment sink shall require approval by the state department of health;
(4) When food is prepared off the premises and is transported to the child care facility from a licensed preparation source, the foods shall be kept in a safe and sanitary condition;
(5) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and
(6) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner. [Eff] (Auth: HRS §346-162) (Imp: HRS 346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-67 Food protection. Food protection shall be carried out as follows:
(1) Policies and practices shall be developed and carried out in a manner that insures that all food is protected from contamination during storage, preparation, and service; and

(2) Food protection policies shall comply with accepted practices of local sanitary codes in chapter 11-50, and shall be adapted to fit the needs of the program except as indicated in these rules. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-68 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and staff members.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty. Plain soap and water shall be an adequate cleansing agent.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-69 Public beaches, swimming activities, and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming activities or swimming pools are in use;

(2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b)(1). However, children shall be personally attended by a responsible adult at all times;
(3) Wading pools exempt under subsection (b)(2) shall be emptied immediately after each use; and
(4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-70 to 17-892.2-74 (Reserved)

SUBCHAPTER 8

SANITATION STANDARDS

§17-891.2-75 Handling of diapers and training pants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:
(1) Use a clean non-porous surface for changing diapers;
(2) Use a space set aside for diapering that is separate from eating and food preparation areas;
(3) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.

(4) Soiled cloth diapers and cloth training underpants shall be placed in a plastic bag without emptying or rinsing the contents, and kept away from eating, food storage, and food preparation areas and out of the children's reach. The soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-891.2-76 Handwashing. (a) The provider and children shall wash hands using water and soap before and after the following activities:

(1) Before and after eating, drinking, or feeding a child;
(2) Before handling clean utensils or equipment;
(3) Before and after preparing food or beverages;
(4) Before and after diapering;
(5) After using the toilet or helping a child in toileting;
(6) After handling bodily fluids or items containing bodily fluids;
(7) After handling soiled diapers, clothes, or equipment;
(8) After handling pets or animals; or
(9) After outdoor play.

(b) Paper towels or separate cloth towels for each child shall be used for drying hands after handwashing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-77 to 17-892.2-79 (Reserved)

SUBCHAPTER 9

PHYSICAL FACILITY STANDARDS

§17-892.2-80 Building codes and space requirements. (a) Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) The child care facility shall:

(1) Be located in a safe and sanitary area in conformance with subchapter 3 of this chapter;

(2) Have ventilation and a sunny exposure or be well-lighted; and

(3) Be located in a reasonably quiet area or employ suitable noise control devices to limit noise exterior to the child care operation.

(c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

(d) The space requirements, enclosed areas, and outdoor areas, of the facility shall be as follows:

Standards for Space Requirements

Enclosed areas:	
Daytime:	There shall be thirty-five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, and hallways. The thirty-five square feet per child requirement shall be a general area definition of

	the square footage of the entire center, not describing the square footage of each class room. Lanai area may be counted for not more than 30 per cent of required area.
Nighttime:	In rooms used for sleeping, there shall be fifty square feet per child exclusive of lanai area.
Outdoor areas:	Lanai area which has both a roof and finished flooring does not count for either enclosed or more than 30 per cent of outdoor space. The square footage for the outside areas shall be a general area requirement related to total child capacity and not limited or qualified by the number of children outside at any one time.

(1) 720 square feet for 6 children plus 70 square feet per child thereafter up through 10.

(2) 1,065 square feet for 11 children plus 65 square feet per child thereafter up through 30.

(3) 2,360 square feet for 31 children plus 60 square feet per child thereafter up through 50. (4) 3,555 square feet for 51 children plus 55 square feet per child thereafter up through 100.

(5) 6,295 square feet for 101 children plus 45 square feet per child thereafter.

(e) The facility shall be equipped with toilets and lavatories as follows:

Number of children	Toilets	Lavatories
1 - 12	1	1
13 - 30	2	2
31 - 45	3	3
46 - 60	4	4
61 - 75	5	5
76 - 90	6	6
91 - 105	7	7
106 - 120	8	8
121 - 135	9	9
136 - 150	10	10
151 - 165	11	11
166 - 180	12	12
181 - 195	13	13
196 - 210	14	14
211 - 225	15	15

[Eff] (Auth. HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-892.2-81 to 17-892.2-84 (Reserved)

SUBCHAPTER 10

PROGRAM MODIFICATIONS

§17-892.2-85 Program modifications for drop-in care. (a) All requirements set forth in this chapter shall be met by the provider except for section 17-892.2-41(a) and (c) and section 17-892.2-44(d).

(b) A child care center offering drop-in care shall be prepared to adjust its staffing to meet the program modifications which result when drop-in care is provided.

(c) Children receiving drop-in care shall be cared for in separate areas or groups.

(d) If a center serves both drop-in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

(e) The facility shall have the following information in writing:

(1) The ages of children accepted for drop-in care;

(2) The procedures for admittance and release of drop-in children; and

(3) Arrangements for staffing and separate activities for drop-in children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-86 Program modifications for night care. A child care facility offering night care shall meet the requirements of this chapter in addition to the following requirements:

(1) In consultation with parents, special attention shall be given by the caregiver to provide for a transition into night care;

(2) A selection of toys for quiet activities shall be available;

(3) Comfortable beds or cots, complete bedding and night clothes shall be available or supplied by the parents;

(4) Beds shall be placed at least three feet apart;

(5) Staff shall be available to assist children during eating and pre-bedtime hours and during the morning period when dressing. During sleeping hours, staff shall be within listening distance to provide for the needs of children and to respond to an emergency;

(6) A child shall not sleep in a building detached from the main facility; and

(7) Night care facilities shall include at least one shower, bathtub, or bathing facility for the children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-892.2-87 Program modifications for demonstration projects. (a) A child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The child care facility shall submit a written proposal to the department indicating the following:

(1) Purpose of the project;
(2) Description of the project;
(3) Length of the project;
(4) Specific child care rules that shall be exempted by the project; and
(5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the department's designated representatives if requested by the department.

(d) A demonstration project which has been approved in writing by the department shall comply with all requirements imposed by the department at the time of its approval as follows:

(1) The name or description of the project shall include the words "licensed demonstration project";
(2) Providers shall be able to show that at all times the demonstration project is in compliance with the child care rules, except as specifically exempted or modified in the department's written approval; and
(3) Within the last quarter of the time specified for the demonstration project, a

written report shall be submitted to the department which shall include:

(A) Developments, findings, recommendations, and suggestions for further study; and

(B) Any proposed recommendations related to the demonstration project for changing or modifying child care rules with justification therefore.

(4) For demonstration programs that have been approved to care for children less than twenty-four months old, the demonstration program shall adhere to any provisions under chapter 895, that have been determined and specified by the department.

(5) For a demonstration program that has been approved to care for children less than twelve months old, the demonstration program shall adhere to requirements set forth under sections 17-895.1-45, 17-895.1-96, and 17-895.1-97.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "demonstration project" in the identifying title, logo, or material." [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

2. The adoption of chapter 17-892.2, 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 Statues, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.

_____
CATHY BETTS
Director of Human Services

APPROVED AS TO FORM:

_____
Deputy Attorney General

IV. Old Business – After Public Hearing

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, **Licensing of Infant and Toddler Child Care Centers**, promulgated by DHS

RECEIVED
By SBRRB at 12:02 pm, Dec 02, 2021

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17.892.2

Chapter Name: Licensing of Group Child Care Centers and Group Child Care Homes

Contact Person/Title: Dayna Luka/Acting Child Care Program Administrator

Phone Number: (808) 586-7058

E-mail Address: dluka@dhs.hawaii.gov **Date:** 12/2/21

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

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

☐ **Yes** ☐ **No**

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

I. Rule Description: ☐ **New** ☐ **Repeal** ☑ **Amendment** ☐ **Compilation**

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

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

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

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

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

☐ **Yes** ☐ **No**

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

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

☐ **Yes** ☐ **No**

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

* * *

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

Please refer to Attachment 1

4. The number of persons who:
   (i) Attended the public hearing: 30

   (ii) Testified at the hearing: 3

   (iii) Submitted written comments: 10

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

   ☐ **Yes** ☐ **No**

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

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

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Chapter 17-895.1, Licensing of Infant and Toddler Child Care Centers

(Attachment 1)

V. In 2018, DHS held about 6 different listening sessions to review the proposed changes that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care Development Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019.

V.a. Infant and toddler child care center providers agreed that the 16 hours of on-going health and safety training over a 12 month period was a reasonable amount.

The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

VI.1. The Public Notice was published in the newspapers statewide on Wednesday, June 30, 2021, to inform the public of the opportunity to provide their comments for the proposed rule chapter at the public hearing scheduled for July 30, 2021. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.

VI.2 Written testimonies were submitted; and comments were overwhelmingly in support of reinserting the language pertaining to the use of lanai space to be used in calculating the maximum number of children allowed on the license. Businesses testified as to how the removal of the language to allow for lanai space to be counted as usable space would negatively affect their operations.

VI.3 The department acknowledges that while we had been applying the rule regarding the use of lanai space in the calculation for license maximum incorrectly, we will need time to rewrite it so that the language is clear. The rule has been reinserted into the proposed rules that enclosed lanai space will be counted in the license maximum until we are able to rewrite the rule in concise language.

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-895.1
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-895.1, Hawaii Administrative Rules, entitled "Licensing of Infant and Toddler Child Care Centers" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 895.1

LICENSING OF INFANT AND TODDLER CHILD CARE CENTERS

Subchapter 1 Licensing Procedure

§17-895.1-1 Definitions

§17-895.1-2 Application
§17-895.1-3 Inspection and issuance of license
§17-895.1-4 Fines
§17-895.1-5 Denial, suspension, revocation of license, and hearings
§§17-895.1-6 to 17-895.1-9 (Reserved)

Subchapter 2 Administration Requirements

§17-895.1-10 Age of children in care
§17-895.1-11 Statement of operation policies
§17-895.1-12 Liability insurance
§17-895.1-13 Information on owner or operator
§17-895.1-14 Change in services and staff
§17-895.1-15 Information and records on each child
§17-895.1-16 Disclosure of information on the child
§17-895.1-17 Information and records on facility
§17-895.1-18 Transportation provisions
§§17-895.1-19 to 17-895.1-24 (Reserved)

Subchapter 3 Program Requirements

§17-895.1-25 Program provisions
§17-895.1-26 Communication between parents and caregivers
§17-895.1-27 Program materials and equipment
§17-895.1-28 Transition to a new facility
§§17-895.1-29 to 17-895.1-34 (Reserved)

Subchapter 4 Staffing Requirements

§17-895.1-35 Staff training, experience, and personal qualifications
§17-895.1-36 Staff-child ratio and group size

§17-895.1-37 Staffing patterns
§§17-895.1-38 to 17-895.1-39 (Reserved)

Subchapter 5 Health Standards for Infants and Toddlers

§17-895.1-40 Health policies and health consultant
§17-895.1-41 Evidence of child's health
§17-895.1-42 Emergency care provisions
§17-895.1-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR)
§17-895.1-44 Admission of ill infants and toddlers
§17-895.1-44.01 Admission of medication
§17-895.1-45 Admission of infants and toddlers with special needs
§17-895.1-46 Daily nutritional needs
§17-895.1-47 Drinking water provisions
§17-895.1-48 Integration of mental health concepts
§§17-895.1-49 to 17-895.1-54 (Reserved)

Subchapter 6 Health Standards for Staff

§17-895.1-55 Staff health standards
§17-895.1-56 Personal health habits of staff
§§17-895.1-57 to 17-895.1-60 (Reserved)

Subchapter 7 Sanitation Standards

§17-895.1-61 Handling of diapers, training pants, linen, and toys
§17-895.1-62 Handwashing
§17-895.1-63 Housekeeping
§§17-895.1-64 to 17-895.1-70 (Reserved)

Subchapter 8 Environmental Health Standards

§17-895.1-71 Disaster plan for emergencies
§17-895.1-72 Accidental injury precautions
§17-895.1-73 Environmental hazards
§17-895.1-74 Water supply
§17-895.1-75 Toilet and lavatory facilities
§17-895.1-76 Food preparation
§17-895.1-77 Food protection
§17-895.1-78 Swimming activities and wading pools
§§17-895.1-79 to 17-895.1-84 (Reserved)

Subchapter 9 Physical Facility Standards

§17-895.1-85 Building codes and space requirements
§§17-895.1-86 to 17-895.1-89 (Reserved)

Subchapter 10 Program Modifications

§17-895.1-90 Program modifications for drop-in care
§17-895.1-91 Program modifications for night care
§17-895.1-92 Program modifications for demonstration projects
§§17-895.1-93 to 17-895.1-95 (Reserved)

Subchapter 11 Safe Sleep

17-895.1-96 Program requirements
17-895.1-97 Sleep environment

Historical Note: Chapter 17-895.1 is based substantially upon chapter 17-895, Licensing of Infant and Toddler Child Care Centers [Eff 11/07/91; am and comp 12/19/02, am 2/24/17, R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-895.1-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"Acutely ill" means temperature above ninety-nine degrees (axillary), one hundred degrees (oral), and one hundred and one degrees (rectal) and other symptoms, such as vomiting, diarrhea, undiagnosed general rash, contagious diseases, severe cough, or difficulty in breathing.

"Approved child development or early childhood training courses" means child development or early childhood courses taken from regionally accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars may be approved by the department provided the agency or organization is recognized by the department as having child care expertise, has submitted a description of the course, workshop, or seminar which fully describes the subject matter covered, the total hours of training and name of the qualified trainer (see "qualified trainer").

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Caregiver" means any individual who is responsible for the physical well-being, health,

safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian for any part of a twenty-four hour day.

"Child care aide" or "aide" or "child care assistant" means any person who helps the lead caregiver or caregiver with all aspects of the planned program.

"Child care center" or "group child care center" means a place maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center or group child care center shall include child nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific licensing or registration rules.

"Director" or "principal" or "lead caregiver" or "operator" means the person at the facility having responsibility for the administration of a child care center and its program.

"Drop-in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop-in child care center" means a facility which accepts children for drop-in care.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address on the application or license certificate for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"Family child care home" or "family child care" or "FCC" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which

provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means a child who is six weeks to twelve months of age.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the state.

"Lead caregiver" or "teacher" or "teacher-director" or "lead teacher" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, and supervising and training other staff.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider’s care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or

a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permits quick and safe exits upon emergencies (e.g. push bars and plates).

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Primary caregiver" means the individual in the infant and toddler child care center to whom the care of a specific child and family is assigned. Primary care is defined as direct care, verbal and physical interactions, primary responses to infant's or toddler's physical and emotional needs while in the center, and continued interaction with parents regarding the infant's or toddler's experiences.

"Provider" means any individual eighteen years or older, caregiver, facility, agency or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child’s caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department up to a maximum period of six months to any child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the

American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

"Qualified trainer" means a person who has twelve credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing and a combined total of three years of experience in training adults who work with children or has six credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing, and a combined total of five years of experience in training adults who work with children.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

(1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
(2) Northwest Commission on Colleges & Universities;
(3) North Central Association of Colleges and Schools-the Higher Learning Commissions
(4) New England Association of Schools and Colleges-New England Commission of Higher Education;
(5) Southern Association of Colleges and Schools Commission on Colleges; or
(6) Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of the child care center, group child care home, or family child care home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State advisory committee on child care services" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Supervision" means to be within sight and hearing distance of the children to insure their safety and protection.

"Temporary hire" means a person who serves as a replacement when the regular staff person is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"Toddler" means a child who is twelve to thirty-six months of age.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

SUBCHAPTER 1

LICENSING PROCEDURE

§17-895.1-2 Application. (a) A completed application to operate an infant and toddler child care center must include the following:

(1) A signed department application form;

(2) A written statement of operation policies;

(3) Verification that the facility meets the applicable county codes;

(4) Results of the background checks as described in §17-801-4, and as indicated in (A) and (B) below:

(A) Applicants, their staff members, and prospective staff members shall provide background clearance records and consent to conduct such checks as indicated in section 17-801-4.

(B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application for certificate of approval

shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued .

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 5751, 9833)

§17-895.1-3 Inspection and issuance of license. (a) In exercising its authority to license child care facilities or renew, suspend, or revoke the license, the department shall analyze the qualifications of providers of child care, review the facility's written policies and program provisions, and inspect the child care facility. Authorized representatives of the department and parents or guardians of the children in care may visit a child care facility at any time during the hours of operation for purposes of observing, monitoring, and inspecting the facilities, activities, staffing, and during investigations of complaints against the facility, and other aspects of the child care facility. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(b) The applicant or licensee shall cooperate with the department by providing access to its

facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(c) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-895.1-2(a)(4) within five working days of hire by the child care facility.

(1) New staff members shall meet the conditions in sections 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering at the child care facility.

(2) An applicant, staff member, or rehired staff member, who has left the state or no longer doing child care for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).

(d) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(e) The department shall request the applicant or licensee to terminate the employment of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(f) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).

(g) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).

(i) Rules prescribed herein are minimum standards. The department shall issue a license under the following conditions:

(1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations are minor deficiencies.

(j) The length of the licensing period shall be as follows:

(1) For new applicants and those providers licensed for less than four years, the licensing period is one year and for all other providers the licensing period may be two years, unless subsequently suspended or revoked.

(2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to subsection (1).

(3) A provisional license may be issued for up to six months; and

(4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.

(k) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee,

and the number and types of children who can be cared for at the facility.

(l) A license certificate shall be valid for:

(1) One year for new applicants and for those who have been licensed for less than four years; and

(2) Two years for those who have been licensed for four years or more,

unless sooner revoked. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-156, 346-161, 346-163, 346-164, 346-165; 42 U.S.C. §§2002, 2005)

§17-895.1-4 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

(1) Caring for more children than allowed by the facility's license;

(2) Violation of the staff-child ratios;

(3) Improperly certifying staff credentials;

(4) Failure to comply with timely request for background check as required in chapter 801;

(5) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;

(6) Failure to report suspected child abuse or neglect that has occurred or will occur; or

(7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff] (Auth: HRS §346-156) (Imp: HRS §§346-154

346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-895.1-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action to be taken by the department shall be as follows:

(1) The department shall deny, suspend, or revoke a regular license or a provisional license if:
   (A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or
   (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.

(2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the license application;

(3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice of the proposed action;

(4) Upon receiving a timely written appeal the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing

officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and

(5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.

(b) The license shall be immediately suspended when:

(1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(3) The provider refuses to terminate a staff member as specified in chapter 17-801; or

(4) The provider refuses to exclude from the premises, the person who is the subject of an on-going or pending investigation in accordance with chapter 17-801.

(c) Upon immediate suspension pursuant to (b), the department shall take the following actions:

(1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;

(2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the

department to reconsider the order within ten working days after mailing of the notice; and

(3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.

(d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.

(f) If an applicant or licensee has their regular or provisional license revoked, they shall be unable to apply for another license for:

(1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and

(2) One year from the date that the license was revoked if the revocation was their second offense. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005)

§§17-895.1-6 to 17-895.1-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-895.1-10 Age of children in care. An infant and toddler center may provide care to children aged six weeks and older. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-14, 346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-11 Statement of operation policies. (a) The facility shall have written operation policies which cover the following areas:

(1) Ages of children accepted;
(2) Maximum number of children permitted by license;
(3) Specific hours of day, night, holiday, and vacation operation;
(4) Type of child care services provided;
(5) Whether the facility provides meals and snacks for the infant or toddler, or parents are to provide the meals and snacks;
(6) Admission requirements and enrollment procedures;
(7) Provisions which may be made for special needs of individual children;
(8) Fees and the plan for payment, including fees for different types of services and refund policy;

(9) Plan for emergency medical care;
(10) Insurance coverage - each facility shall inform parents or guardians in writing of its policy relating to liability insurance;
(11) Personal belongings brought to the facility;
(12) Transportation arrangements;
(13) Parental permission for trips and related activities outside the facility, if applicable;
(14) Admission and care of ill children;
(15) Administering medication;
(16) Provision and management of diapers and other infant and toddler supplies;
(17) Sanitation practices;
(18) Grievances which shall include the department's information for parents to file a complaint;
(19) Fundraising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;
(20) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
(21) Regular communication between caregivers and parents or guardians to relay information about the child;
(22) Suspension and expulsion of children which includes the following:
    (A) The conditions under which a child may be suspended or expelled, if applicable;
    (B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain

enrolled, except as specified in (22)(C) below;

(C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;

(D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and

(E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and

(23) Other policies that may be required by the department.

(b) Written policies and procedures shall be reviewed with each caregiver in the facility.

(c) Written policies shall be made available for review by parents or guardians at the time of enrollment of the infant or toddler. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-12 Liability insurance. A child care facility shall:

(1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;

(2) Provide to the department evidence of liability insurance coverage; and

(3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-895.1-13 Information on owner or operator. (a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the child care facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name of the owner or sponsoring agency (privately owned, church, or agency owned, etc.) of the facility shall be supplied to the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-14 Change in services and staff. A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

(1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of the children enrolled in the facility at least four weeks prior to the effective date of change.

(2) A facility shall provide to the department written notification of changes in staff who provide direct care to children within five working days after the change.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-15 Information and records on each child. (a) Admission procedures shall require sufficient information and instruction from the parents or guardians to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to the admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The names and addresses of the parents or guardians who are legally responsible for the child;

(3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the facility;

(4) The name, address, and telephone number of person who shall assume responsibility for the child if for some reason the parent or guardian cannot be reached immediately in an emergency;

(5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and

(6) Health information concerning the child, including any allergies as required by section 17-895.1-41.

(c) The information shall be available on facility forms and shall be kept current.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-16 Disclosure of information on the child. (a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff or the department, unless the parents or guardians of

the child grant written permission for the disclosure or an emergency arises.

(b) The facility shall have release of information forms available for parents or guardians to sign.

(c) The parents or guardians shall be informed in writing of the facility's policy regarding disclosure of information. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-895.1-17 Information and records on facility. (a) The facility shall maintain, and make available to the department current records and information including:

(1) Roster of enrolled children;

(2) Daily attendance records by names of children;

(3) Daily plan for feeding the children;

(4) Daily schedule of activities; and

(5) A list of staff members, including each staff member's position or title, training, experiences and health records;

(6) Written permission from the parent to allow the child to have contact with pets or other animals; and

(7) Log of emergency preparedness drills practiced in accordance with section 17-895.1-71.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child or employee, and any illness or injury received at the child care facility that results in a child’s hospitalization. [Eff] (Auth: HRS. §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005)

§17-895.1-18 Transportation provisions. Infant and toddlers transported in vehicles, either to and from the facility or for program activities, shall be protected by adequate supervision, safety precautions, and liability and medical insurance coverage as follows:

(1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;

(2) During any field trip or excursion operated or planned by the facility, the staff-child ratio and group size requirements as provided in section 17-895.1-36 shall apply;

(3) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development;

(4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;

(5) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;

(6) A child shall not be left unattended in a vehicle;

(7) Staff members shall take a head count or attendance record check before and after transportation is provided; and

(8) During any field trip or excursion, staff members shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms signed by the child's parent or guardian.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-19 to 17-895.1-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-895.1-25 Program provisions. (a) The program conducted in the facility shall provide for staff supervision of the infants and toddlers at all times and an environment and experiences which are developmentally appropriate which are aimed at promoting the infant or toddler's physical, emotional, intellectual, and social well-being, and supports the growth and integrity of the family unit.

(b) The director of the facility shall provide the department with a brief written description of the facility's program goals and activities, which shall include the following:

(1) Provisions for the promotion of physical development, which shall include:
    (A) Varied, developmentally appropriate physical activities; and
    (B) Opportunities for the infants and toddlers to learn about the health, development, and care of their bodies including exercise, safety, nutrition, and hygiene, as appropriate to their age and development;
(2) Provisions for the promotion of emotional development, which shall include:
    (A) Staff recognition of the special difficulties of infant and toddler separations and assistance to families, infants, and toddlers to make the transition from home to facility as gently as possible, such as a phased-in

orientation process to allow infants and toddlers to experience limited amounts of time at the facility before becoming fully integrated;

(B) Assignment of each infant or toddler to a primary caregiver who shall be responsible for care the majority of the time;

(C) Prompt response by all caregivers to an infant or toddler's physical and emotional needs, i.e., feeding, diapering, holding, touching, and eye contact;

(D) Recognition and care of each infant or toddler as an individual with opportunities for individual choices, self-expression, and some personal privacy;

(E) Provision of constructive guidance and the setting of clearly defined limits which foster the infant or toddler's ability to be self-disciplined, as appropriate to their age and development;

(F) Prohibition of use of:

(i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or

(ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the infant or toddler's health or self-esteem; and

(G) Providers shall respect each infant’s or toddler's cultural, ethnic, and

family background, as well as the child's primary language or dialect;

(3) Provisions for the promotion of intellectual development, which shall include:

(A) Offering of frequent, but paced, personal, verbal, and physical interaction between caregiver and infant or toddler as part of the daily routine;

(B) Availability of a variety of learning materials, which staff helps children to use; and

(C) Hands-on experiences, including both familiar and new activities, to enable the infant or toddler to learn about themselves and the world; and

(4) Provisions for the promotion of social development, which shall include:

(A) Caregiver behavior and interactions which emphasize and foster attitudes of mutual respect between adults and children and between children; and

(B) Guidance to infants and toddlers to enable them to develop and work out ways of getting along with each other, including an appreciation of cultural and ethnic diversity, as appropriate to the infant or toddler's level of understanding.

(c) The program shall provide a balance of active and quiet activities and shall recognize the infants and toddlers' need for uninterrupted sleep.

(d) In drop-in centers, every effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.

(e) The program shall provide information on and access to parenting resources (i.e., bulletin boards, classes, resource libraries, handouts).

[Eff] (Auth: HRS §46-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-26 Communication between parents and caregivers. (a) Centers shall obtain from the parent or guardian a description of the infant's or toddler's daily routine and behavior patterns prior to enrollment; and

(b) Caregivers shall relay information and concerns about the health, development, or behavior of the infant or toddler, as well as positive experiences, directly to the parents or guardians on the day of the major change, symptom, or event. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-27 Program materials and equipment. (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be developmentally appropriate to the infants and toddlers in care.

(b) The quantity of materials and equipment shall be sufficient to:

(1) Avoid excessive competition among the children and long waits for use of the materials and equipment; and

(2) Provide for a variety of experiences and appeal to the individual interests of the infants and toddlers.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials and equipment shall be safe and kept clean and in good repair, not be recalled, stored in an orderly way, and arranged to allow children to select, remove, and replace the materials and equipment either independently or with assistance, as appropriate to their age and development.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) The following shall be available:

(1) High chairs, safety seats, or size-appropriate low seating for individual feeding;

(2) Adequate padding for safe floor play;

(3) Rocking or comfortable chair for infant and toddler feeding and comforting; and

(4) Individual storage spaces for children's clothing and personal belongings. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-28 Transition to a new facility. (a) A facility shall have a written policy to assist the infant or toddler in making a transition from the child care setting to a new type of care by communicating what will happen at the infant's or toddler's level of awareness or understanding.

(b) The provider shall cooperate with parents, guardians, new providers, or other caregivers when information is requested to assist an infant or toddler to adjust to a new environment as allowed by section 17-895.1-16. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-29 to 17-895.1-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-895.1-35 Staff training, experience, and personal qualifications. (a) Each caregiving staff shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions or other courses available to all staff and volunteers.

(c) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

(1) Prevention and control of infectious diseases (including immunizations);
(2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
(3) Administration of medication, consistent with standards for parental consent;
(4) Prevention and response to emergencies due to food and allergic reactions;
(5) Building and physical premises safety;
(6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(9) Appropriate precautions in transporting children;

(10) Pediatric first aid and child cardiopulmonary resuscitation; and

(11) Recognition and reporting of child abuse and neglect.

(d) When a caregiver, substitute or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (c) shall be repeated.

(e) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete department approved on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

(1) Each caregiver staff member shall complete at least sixteen hours of training annually in at least two of the topic areas in subsection (f).

(2) Substitutes shall complete at least ten hours of training annually in at least two of the topic areas in subsection (f).

(3) Volunteers who serve ten hours or more a week shall complete at least eight hours of training annually in at least two of the topic areas in subsection (f).

(4) When an individual does not meet the requirements in subsection (e) and does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-895.1-36(f) and 17-895.1-37.

(f) Each caregiver shall provide written evidence to the department to show completion of on-

going training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, except for safe sleep training required in accordance with section 17-895.1-96(b), and shall be in the following topic areas:

(1) Physical care of the young child;
(2) Care of the sick child;
(3) Child nutrition;
(4) Child growth and development;
(5) Children with special needs;
(6) Learning activities and play;
(7) Family engagement;
(8) Managing challenging behaviors;
(9) Community resources;
(10) Prevention of child maltreatment and abuse;
(11) Pediatric first aid and child cardiopulmonary resuscitation;
(12) Health and safety;
(13) Child care business or program management; or
(14) Physical environment; and
(15) Safe sleep if permitted to care for children less than one year of age.

(g) Applicants and staff members shall be of reputable and responsible character and shall not have the following:

(1) A criminal history record, employment history, sex offender registry history, child abuse or neglect history, or adult abuse history that may pose a risk to the infants and toddlers in care as specified in section 17-801-5; or
(2) Any other situations that poses a risk to the health, safety or well-being of children in care.

(h) The director of an infant and toddler center shall have:

(1) A bachelor's degree or higher in early childhood education (ECE), child development (CD), or related field from a regionally accredited college or university or transferable to a regionally accredited college or university; thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; and twelve months of full time experience working with children under thirty-six months of age in a licensed group care setting; or

(2) Two years of college education in early childhood education, child development, or related field; thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; and twenty-four months of full time experience working with children under thirty-six months of age in a licensed group care setting.

(i) A lead caregiver shall have:

(1) A bachelor’s degree or higher in ECE or CD or related fields, e.g., maternal-child health, nursing, or human development; twelve months of full time experience working with children under thirty-six months of age in a licensed group care setting; twelve semester credits approved ECE or CD courses, which may be part of the bachelor’s degree and shall be from a regionally accredited college or university or transferable to a regionally accredited college or university; and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(2) A high school diploma, or its equivalent, and a child development associate credential; twenty-four months of full time experience working with children under five years of age in a licensed group care setting of which at least twelve months of experience shall have been with children under thirty-six months of age; twelve semester credits approved ECE or CD courses from a regionally accredited college or university or transferable to a regionally accredited college or university; and thirty hours of course work in infant toddler development from an accredited teacher training institute or program; or

(3) Two years of college education, preferably in ECE or CD or related fields; twenty-four months of full time experience working with children under five years of age in a licensed group care setting of which at least twelve months of experience shall have been with children under thirty-six months of age; twelve semester credits approved ECE or CD courses from a regionally accredited college or university or transferable to a regionally accredited college or university; and thirty hours of course work in infant and toddler development from an accredited teacher training institute.

(j) A caregiver shall have:

(1) A high school diploma or its equivalent, twelve months of full time experience working with children under thirty-six months of age in a licensed group care setting, twelve semester credits approved ECE or CD courses from a regionally accredited college or university or

transferable to a regionally accredited college or university, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(2) A high school diploma or its equivalent, twenty-four months of full time experience working with children under thirty-six months of age in a licensed group care setting, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(3) No high school diploma, thirty-six months of full time experience working with children under thirty-six months of age in a licensed group setting, and thirty hours of course work in infant and toddler development from an accredited teacher training institute or program.

(k) A child care aide shall have:

(1) A high school vocational child care training course; or

(2) An orientation training in the center.

(l) A twelve-month non-renewable waiver may be granted to new hires, rehires, and current staff in director, lead caregiver, or caregiver positions, who meet all other requirements except the thirty hours course work in infant and toddler development from an accredited teacher training institute or program, to complete this required course work while concurrently serving in the capacity of the facility's director, lead caregiver, or caregiver.

(m) All staff members required to complete the thirty hours of course work in infant and toddler development from an accredited teacher training institute or program, as stipulated in subsections (f) through (h), shall, within two years of completion of this course work, obtain fifteen additional hours of

course work in infant and toddler development from an accredited teacher training institute or program.

(n) When the fifteen additional hours of professional development in infant and toddler development is completed, the fifteen hours of professional development may count as meeting a portion of the required on-going health and safety training in section 17-895.1-35(e).

(o) The age requirements for staff shall be as follows:

(1) Child care aide, volunteer, clerical, or maintenance personnel shall be at least fourteen years old, except that a child care aide, who is to be counted in the staff-child ratio, shall be at least eighteen years old; and

(2) All other staff shall be at least eighteen years old.

(p) Volunteers shall:

(1) Participate in an orientation to the program; or

(2) Be a participant in a high school program which includes training in infant and toddler care; and

(3) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(q) Temporary hires shall meet qualifications of positions for which hired.

(r) Substitutes for lead caregivers and caregivers shall be at least eighteen years of age and shall have participated in an orientation program of the facility, and the curriculum, lesson plans, and daily activities assigned to the substitute shall be closely supervised by the center's director.

(s) Substitutes for director shall meet the qualifications of a caregiver and shall have worked in the facility for at least six months.

(t) Substitutes for aides shall meet the qualifications of an aide.

(u) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-36 Staff-child ratio and group size. (a) The staff-child ratio and group size shall be met and maintained by the facility during all hours of operation.

(b) The staff-child ratio shall be in writing and shall be available to the department.

(c) Staff members shall be on site and shall be regularly assigned to a particular group of children to be included in the staff-child ratio.

(d) The director may serve as a caregiver, and be included in the staff-child ratio, only when total infant and toddler facility size does not exceed sixteen. The director may serve as a caregiver but shall not be included in the staff-child ratio in an infant and toddler program with more than sixteen children.

(1) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. This inclusion in the staff-child ratio shall not exceed ten hours per week.

(2) Exception may be made and the director of only those facilities which operate full day may be included in the staff-child ratio during the first hour and the last hour of the regular operational day.

(e) Custodians, cooks, and bus drivers shall not be counted in the staff-child ratio when performing regular duties.

(f) The following staff-child ratios and group size shall be used in infant and toddler programs:

Ages of Children	Staff-child ratio	Maximum Group Size Allowed
6 wk – 12 mo.	1:3	6
	1:4	8
12 mo. – 24 mo.	1:3	6
	1:4	8
	1:5	10
	1:4	12
18 mo. – 36 mo.	1:5	10
	1:6	12

(g) Group size refers to the specific number of children assigned to specific staff who occupy an individual classroom or well- defined physical space within a larger room; when groups are assigned space within a larger room, there shall be room dividers to ensure that children stay within their assigned group area and to keep the noise level down.

(h) The ratios and group sizes in the table above shall apply, as stated, only to homogenous age groups.

(i) Multi-age grouping is both permissible and desirable; however, the following requirements and restrictions apply:

(1) Children who are between the ages of six weeks to eighteen months can be grouped together; when this occurs, the ratio and group size shall be those required for the youngest child in the group according to the table above; or

(2) Children who are between the ages of six months to thirty-six months can be grouped together; when this occurs, the ratio and group size shall be those required for the youngest child in the group according to the table above; or

(3) In multi-age groups, the ratio and group size shall not exceed the ratio and group size for that of one age group higher than the youngest child in the group, and two thirds of the children must be in the oldest age group.

(j) Under no circumstances shall there be more than two children under three months of age in any group.

(k) Children with special needs shall be admitted, provided their needs can be met without jeopardizing the staff-child ratio or the quality of care of the entire group. All reasonable attempts shall be made to meet their needs. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-37 Staffing patterns. (a) There shall always be a minimum of two staff in the center when children are in care.

(b) When only one staff is required to supervise the children, as based on the staff-child ratio, the second staff shall be readily accessible and available to the staff who is supervising the children.

(c) For every group, there shall always be one staff who meets the qualifications of a lead caregiver or caregiver.

(d) When the group size requires three staff, there shall minimally be one staff who meets the qualifications of a lead caregiver and one who meets the qualifications of a caregiver.

(e) These staffing patterns shall be maintained at all times, except for the first hour and the last hour of the operational day when a caregiver can act in the position of a lead caregiver. [Eff] (Auth: HRS §346-20) (Imp: HRS §346-20; 42 U.S.C. §§2002, 2005)

§§17-895.1-38 to 17-895.1-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR INFANTS AND TODDLERS

§17-895.1-40 Health policies and health consultant. To assist in developing current and updating health policies, all programs shall have one of the following provisions:

(1) The facility shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation;

(2) The facility has made a contractual arrangement with a private physician or non-profit health organization in the community to provide health care to the infants and toddlers in the program;

(3) There is already a procedure existing in the community for the provision of health consultation service, and arrangements have been made for the use of this service; or

(4) The infant and toddler program has a health advisory group that may serve in such a capacity. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-41 Evidence of child's health. (a) The facility shall require and obtain from the parent or guardian of each infant and toddler entering their program a health record of the infant or toddler which complies with the provisions of chapter 11-157, which

relate to the school entry examination requirements, immunization, physical examination, and chapter 11-164.2 for tuberculosis clearance which consists of the following:

(1) Written evidence of a physical clearance obtained within two months of admission to the facility;

(2) Written evidence that the infant or toddler has received a tuberculin clearance; and

(3) Initial and continuous written evidence that immunizations are current; or

(4) A written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health, in accordance with chapter 11-157; or

(5) A written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bonafide religious tenets and practices, in accordance with chapter11-157.

(b) For children experiencing homelessness or in foster care, the child care facility shall allow a grace period of three months from the child’s first day in care to obtain the evidence described in subsection (a), in accordance with chapter 11-157, provided that the parents or guardians submit to the facility in writing the health needs for the child, including any allergies, at the time the child is placed in care.

(c) Medical clearance for care of a child with special needs shall be obtained before admission into an infant and toddler facility.

(d) The records of each child enrolled in the program shall include pertinent information about birth, health status, developmental progress,

including prematurity and any special needs and efforts necessary to meet these needs. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-42 Emergency care provisions. (a) Every child care facility shall have provisions for emergency care of any child requiring treatment and for care of a child who becomes ill after arrival, as follows:

(1) The child care facility shall have one of the following written policies which indicate that:

(A) The responsible individual in the child care center, i.e. director, caregiver or health- trained staff, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care to the infant or toddler at the hospital or clinic; or

(B) The child care facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian for use of this alternative emergency coverage for their infant or toddler shall be on file at the facility.

(b) If health care is provided in the child care facility, the facility shall have on file a written permission from each parent or guardian covering all aspects of health care which is provided at the facility.

(c) An adult shall accompany the child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee

assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(d) Physical arrangements that are clean and safe for infants and toddlers, who become ill after arrival at the facility, shall be available for their care until parents or guardians can be notified to provide alternative arrangements.

(e) An operating telephone that is available and is easily accessible to the staff members to be used in case of an emergency;

(f) A plan for accessing a telephone when the child care is provided somewhere other than when not in the usual location where care is regularly provided. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in pediatric first aid at the facility when children are present or at an off-site group activity, such as during field trips and excursions.

(2) A current first aid certificate means a certificate that has not expired.

(3) The current pediatric first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in child CPR at the facility when children are present or at an off-site group activity, such as during field trips and excursions. The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(2) A current certificate means a certificate that has not expired.

(3) If the provider is caring for infant children, the course shall include training in infant CPR. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-44 Admission of ill infants and toddlers. (a) Acutely ill infants and toddlers may only be admitted with adequate provision for isolation and adequate personnel to provide individual care.

(b) When health policies of the child care facility allow ill infants or toddlers to be admitted or to remain in the facility, health consultation shall be available regarding special care and medication.

(1) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called.

(2) Written permission shall be required of the parent or guardian to call upon the stated

physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached.

(c) Caregiving staff and parents or guardians shall be informed of the child care facility's policies on ill infants and toddlers.

(d) The facility shall, in consultation with its health consultant, establish a readmission policy for children who have been absent because of illness which shall be provided to the parents or guardians. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-44.01 Administration of medication. (a) When medication prescribed by a physician is administered in the facility:

(1) The medication shall be kept in the original container bearing the prescription label, which shows the infant's or toddler's name, a current date, and the physician's directions for use;

(2) Medication shall be stored:

(A) In a refrigerator, if refrigeration is required; medication shall be separated from food by being enclosed in a covered container; or

(B) In a cool, dry, dark, and secured enclosure, which is inaccessible to the infants and toddlers, if refrigeration is not required.

(3) Medication shall be returned to parents or guardians when no longer in use; and

(4) There shall be an authorization signed by the parent or guardian for the facility staff to administer medication.

(b) When over the counter medication is recommended by the infant's or toddler's doctor, medication shall be administered at the facility as

directed in writing by the doctor. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-45 Admission of infants and toddlers with special needs. (a) When infants and toddlers with special needs are admitted to a facility, the facility shall provide for the special needs of each infant or toddler.

(b) The infant or toddler with special needs shall be admitted only after consultation between the infant's or toddler's source of health care and the program's health consultant. The consultation shall include written recommendations to accommodate the child's special needs or to define the child's participation in the program.

(c) If the infant's or toddler's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's special needs before the infant or toddler is admitted to the facility.

(d) Where the nature of the infant's or toddler's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-46 Daily nutritional needs. (a) Meals and snacks of a quantity to complement food served at home shall be provided by the parent, guardian, or facility to meet the daily nutritional needs of the infant or toddler.

(b) In a facility providing meal service, the facility shall ensure that the minimum meal components and food amounts as required by the United States

Department of Agriculture (USDA) Child Care Food Program, as adapted for Hawaii by the state department of health, shall be provided.

(c) In a facility, where parents or guardians are allowed to provide food for their own child (i.e., formula or other foods for meals or snacks), the facility, in addition to food the child brings, shall provide the minimum amounts required by the USDA Child Care Food Program, by offering and providing children in care:

(1) Four to eight hours – morning snack or breakfast or afternoon snack;

(2) Eight hours or more – morning snack or breakfast and afternoon snack, unless the eight hours or more extend into the evening hours when the children may be asleep;

(d) For children twelve to thirty-six months of age, when two snacks are required, at least one of the snacks shall include the provision and offering of milk (or the individual child's formula) or its calcium equivalent.

(e) Information provided by parents, guardians, or the child's physician concerning the child's eating habits, food preferences, or special needs shall be considered in the children's feeding schedules and menus.

(f) Infants and toddlers shall not be offered foods to which they are allergic or, for religious reasons, cannot consume, and the parent or guardian of the child shall arrange for nutritious substitute foods.

(g) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(h) Signs of food sensitivity or allergy shall be reported in writing to the parent or guardian on the day this has been observed.

(i) Infants and toddlers shall be encouraged but shall not be required to eat the food offered by the facility, as follows:

(1) Caregiver shall be alert to and consider individual infant and toddler cues in determining amounts of food to provide;
(2) When solid foods are introduced, they shall be carefully selected and added one at a time with a few days span between each new addition; and
(3) Food textures shall be adjusted to accommodate the individual child's chewing and swallowing ability, as well as preferences.

(j) Infants and toddlers shall not be offered foods which pose safety hazards.

(k) Food shall not be used as a punishment or reward.

(l) Infants and toddlers shall be personally attended while being fed.
(1) Infants being bottle fed shall have bottle held by the caregiver, not propped; and
(2) Parents or guardians may assume full responsibility for the infant's or toddler's diet.

(m) The child care facility's food service shall be approved and reviewed annually by a qualified nutrition consultant the facility has chosen or provided by an appropriate community resource.

(n) The facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-47 Drinking water provisions. Potable water shall be offered to infants and toddlers throughout the day in sanitized bottles and cups.

[Eff] Auth: HRS §346- 162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-48 Integration of mental health concepts. Mental health aspects of infant and toddler development shall be integrated into the program as follows:

(1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to an infant's or toddler's admission to the child care facility. The personal interview shall be conducted to secure pertinent information on the infant's or toddler's overall development and behavior and to acquaint the parent or guardian with the facility's program and policies;

(2) The child care facility shall provide its staff members with annual orientation to state or other mental health services for infants and toddlers, or otherwise familiarize its staff with consultative and clinical services and programs for early identification of social, emotional, intellectual, and behavioral problems of infants and toddlers; and

(3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-49 to 17-895.1-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-895.1-55 Staff health standards. (a) Evidence that each caregiver staff member is free from health problems, which would have a harmful effect on the infants and toddlers or which would interfere with effective functioning, shall be available at the facility as follows:

(1) The results of an employment physical examination, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person who works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;

(2) Written evidence that each person who works directly with children for any period of time is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care and shall be on file at the facility. Each person shall complete updated clearances in compliance with chapter 11-164; and

(3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able and does not pose a health hazard to care for infants and toddlers.

(b) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-56 Personal health habits of staff. (a) The facility shall have written policies, which have been developed with the assistance of the facility's health consultant and that minimally require:

(1) Staff with fever, other symptoms of illness, or an altered physical or mental state, shall not be allowed to work;

(2) Staff with visible skin conditions, such as lesions, boils, or dermatitis, shall not prepare or serve food or handle utensils and feeding equipment;

(3) Staff's appearance shall reflect good grooming habits and personal hygiene, including clean and neat hair and nails, appropriate clothing, and good oral hygiene;

(4) No smoking, including electronic smoking devices, is allowed in the presence of the infants and toddlers, nor in any parts of the building, which are used for child care, during the hours of child care operation, and personal nicotine products shall be stored out of reach of children;

(5) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, it shall be locked up and inaccessible to children;

(6) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care; and

(7) Staff shall take appropriate measures to manage stress by maintaining good mental and physical health.

(b) In-service training shall be provided to staff on various aspects of personal health care and healthy lifestyle, such as care of head lice (ukus), impetigo, viral infections, risk factors, and stress management.

(c) Volunteers shall be subject to the same requirements for health and personal health habits as the caregiving staff. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-57 to 17-895.1-60 (Reserved)

SUBCHAPTER 7

SANITATION STANDARDS

§17-895.1-61 Handling of diapers, training pants, linen, and toys. (a) Diapers, training pants, and linen shall be handled in the following manner:

(1) When disposable diapers are used, soiled diapers shall be placed in a plastic bag or a plastic lined receptacle;

(2) When cloth diapers or training pants are used, diapers or training pants soiled with stool shall not be washed at the center; using disposable plastic gloves, the diaper

or training pants shall be put in a sealed plastic bag to be picked up by the child's parent or guardian at the end of the day;

(3) Sheets, diapers, and training pants soiled with blood, body fluids, or waste shall be handled as little as possible to prevent contamination of the area and of the staff handling the linen; and

(4) Soiled sheets, diapers, and training pants, which are transported to a laundry area outside of the facility, shall be placed in plastic bags while being transported from the child care facility to the laundry.

(5) Use a clean non-porous surface for changing diapers;

(6) Use a space set aside for diapering that is separate from eating and food preparation areas; and

(7) Soiled disposable diapers shall be discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of children’s reach.

(b) Toys shall be provided and handled in the following ways:

(1) Each of the designated groups shall be provided with developmentally appropriate toys;

(2) Toys shall not be shared between different groups of children, such as between infants and toddlers;

(3) Only washable toys shall be used for infants and toddlers in diapers or training pants; and

(4) Toys shall be washed or sanitized daily.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-62 Handwashing. (a) The facility shall have a written policy that specifies when handwashing is required for staff and children, defines handwashing procedure, and provides continuing monitoring to assure that the handwashing procedure is carried out.

(b) Handwashing policy for staff shall require that handwashing is done:

(1) Before and after eating or drinking;
(2) Before handling clean utensils or equipment;
(3) Before and after handling food or beverages;
(4) Before and after assisting or training the child in feeding and in toileting;
(5) After going to the bathroom;
(6) After handling any bodily fluids or items containing bodily fluids;
(7) After handling soiled diapers, clothes, or equipment;
(8) After removing disposable gloves; and
(9) After outdoor play.

(c) Infants and toddlers, who self-feed in any manner, shall have their hands washed with soap and water before and after eating and after toileting.

(d) Handwashing does not require hot water and may be done with cold water and plain soap.

(e) If bar soap is used, it shall be kept on racks that allow for water drainage. If liquid soap is used, the dispenser shall be replaced or cleaned, as necessary.

(f) Paper towels or separate cloth towels for each child shall be used for drying hands after handwashing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-63 Housekeeping. (a) Facilities shall have written policies for the routine cleaning of the facility, furniture, equipment, and toys. These policies shall specify the type of disinfectant and cleaning agent used, method for cleaning, schedule

for cleaning, storage of cleaning material and utensils, disposal of soiled items or spilled body fluids, and cleaning of equipment.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the infants and toddlers. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-64 to 17-895.1-70 (Reserved)

SUBCHAPTER 8

ENVIRONMENTAL HEALTH STANDARDS

§17-895.1-71 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

(1) Evacuation;
(2) Relocation of the child care facility if the facility becomes uninhabitable, or if the facility is ordered to evacuate;
(3) Sheltering in place at the child care facility;
(4) Lock-down of the child care facility;
(5) Communication and reunification with families during and after an emergency;

(6) Continuity of operations during and after an emergency;
(7) Accommodation of toddlers during an emergency;
(8) Providing for the needs of children with disabilities and children with special needs during an emergency;
(9) Providing for the needs of children with chronic medical conditions during an emergency.

(b) The plan relating to fire emergencies shall be approved by the fire inspector, and the facility's health consultant shall review the plan as related to subsections (a)(8) and (9).

(c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.

(d) Each child care facility shall provide emergency preparedness training to staff members.

(e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.

(f) The diagram of emergency exits shall be posted in a prominent place in the facility.

(g) An underwriters laboratory listed fire warning device or system shall be installed in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be current and on file at the facility.

(h) There shall be an unexpired ABC multi-purpose type fire extinguisher in every room where infants and toddlers are cared for.

(i) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, or lock-down of the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; §§2002, 2005)

§17-895.1-72 Accidental injury precautions. The facility shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

(1) Child care activities and premises shall take precautions not to expose the infants and toddlers to situations which may be hazardous to the particular age or capacity of the infant or toddler;

(2) The program shall help infants and toddlers to increase awareness of safety practices and accident hazards and to teach them, as appropriate to their age and development, how to avoid such hazards;

(3) Accident prevention practices and policies shall be available in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices; and

(4) The facility shall have written procedures for infection control, to use in all situations to prevent the transmission of blood-borne pathogens that may be spread through blood and body fluids. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-73 Environmental hazards. The indoor and outdoor premises of the child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the infants and toddlers as follows:

(1) The facility shall be protected against rodents and insects;

(2) All entrances and exits shall be secured;

(3) The outdoor space shall be fenced, or shall have natural barriers or other protective

conditions to deter infants and toddlers from getting into unsafe areas.

(4) There shall be no open drainage ditches, wells, or holes into which infants and toddlers may fall.

(5) Drainage shall be adequate to prevent stagnant pools of water from accumulating.

(6) Garbage and trash shall be stored in covered containers out of reach of the infants and toddlers and shall be removed frequently enough to avoid creating a health hazard or nuisance.

(7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or shall be supervised when used safely;

(8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(9) Open fireplaces shall not be used. Floor heaters and all heating elements, including hot water pipes, shall be insulated or installed in a manner which makes the pipes inaccessible to the infants and toddlers.

(10) Children shall be supervised when using hot water taps;

(11) Stove top controls shall not be accessible by children;

(12) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities.

(13) Emergency exits shall be clear of obstructions;

(14) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges,

rust, and splinters are not accessible to children;

(15) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;

(16) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;

(17) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to the infants and toddlers; also, furniture and equipment shall be physically proportionate to the infants and toddlers' sizes.

(18) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to the infants and toddlers.

(19) Poisonous plants shall be out of reach of the infants and toddlers on the premises.

(20) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times.

(21) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care center, the lodging house, the boarding house, or other business shall not be conducted at the center.

(22) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-74 Water supply. (a) The water supply shall be from a source approved by the health

authority and shall be under pressure. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) Running water shall be available and shall be immediately adjacent and visually accessible to the care area. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-75 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

(1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;
(2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;
(3) Where water sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;
(4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be separated from cooking, sleeping, or eating areas;
(5) Where water carried sewage disposal is not available, privies shall be used in accordance with local sanitary requirements and shall be designed with step stools or with holes sized to the age group;
(6) If toilet training chairs are provided for use by children, the toilet training chairs

shall be emptied promptly, cleaned, and sanitized after use;

(7) Lavatories shall be provided in quantities commensurate with toilet facilities. Hot water temperatures shall not exceed one hundred degrees fahrenheit or thirty-eight degrees celsius, at outlets accessible to children;

(8) Toilet facilities shall be child sized, or safe, sturdy step stools shall be provided to allow standard sized toilets and lavatories to be used;

(9) There shall be a sink that is adequate size for the rinsing of children. The sink shall be cleaned and disinfected prior to and after use and shall not be used for handwashing, food preparing, or cleaning; and

(10) The facility shall ensure an adequate supply of sanitized bedding is available to any program caring for infants and toddlers.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-76 Food preparation. Food preparation shall be carried out in a kitchen with proper equipment and cleanup facilities as follows:

(1) All dishwashing shall be performed in a sanitary manner. A domestic dishwasher shall be acceptable, but if it is not available, the dishes shall be washed and rinsed in a sanitizing solution;

(2) In a child care facility where food is prepared on the premises, adequate sized equipment for the size of the program shall be available. An approved dishwasher or a three compartment sink shall be used. Both the dishwasher and the three compartment sink shall require approval by the state department of health;

(3) When food is prepared off the premises and is transported to the child care facility from a licensed preparation source, the food shall be kept in a safe and sanitary condition;
(4) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and
(5) Cooking utensils used in food preparation and service shall be cleaned and stored in a sanitary manner. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-77 Food protection. (a) Food protection policies and practices, which comply with accepted practices of local sanitary codes in chapter 11-50, shall be developed and carried out in a manner that insures that all food is protected from contamination during storage, preparation, and service.

(b) Refrigeration shall be available for infant and toddler programs. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-78 Swimming activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:
(1) A certified lifeguard, who may be a caregiving staff, shall be on duty at all

times when swimming activities or swimming pools are in use;

(2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of section 17-895.1-40(b)(1), and the program shall comply with the following requirements:

(A) Wading pools shall be emptied immediately after each use; and

(B) Children shall be personally Attended by a responsible adult at all times; and

(3) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the caregiver responsible for the care of children.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-79 to 17-895.1-84 (Reserved)

SUBCHAPTER 9

PHYSICAL FACILITY STANDARDS

§17-895.1-85 Building codes and space requirements. (a) Child care facilities shall conform to the zoning, building, electrical, plumbing, and fire codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) The child care facility shall:

(1) Be located in a safe and reasonably quiet area or employ suitable noise control

devices to limit exterior noises to the child care operation;

(2) Have ventilation and a sunny exposure or be well-lighted; and

(3) Keep all buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility repaired, safe, and sanitary at all times.

(c) The program areas specifically designated for infants and toddlers, both indoors and outdoors, shall be separated by permanent structural walls, fences or other barriers in order to:

(1) Protect the younger children from traffic and high activity levels of older age groups;

(2) Minimize congestion and noise pollution; and

(3) Avoid staff specifically assigned to infant and toddler care from being pulled from infant and toddler programs into other areas at any time.

(d) The space requirements for enclosed areas are as follows:

(1) For daytime care:

(A) There shall be thirty-five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, hallways, and spaces consumed by cribs and playpens;

(B) The thirty-five square feet per child requirement can be based on the general square footage area of the entire center, not necessarily based on the square footage of each classroom; and

(C) Lanai area, which has both a roof and finished flooring, may be counted for up to 30 per cent of the required enclosed area; and

(2) For nighttime care, there shall be fifty square feet per child, exclusive of lanai area, in rooms which are used for sleeping.

(e) The space requirements for outdoor areas are as follows:

(1) The center shall maintain, or have access to an outdoor play area of at least seventy-five square feet for each child using the outdoor area at any one time; and

(2) Lanai area, when not included in the required enclosed area space, may be counted for up to 30 per cent of the required outdoor space.

(f) The facility shall be equipped with toilets and lavatories as follows:

Number of children	Toilet(s)	Lavatory(ies)
1 - 12	1	1
13 - 30	2	2
31 - 45	3	3
46 - 60	4	4
61 - 75	5	5

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-86 to 17-895.1-89 (Reserved)

SUBCHAPTER 10

PROGRAM MODIFICATIONS

§17-895.1-90 Program modifications for drop-in care. (a) All requirements set forth in this chapter

shall be met by the provider except for section 17-895.1-41(a) and (d).

(b) Infants and toddlers receiving drop-in care shall be cared for in separate areas or groups from the other infants and toddlers who attend the program regularly.

(c) If a facility serves both drop-in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

(d) The facility shall have the following information in writing:

(1) The ages of the infants and toddlers accepted for drop-in care;

(2) The procedures for admittance and release of drop-in children; and

(3) Arrangements for staffing and separate activities for drop-in children. [Eff] (Auth: HRS §346-162) Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-91 Program modifications for night care. A child care facility offering night care shall meet the requirements of this chapter and the following additional requirements:

(1) In consultation with parents, special attention shall be given by the caregiver to provide for transition into night care;

(2) A selection of developmentally appropriate toys for quiet activities shall be available;

(3) Comfortable cribs, beds or cots that comply with the safe sleep requirements in sections 17-895.1-96 and 17-895.1-97, complete bedding and night clothes shall be available or supplied by the parents;

(4) Cribs or beds shall be placed at least three feet apart;

(5) Staff shall be available to assist the infants and toddlers, as required by their

age and developmental level, during eating and pre-bedtime hours and during the morning period when dressing;

(6) During sleeping hours, staff shall be within hearing distance at all times to provide for the needs of the infants and toddlers and to respond immediately in an emergency;

(7) An infant or toddler shall not sleep in a building detached from the main facility; and

(8) Night care facilities shall include at least one shower, bathtub, or bathing facility for infants and toddlers. [Eff] (Auth: HRS §346-162) Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-895.1-92 Program modifications for demonstration projects. (a) An infant and toddler child care facility may establish a demonstration project for a specific purpose, or set of purposes, upon receiving written approval from the department.

(b) The facility shall submit a written proposal to the department indicating the following:

(1) Purpose of the project;

(2) Description of the project;

(3) Length of the project;

(4) Specific infant and toddler child care center rules that shall be exempted by the project; and

(5) Justification for the proposed exemptions.

(c) The persons responsible for the project or the designated representatives shall appear in person to discuss the proposal with the department or the department's designated representatives, if requested by the department.

(d) A demonstration project, which has been approved in writing by the department, shall comply with all requirements imposed by the department at the time of its approval as follows:

(1) The name or description of the project shall include the words "licensed demonstration project";
(2) Providers shall be able to show that at all times the demonstration project is in compliance with the infant and toddler child care center rules, except as specifically exempted or modified in the department's written approval; and
(3) Within the last quarter of the time specified for the demonstration project, a written report shall be submitted to the department which shall include:
(A) Developments, findings, recommendations, and suggestions for further study; and
(B) Any proposed recommendations related to the demonstration project for changing or modifying infant and toddler child care center rules with justification therefor.

(e) Proposed demonstration programs disapproved or discontinued by the department shall not be permitted any further use of the words "demonstration project" in the identifying title, logo, or material. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§§17-895.1-93 to 17-895.1-95 (Reserved)

SUBCHAPTER 11

SAFE SLEEP

§17-895.1-96 Program requirements. (a) A child care facility shall have a written operation policy

regarding safe sleep when permitted to care for children less than one year of age.

(b) All employees and volunteers of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall ensure the following for sleeping children less than one year of age:

(1) Children shall be placed on their backs to sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;

(2) Sleeping children are physically monitored and periodically checked; and

(3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap. [Eff] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

§17-895.1-97 Sleep environment. (a) A child care facility shall use cribs and playpens that have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen for children less than one year of age.

(c) A clean, tightly fitted crib sheet shall be used to cover the crib or playpen for children less than one year of age.

(d) Sleeping areas shall be kept ventilated and at a safe temperature.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair.

(g) For children ages one year and older, the following sleeping equipment shall be available:

(1) Individual bed, crib, cot, mat, or rug for each child who rests; and

(2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child."

[Eff] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

2. The adoption of chapter 17-895.1, 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 Statues, which were adopted on June 1, 2020 and filed with the Office of the Lieutenant Governor.

_____
CATHY BETTS
Director of Human Services

APPROVED AS TO FORM:

_____
Deputy Attorney General

IV. Old Business – After Public Hearing

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of 896.1, **Licensing of Before and After School Child Care Facilities**, promulgated by DHS

RECEIVED
By SBRRB at 12:03 pm, Dec 02, 2021

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17.892.2

Chapter Name: Licensing of Group Child Care Centers and Group Child Care Homes

Contact Person/Title: Dayna Luka/Acting Child Care Program Administrator

Phone Number: (808) 586-7058

E-mail Address: dluka@dhs.hawaii.gov **Date:** 12/2/21

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

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

☐ **Yes** ☐ **No**

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

I. Rule Description: ☐ **New** ☐ **Repeal** ☑ **Amendment** ☐ **Compilation**

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

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

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

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

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

☐ **Yes** ☐ **No**

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

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

☐ **Yes** ☐ **No**

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

* * *

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

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

Please refer to Attachment 1

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

Please refer to Attachment 1

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

Please refer to Attachment 1

4. The number of persons who:
   (i) Attended the public hearing: 30

   (ii) Testified at the hearing: 3

   (iii) Submitted written comments: 10

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

   ☐ **Yes** ☐ **No**

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

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

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Chapter 17-896.1, Licensing of Before and After School Child Care Facilities

(Attachment 1)

V. In 2018, DHS held about 6 different listening sessions to review the proposed changes that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care Development Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019.

V.a. The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of child care.

The recommendation to consider other options to comply with maximum group size limits were incorporated into the proposed rule. The proposed rule allows for some exceptions when the children may be grouped all together.

VI.1. The Public Notice was published in the newspapers statewide on Wednesday, June 30, 2021, to inform the public of the opportunity to provide their comments for the proposed rule chapter at the public hearing scheduled for July 30, 2021. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.

VI.2 Written testimonies were submitted; and comments were overwhelmingly in support of reinserting the language pertaining to the use of lanai space to be used in calculating the maximum number of children allowed on the license. Businesses testified as to how the removal of the language to allow for lanai space to be counted as usable space would negatively affect their operations.

VI.3 The department acknowledges that while we had been applying the rule regarding the use of lanai space in the calculation for license maximum incorrectly, we will need time to rewrite it so that the language is clear. The rule has been reinserted into the proposed rules that enclosed lanai space will be counted in the license maximum until we are able to rewrite the rule in concise language.

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-896.1
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-896.1, Hawaii Administrative Rules, entitled "Licensing of Before and After School Child Care Facilities" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 896.1

LICENSING OF BEFORE AND AFTER SCHOOL
CHILD CARE FACILITIES

Subchapter 1 Licensing Procedure

§17-896.1-1 Definitions
§17-896.1-2 Application
§17-896.1-3 Inspection and issuance of license
§17-896.1-4 Fines
§17-896.1-5 Denial, suspension, revocation of license, and hearings
§§17-896.1-6 to 17-896.1-9 (Reserved)

Subchapter 2 Administration Requirements

§17-896.1-10 Age of children in care
§17-896.1-11 Statement of operation policies
§17-896.1-12 Liability insurance
§17-896.1-13 Information on owner or operator
§17-896.1-14 Change in services and staff
§17-896.1-15 Information and records on each child
§17-896.1-16 Disclosure of information on the Child
§17-896.1-17 Information and records on facility
§17-896.1-18 Transportation provisions
§§17-896.1-19 to 17-896.1-24 (Reserved)

Subchapter 3 Program Requirements

§17-896.1-25 Program provisions
§17-896.1-26 Communication with parents
§17-896.1-27 Program materials and equipment
§§17-896.1-28 to 17-896.1-34 (Reserved)

Subchapter 4 Staffing Requirements

§17-896.1-35 Staff training, experience, and personal qualifications
§17-896.1-36 Staff-child ratio and group size
§§17-896.1-37 to 17-896.1-39 (Reserved)

Subchapter 5 Health Standards for Children

§17-896.1-40 Health consultation provisions
§17-896.1-41 Evidence of child's health
§17-896.1-42 Emergency care provisions

§17-896.1-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR)
§17-896.1-44 Admission of ill children
§17-896.1-44.01 Administration of medication
§17-896.1-45 Admission of children with special needs
§17-896.1-46 Daily nutritional needs
§17-896.1-47 Drinking water provisions
§17-896.1-48 Integration of mental health concepts
§§17-896.1-49 to 17-892.2-54 (Reserved)

Subchapter 6 Health Standards for Staff

§17-896.1-55 Staff's health standards
§17-896.1-56 Personal health habits of staff
§§17-896.1-57 to 17-896.1-60 (Reserved)

Subchapter 7 Environmental Health Standards

§17-896.1-61 Disaster plan for emergencies
§17-896.1-62 Accidental injury precautions
§17-896.1-63 Environmental hazards
§17-896.1-64 Water supply
§17-896.1-65 Toilet and lavatory facilities
§17-896.1-66 Food preparation
§17-896.1-67 Cleaning of premises
§17-896.1-68 Swimming activities and wading pools
§17-896.1-69 Handwashing
§§17-896.1-70 to 17-896.1-79 (Reserved)

Subchapter 8 Physical Facility Standards

§17-896.1-80 Building codes and space requirements

Historical Note: The chapter is based substantially upon 17-896, Hawaii Administrative Rules. [Eff 4/11/92; am and comp 12/19/02; R]

SUBCHAPTER 1

LICENSING PROCEDURE

§17-896.1-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"After or before school care aide" means a person responsible for helping the leader carry out the direct care of the children, under the direction of the program leader or assistant program leader.

"After or before school care assistant program leader" means a person responsible for planning, carrying out, or both, direct care of the children under the direction of the program leader.

"After or before school care program leader" means a person responsible for planning, carrying out, or both, the direct care of the children in the program. For example, making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff and volunteers, and working cooperatively with the director and other staff toward achieving program goals and objectives.

"After school care" means child care provided after the end of the regular school day during the academic year for children who are kindergarten age and above who are enrolled in public or private elementary schools.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before school care" means child care provided before the start of the regular school day during the academic year for children who are kindergarten age and above and who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations where a person or organization has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the child's parent, guardian, or other, for any part of a twenty-four day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a family child care home, in a group child care home, or in a group child care center.

"Child care center" or "group child care center" means a place other than a private home, maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Child development associate" or "CDA" means the credential issued by the Council for Professional Recognition.

"Child with special needs" means a child with a condition such as a physical, emotional, behavioral, or learning disability or impairment that causes the

child to require additional or specialized services or accommodations.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Council for Professional Recognition" means the organization that administers the CDA credential.

"County building code" means the building code used by the applicable counties.

"Director," "principal," or "program coordinator," means the person at the facility having responsibility for its administration and program.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Facility" means the premises of the address that is on the application or license certificate for child care, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, American Medical Society, or the department of health.

"Form l4" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home" or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to

admitting or not admitting sick children to child care.

"Intersession care" means child care provided during the breaks within the academic school year for children who are enrolled in public or private elementary schools.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the State.

"Liability insurance coverage" means a general casualty insurance policy issued to insure against legal liability for injury resulting from negligence to a child during the time the child is under the provider's care.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Policy" means a principal plan for the management of a child care facility.

"Provider" means any individual 18 years or older, caregiver, child care facility, agency or organization, exempt care providers, and adult employees, who provide child care to children in the absence of the child's caretaker.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department for up to a period of six months to any child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in Public Health Nutrition or Nutritional Sciences.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regionally accredited college or university" means any college or university that is recognized by the following regional accrediting organizations:

(1) Middle State Associations of Colleges & Schools-Commission on Higher Education;
(2) Northwest Commission on Colleges & Universities;
(3) North Central Association of Colleges and Schools-the Higher Learning Commissions
(4) New England Association of Schools and Colleges-New England Commission of Higher Education;
(5) Southern Association of Colleges and Schools Commission on Colleges; or
(6) Western Association of Schools and Colleges-Accrediting Commission for Community and Junior Colleges or Western Association of Schools and Colleges-Senior College and University Commission.

"Regular license" means a certificate of approval issued by the state department of human services to any child care facility which conforms to all the rules at the time the license is issued.

"Regularly" means the typical or normal pattern of a child care facility, or a practice or schedule

that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means administrative, child care, office, maintenance, employees, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement staff person for no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

"Summer care" means care that is provided after the end of the academic year and occurs during the summer months.

"Supervision" means to be within sight and hearing distance of the children to insure the safety and protection of the children.

"Teacher," "teacher-director," "head teacher," "lead teacher," or "program leader" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, supervising, and training other staff.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Temporary permit" means the same as provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteer" means a person working or offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the program. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

§17-896.1-2 Application. (a) A completed application to operate a before and after school child care center must include the following:

(1) A signed department application form;

(2) A written statement of operation policies;

(3) Verification that the facility meets the applicable county codes;

(4) Results of the background checks as described in section 17-801-4, and as indicated in (A) and (B) below:

(A) Applicants, their staff members, and prospective staff members shall provide background clearance records and consent to conduct background checks as indicated in section 17-801-4.

(B) The department shall conduct the background checks in accordance with chapter 17-801.

(b) The date of application shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application shall be issued no later than ninety days from the date the completed application as defined in subsection (a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application

must be submitted unless the licensing unit has granted additional time to satisfy all requirements in subsection (a). [Eff] (Auth: HRS §346-20) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; SLH 1986; 50 Fed Reg. 2089)

§17-896.1-3 Inspection and issuance of license. (a) In exercising its authority to license a before or after school program or renew, suspend, or revoke the license, the department shall analyze the qualifications of staff, review the facility's written policies and program provisions, and inspect the facility.

(b) Authorized representatives of the department and parents or guardians of the children in care may visit the facility at any time during the hours of operation for purposes of observing, monitoring or inspecting the facilities, activities, staffing, and other aspects of the program and facility.

(c) The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(d) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(e) After the initial licensure, the licensee shall ensure that new staff members comply with section 17-896.1-2(a)(4) within five working days of hire by the child care facility.

(1) New staff members shall meet the conditions in 17-801-5(a) and 17-801-5(b) prior to starting employment or volunteering at the child care facility.

(2) An applicant, staff member, or rehired staff member, who has left the state for a period of one hundred eighty consecutive days or more, shall comply with sections 17-801-5(a), 17-801-5(b), and 17-801-5(c).

(f) Annual background checks shall be conducted. The applicants and staff members shall provide consent to the department to conduct a background check in accordance with chapter 17-801 no later than the anniversary date of the last consent to conduct a background check.

(g) The department shall request the applicant or licensee to terminate the employment of a staff member determined to be not suitable to provide child care for children in accordance with chapter 17-801.

(h) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(b)(2).

(i) The department shall request the applicant or licensee to exclude from the premises, the person who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801.

(j) The applicant or licensee shall comply with the conditions set forth in section 17-801-6(c)(2).

(k) Rules prescribed in this chapter are minimum standards. The department shall issue a license under the following conditions:

(1) A regular license certificate shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional license certificate shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations are minor deficiencies.

(l) The length of the licensing period shall be as follows:

(1) For new applicants and those providers licensed for less than four years, the licensing period is one year and for all other providers, the licensing period may be two years, unless subsequently suspended or revoked.

(2) During a licensing period, a provider may be issued more than one license certificate which may include a provisional license certificate followed by a regular license certificate. When this occurs, the total length of a licensing period shall be according to paragraph (1).

(3) A provisional license may be issued for up to six months; and

(4) A license shall be renewed for a new licensing period only upon application and upon the department's approval. An application shall be submitted to the department at least ninety days prior to the expiration of the licensing period.

(m) Each regular license and provisional license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.

(l) A license certificate shall be valid for:

(2) One year for new applicants and for those who have been licensed for less than four years; and

(3) Two years for those who have been licensed for four years or more,

unless sooner revoked. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-156, 346-163, 346-165; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg. 2089)

§**17-896.1-4 Fines.** (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

(1) Caring for more children than allowed by the facility's license;
(2) Violation of the staff-child ratios;
(3) Improperly certifying staff credentials;
(4) Failure to comply with timely request for background check as required in chapter 801;
(5) Allowing conditions to exist at the facility which constitute a risk of harm or an imminent danger to the health, welfare, or safety of the children; or injuries to children resulting from the conditions;
(6) Failure to report suspected child abuse or neglect that has occurred or will occur;
(7) Any behavior that may create an unsafe or unhealthy environment or may pose a risk of harm to children. [Eff] (Auth: HRS §346-156) (Imp: HRS §§346-154, 346-156, 346-162, 350-1; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-5 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action to be taken by the department shall be as follows:

(1) The department shall deny, suspend, or revoke a regular license or a provisional license if:
  (A) An applicant or licensee does not comply with the applicable statutes and rules of the department respecting child care facilities; or
  (B) The child care facility or any employee of the facility knowingly makes a false statement to any person concerning the child care facility's liability insurance coverage.
(2) An applicant or licensee whose license is denied, suspended, or revoked shall be given written notice by certified or registered

mail addressed to the location shown on the license application;

(3) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, within ten working days after the mailing of the notice of the proposed action;

(4) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and

(5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.

(b) The license certificate shall be immediately suspended when:

(1) Conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(2) The department received a report of allegations which identify risks to the health, safety, or well-being of the children in care. These risks include: the existence of a health hazard on the premises, or unsafe facility conditions that cannot be immediately abated;

(3) The provider refuses to terminate a staff member as specified in chapter 17-801; or

(4) The provider refuses to exclude from the premises, the person who is the subject of

an on-going or pending investigation in accordance with chapter 17-801.

(c) Upon immediate suspension pursuant to (b), the department shall take the following actions:

(1) Provide the licensee written notice of the order by personal service, by certified, or registered mail addressed to the location shown on the license;

(2) Provide a statement of the reasons for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order within ten working days after mailing of the notice; and

(3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.

(d) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received, even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(e) Filing of a request for an administrative appeal does not permit the applicant or licensee to continue to care for children under this chapter.

(f) If an applicant or licensee has their regular license or provisional license revoked, they shall be unable to apply for another license for:

(1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and
(2) One year from the date that the license was revoked if the revocation was their second offense. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-6 to 17-896.1-9 (Reserved)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-896.1-10 Age of children in care. A before and after school child care facility may provide care to children aged four years and eight months and older who are enrolled in public or private elementary schools. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-14, 346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-11 Statement of operation policies.
(a) A before and after school child care facility shall have written operation policies, which shall be available to the department, caregiver staff, and parents or guardians of children for whom care is, or may be, available.
(b) The policies shall be reviewed with each caregiver in the facility and with parents or guardians at the time of enrollment of a child.
(c) Policies shall cover the following areas:
(1) Ages of children accepted;

(2) Maximum number of children permitted by license;
(3) Specific hours of day, night, holiday, and vacation operation;
(4) Whether meals or snacks are served;
(5) Type of child care services to be offered;
(6) Provisions which may be made for special needs of individual children;
(7) Admission requirements and enrollment procedures;
(8) Fees and the plan for payment, including fees for different types of services and refund policy;
(9) Plan for emergency medical care;
(10) Insurance coverage - each center shall inform parents or guardians in writing of its policy relating to liability insurance;
(11) Personal belongings brought to the facility;
(12) Transportation arrangements;
(13) Parental permission for trips and related activities outside the facility;
(14) Disclosure of information on the child, or parents or guardians of the child;
(15) Fund raising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;
(16) Admission of ill children, or children with special needs;
(17) Administering medication;
(18) Sanitation practices;
(19) Brief written description of the facility's program goals;
(20) Grievances which shall include the department’s information for parents to file a complaint;
(21) Mandated reporting of suspected child abuse or neglect in accordance with chapter 350, HRS;
(22) Suspension and expulsion of children with includes the following:

(A) The conditions under which a child may be suspended or expelled, if applicable;
(B) Sufficient timeframe before suspension or expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in paragraph (22)(C) below;
(C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children;
(D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and
(E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and

(23) Other policies which may be required by the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; §§2002, 2005, 9833)

§17-896.1-12 Liability insurance. A child care facility shall:

(1) Obtain and maintain liability insurance coverage as defined in section 346-157, HRS;
(2) Provide to the department evidence of liability insurance coverage; and
(3) Notify the department and parents or guardians in writing within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's

or guardian's child is cared for at the facility. [Eff] (Auth: HRS §346-157) (Imp: HRS §346-157)

§17-896.1-13 Information on owner or operator. (a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name and address of the owner or sponsoring agency (privately owned, church or agency owned, etc.) shall be supplied to the department. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-14 Change in services and staff. (a) A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

(1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of children enrolled in the facility; and

(2) Notification of any changes in service shall be made no later than thirty days before the date of the change and shall be included in the facility's operating policies.

(b) A facility shall provide to the department written notification of changes in staff members who provide direct care to children within five working

days after the change. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-15 Information and records on each child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The child's likes, dislikes, allergies and other personal information which may impact on the child's over-all behavior;

(3) The name and address of the parents or guardians who are legally responsible for the child;

(4) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care facility;

(5) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;

(6) The name, address, and telephone number of persons authorized to take the child from the facility.

(7) Health information concerning the child, including any allergies as required by section 17-896.1-41.

(c) The information shall be available on facility forms and shall be updated as necessary. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-16 Disclosure of information on the child. Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-17 Information and records on facility. (a) Written information and records on the facility shall be maintained and made available to the department. The facility shall maintain current records and information including:

(1) Roster of enrolled children;
(2) Daily attendance records by names of children;
(3) Daily menu for facilities which provide meals or snacks;
(4) Daily schedule of activities; and
(5) A list of staff members including each staff member's training, position or title, experience, and health records.
(6) Written permission from the parent to allow the child to have contact with pets or other animals; and
(7) Log of emergency preparedness drills practiced in accordance with section 17-896.1-61.

(b) The child care facility shall report to the department, within one working day of occurrence, the death of a child or staff member, and any illness or injury received at the child care facility that results in a child’s hospitalization. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-18 Transportation provisions. When transportation is provided by a facility, children shall be protected by adequate supervision and safety precautions as follows:

(1) For transportation to and from the facility, the vehicle and driver shall satisfy all relevant motor carrier safety rules and traffic laws of the state;

(2) During any field trip or excursion operated or planned by the facility, the staff-child ratios as required in section 17-896.1-36 shall apply;

(3) Children shall be instructed in safe transportation conduct; and

(4) Prior to transporting children, the child care facility shall obtain written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;

(5) Children shall be secured in the seat of the bus or in the back seat of a personal vehicle in approved car seats or restraints;

(6) A child shall not be left unattended in a vehicle;

(7) Staff members shall take a head count or attendance record check before and after transportation is provided; and

(8) During any field trip or excursion, staff members shall have available with them a first aid kit, emergency contact phone numbers, and medical treatment release forms singed by the child's parent or guardian.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-19 to 17-896.1-24 (Reserved)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-896.1-25 Program provisions. The program conducted in the facility shall provide for staff supervision at all times, except during bathroom use when staff supervision may be within hearing distance of children, and an environment and experiences which are aimed at promoting the individual child's physical, emotional, and social well-being and growth. This shall be done in the following ways:

(1) At least twenty-five percent of the program time shall be spent in gross motor activities, such as running, climbing and other vigorous activities, to promote physical development.

(2) To promote emotional development the program shall provide that:

(A) There are opportunities for individual self-expression;

(B) Each child is recognized as an individual;

(C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's ability to be self-disciplined;

(D) Each child's personal privacy is respected;

(E) Providers shall not use:

(i) Physical punishment, abuse, or harm including but not limited to spanking, pinching, slapping, or shaking; or

(ii) Methods of influencing behavior which are frightening, humiliating, damaging, neglectful, or injurious to the child's health or self-esteem; and

(F) Providers shall respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect; and

(3) Programs to promote social development shall provide that:

(A) Children are guided in developing and working out ways of getting along with each other;

(B) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and

(C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity.

(4) The activities and experiences provided by the program are appropriate to the developmental level of the children;

(5) The program provides a balance of active and quiet activities; and

(6) The program shall provide for the self-direction of the children by:

(A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;

(B) Encouraging children to do things independently; and

(C) Providing children opportunities to be involved in decision making about group and individual activities.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-26 Communication with parents. Caregivers shall relay concerns about the health,

development, or behavior of the child to the parents or guardians promptly and directly. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-27 Program materials and equipment. (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

(1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and

(2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be safe and kept clean, in good repair, not be recalled and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Soft media or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Storage space for play materials and equipment used by the children shall be available.

(h) Provision shall be made for a place for each child's personal belongings.

(i) There shall be a mat or cot available for any child who needs to rest. [Eff]

(Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-28 to 17-896.1-34 (Reserved)

SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-896.1-35 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Each caregiver, substitute, and volunteer within forty-five days of hire, shall complete initial training that is approved by the department in health and safety standards which addresses the following areas:

(1) Prevention and control of infectious diseases (including immunizations);
(2) Prevention of sudden infant death syndrome and use of safe sleeping practices;
(3) Administration of medication, consistent with standards for parental consent;
(4) Prevention and response to emergencies due to food and allergic reactions;
(5) Building and physical premises safety;
(6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event;
(8) Handling and storage of hazardous materials

and the appropriate disposal of biocontaminants;

(9) Appropriate precautions in transporting children, if applicable;

(10) Pediatric first aid and child cardiopulmonary resuscitation; and

(11) Recognition and reporting of child abuse and neglect.

(c) When a caregiver, substitute, or volunteer has not provided child care for one hundred eighty consecutive days or more, the initial training in subsection (b) shall be repeated.

(d) After the initial training in health and safety standards is completed with one hundred percent accuracy and the results are received and recorded by the department, each caregiver shall complete on-going training appropriate to the age of children the caregiver serves within twelve months from the date the initial training was received and recorded by the department, and then annually thereafter.

(1) Each caregiver staff member shall complete at least sixteen hours of department-approved training annually in at least two of the topic areas in subsection (e).

(2) Substitutes shall complete at least ten hours of department-approved training annually in at least two of the topic areas in subsection (e).

(3) Volunteers who serve ten hours or more a week shall complete at least eight hours of department-approved training annually in at least two of the topics areas in subsection (e).

(4) When an individual does not meet the requirements in subsection (d) or does not provide evidence of working to complete on-going training, the individual shall no longer be eligible to meet the staff-child ratio in accordance with sections 17-896.1-36(e) and (f).

(e) Each caregiver shall provide written evidence to the department to show completion of on-going

training. The on-going training course, workshop, or class shall be different from the training topic areas completed in the prior twelve month period, and shall be in the following topic areas:

(1) Physical care of the young child;
(2) Care of the sick child;
(3) Child nutrition;
(4) Child growth and development;
(5) Children with special needs;
(6) Learning activities and play;
(7) Family engagement;
(8) Managing challenging behaviors;
(9) Community resources;
(10) Prevention of child maltreatment and abuse;
(11) Pediatric first aid and child cardiopulmonary resuscitation;
(12) Health and safety;
(13) Child care business or program management; or
(14) Physical environment.

(f) Applicants and staff members shall be of reputable and responsible character and shall not have the following:

(1) A criminal history record, employment history, sex offender registry history, child abuse/neglect history, or adult abuse history that may pose a risk to children in care as specified in section 17-801-5; or
(2) Any other situations that poses a risk to the health, safety or well-being of children in care.

(g) Directors, program leaders, assistant program leaders, and aides employed in a licensed facility on January 25, 1982, shall be deemed to have adequate minimum qualifications for the type of staff position occupied and to maintain this status when shifting employment to another licensed facility.

(h) The age requirements for staff shall be as follows:

(1) All staff positions other than child care aide, volunteer, clerical, or maintenance

personnel shall be at least eighteen years old; and

(2) A child care aide shall be at least sixteen years old to be counted in the staff-child ratio and at least thirteen years old to be hired as an aide.

(i) The director shall have the following qualifications:

(1) A bachelor's degree or higher from a regionally accredited college or university or transferable to a regionally accredited college or university and twelve months of experience in working with children; or

(2) Child development associate (CDA) certification and twelve months of experience in working with children; or

(3) Two years of college education and twenty-four months of experience in working with children; and

(4) In all cases, at least six months of experience shall be with children of the appropriate age for the before/after school program being directed.

(j) The director may teach and may be counted in the staff-child ratio as follows:

(1) In a facility with an enrollment of less than fifty children, the director may teach and may be counted in the staff-child ratio; and

(2) In a facility with an enrollment of fifty or more children the director may teach but shall not be included in the staff-child ratio.

(A) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. In any case this inclusion in the staff-child ratio may not exceed ten hours per week.

(B) Exception may be made and the director may be included in the staff-child ratio during the first hour and the

last hour of the regular operational day.

(C) Exception may be made and the director of a facility with an enrollment of fifty or more children may teach and be counted in the staff-child ratio when the attendance at the facility is less than fifty children.

(k) A program leader shall meet one of the qualifications:

(1) Two years of college education and six months experience in working with school-age children; or

(2) Child development associate (CDA) and six months experience in working with school-age children; or

(3) Completion of high school and nine months of experience in working with school-age children; and

(4) In all cases undergo an orientation training provided by the facility.

(l) An assistant program leader shall be at least 18 years old, shall always be under the direction of a program leader, and shall undergo orientation training provided by the facility.

(m) An aide shall be at least thirteen years old, shall always be under the direction of a program leader or an assistant program leader, and shall undergo orientation training provided by the facility. Aides shall be at least sixteen years old to be counted in the staff-child ratio.

(n) Volunteers shall:

(l) Participate in an orientation training provided by the facility; and

(2) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(o) Temporary hires shall meet qualifications of positions for which hired.

(p) Substitutes for director, assistant program leader, and aide shall meet the qualifications of the position for which hired.

(q) Substitutes for program leaders shall be at least eighteen years of age and shall have participated in an orientation training program of the facility, and the daily activities assigned to the substitute shall be closely supervised by the facility's director.

(r) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department.

(s) Directors of facilities shall make available to all staff members and volunteers information regarding workshops, seminars, training sessions or other courses that are available from any source, public or private, in order to encourage staff growth and development. [Eff] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg 2089)

§17-896.1-36 Staff-child ratio and group size.

(a) Every facility shall have a director.

(b) The staff-child ratio shall be met and maintained at all times by the facility.

(c) The staff-child ratio shall be in writing and shall be made available to the department.

(d) The staff-child ratio shall not exceed twenty children per staff member.

(e) Distribution of staff may include a team comprised of director, as allowed under section 17-896.1-35(j), program leader, assistant program leaders, and child care aides. Aides shall not constitute more than one-third of the required staff-child ratio.

(f) The staff members shall be on site and shall be assigned to a group of children to be included in the staff-child ratio.

(g) The maximum group size shall not exceed 40 children.

(1) When exceptions are made for special events,

such as but not limited to, assemblies, performances, meal and snack time, and outdoor play area, the following shall apply:

(A) The staff-child ratio shall be maintained at all times in accordance with subsection (d).

(B) Distribution of staff requirements in subsection (e) shall be maintained at all times.

(h) Custodians and cooks shall not be counted in the staff-child ratio when performing regular duties.

(i) When acting as the driver of the facility vehicle for transportation to or from the program or on excursions, the program leader, assistant program leader, or aide shall count toward the staff-child ratio for those children in the vehicle.

[Eff] (Auth: HRS §346-162)) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg 2089)

§§17-896.1-37 to 17-896.1-39 (Reserved)

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-896.1-40 Health consultation provisions. All programs shall have on file written evidence that an arrangement has been made with a health care professional to provide consultation and this arrangement is satisfactory with the parents of the children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-41 Evidence of child's health. (a) The child's enrollment in school shall be evidence of the child's good health.

(b) The child care facility shall have in writing information about a child's specific health condition which requires special attention by the program staff. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-42 Emergency care provisions. (a) Every child care facility shall have in writing:

(1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; or

(2) The name of the nearest hospital or clinic where such care may be provided; and

(3) Permission of the parent or guardian to call the stated physician or health resource, or the hospital or clinic, if the parent or guardian cannot be reached in case of a health emergency.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(c) Physical arrangements that are clean and safe for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements.

(d) An operating telephone that is available and is easily accessible to the provider to be used in case of an emergency;

(e) A plan for accessing a telephone when not in the usual location where care is being provided. [Eff] (Auth: HRS §346-162)) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-43 Pediatric first aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in pediatric first aid when children are present at the facility or at an off site group activity, such as during field trips and excursions.

(2) A current certificate means a certificate that has not expired.

(3) The current pediatric first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(4) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in child CPR when children are present at the facility or at an off site group activity, such as during field trips and excursions.

(2) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and be approved by the department.

(3) A current certificate means a certificate that has not expired. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-44 Admission of ill children. (a) When health policies of the child care facility allow ill children to be admitted or to remain in the child care facility, medical consultation shall be available regarding special care and medication.

(b) Both the provider and the parents or guardians shall be familiar with the policies of the facility relevant to ill children.

(c) Provisions shall be made to allow the facility's health consultant and the child's regular source of health care to communicate in order to preserve continuity and consistency of care.

(d) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called in case of emergency. Written permission of the parent or guardian to call upon the stated physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached, shall be required. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-44.01 Administration of medication. (a) When medication prescribed by a physician is administered in the facility:

(1) The medication shall be kept in the original container bearing the prescription label which shows the date filled, the physician's directions for use, and the child's name;

(2) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and

(3) There shall be an authorization signed by the parent or guardian for the administration of medication by the facility.

(b) When over-the-counter medication is administered in the facility, the child's parent or guardian or physician shall provide to the child care facility written permission and written instructions to administer the medication. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

§17-896.1-45 Admission of children with special needs. (a) When children with special needs are admitted to the program, the facility shall provide for the special needs of each child.

(b) The child with special needs shall be admitted only after consultation with the child's source of health care and the program's health consultant. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the staff members of the program shall receive training related to the nature of the child's condition and the child's potential for growth and development.

(d) Where the nature of the child's special needs or the number of children with special needs in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-46 Daily nutritional needs. (a) To the extent possible, information provided by the parents or guardians concerning the child's eating

habits or special needs shall be considered, and children shall be encouraged, but shall not be required, to eat the food offered by the facility.

(b) The program shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health.

(c) Children in after school programs for two to four hours shall be offered a nutritious snack which may be brought from home or provided by the facility.

(1) In a facility providing snack, the snack shall consist of at least one of the following: fruit, vegetable, milk or its calcium equivalent, an enriched grain product, meat, or a meat alternate.

(2) If a beverage is served in addition to items allowed in subsection (c)(1), it can be water or fruit or vegetable juice; if fruit or vegetable juice, it shall be one hundred percent juice.

(d) In a facility providing breakfast, the breakfast shall consist of milk, fruit, or one hundred percent fruit juice, and an enriched grain product.

(e) In a facility providing full day care, parents may provide the nutritional requirements for that period of time. The facility shall provide a guide to parents or guardians on nutritional snacks and brown bag lunches.

(f) In a facility providing meal service, the minimum components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - - - - one snack;

(2) Four to eight hours - - - one snack or breakfast and lunch or supper;

(3) Eight hours or more - - - one snack or breakfast and lunch or supper and one additional snack unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in subsection (f)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent.

(g) Local ethnic foods may be added or substituted for quantity; for allowable food reimbursement, facilities shall consult with the USDA.

(h) Children shall not be offered foods to which they are allergic or, for religious reasons, cannot consume. Provisions shall be made to secure such information from the parent or guardian, and the parent or guardian of the child shall arrange for nutritious substitute foods.

(i) A list of food items that are provided by the caregiver shall be posted in a prominent place for review by parents.

(j) Food shall not be used as a punishment or reward.

(k) The child care facility's food service shall be reviewed biennially by a qualified nutrition consultant the center has chosen or provided by an appropriate community resource. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-47 Drinking water provisions. There shall be drinking fountains or another device or system whereby potable water shall be readily accessible to all children. [Eff]

(Auth: HRS §346- 162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-48 Integration of mental health concepts. Mental health aspects of child development shall be integrated into the program as follows:

(1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to the child care facility. The interview shall be conducted to secure pertinent information on the child's overall behavior and to acquaint the parent or guardian with the facility's policies.

(2) The program director shall be aware of mental health, consultant, and clinical services for children for the early identification of social, emotional, intellectual, and behavioral problems of children; and

(3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

[Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-49 to 17-896.1-54 (Reserved)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-896.1-55 Staff's health standards. Evidence that each caregiver staff member is free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the facility as follows:

(1) The results of employment physical examinations, and when indicated on a physical exam that the individual has a mental health disorder or limitation, a psychological exam, given within one year prior to employment of each person who works directly with children that indicates each person is in adequate physical, and if needed, mental health to care for children shall be on file at the facility;

(2) Written evidence that each person who works directly with children for any period of time is free from communicable tuberculosis in accordance with the requirements for child care facility personnel, under chapter 11-164.2. The tuberculosis clearance must be completed within one year before beginning child care and shall be on file at the facility. Each person shall complete updated clearances in compliance with chapter 11-164;

(3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able to care for school age children; and

(4) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-56 Personal health habits of staff. The personal health habits of all caregivers shall not interfere with the protection of the health of the children as follows:

(1) The facility shall have:
  (A) Health policies developed specifically for the facility which set out aspects of personal health care; or
  (B) Written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver; or
  (C) In-service training for the child care staff members designed and presented by a health-trained individual which includes personal health care;

(2) No smoking, including electronic smoking devices, is allowed on the premises during child care hours of operation, and personal nicotine products shall be stored out of reach of children;

(3) Alcoholic beverages shall not be consumed prior to and during the hours of operation at the child care facility; if alcoholic beverages are stored at the facility, they shall be locked up and inaccessible to children; and

(4) Medication that impairs or limits the staff's ability to provide care shall not be consumed prior to or during the hours of child care. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-57 to 17-896.1-60 (Reserved)

SUBCHAPTER 7

ENVIRONMENTAL HEALTH STANDARDS

§17-896.1-61 Disaster plan for emergencies. (a) Each child care facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster or other emergencies, and the plan shall include written procedures for:

(1) Evacuation;
(2) Relocation of the child care facility if facility becomes uninhabitable or if the facility is ordered to evacuate;
(3) Sheltering in place at the child care facility;
(4) Lock-down of the child care facility;
(5) Communication and reunification with families during and after an emergency;
(6) Continuity of operations during and after an emergency;
(7) Providing for the needs of children with disabilities and children with special needs during an emergency; and
(8) Providing for the needs of children with chronic medical conditions during an emergency.

(b) The plan relating to fire emergencies shall be approved by the fire inspector, the facility's health consultant shall review the plan as related to subsections (a)(7)(8).

(c) The facility shall complete practice drills for the various emergency situations at regular intervals, or whenever a new procedure has been added.

(d) Each child care facility shall provide emergency preparedness training to staff members.

(e) The facility shall make the plan available for review by or provide a copy of the plan to each family whose child is enrolled at the child care facility.

(f) The diagram of emergency exits shall be posted in a prominent place in the facility.

(g) Each child care facility shall install an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be current and on file at the facility.

(h) There shall be an unexpired ABC multi purpose type fire extinguisher in the child care area.

(i) The provider shall notify the department within one working day when an emergency resulted in the evacuation, relocation, shelter in place, and lock-down of the facility. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-62 Accidental injury precautions. (a) The facility shall ensure that the risk of accidental injury on the premises is minimized by having accident prevention practices and policies in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices.

(b) Procedures for infection control, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids that might contain blood shall be in writing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-63 Environmental hazards. The indoor and outdoor premises of a child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(1) The child care facility shall be protected against rodents and insects;

(2) All entrances and exits shall be secured;
(3) The outdoor space shall be fenced, shall have natural barriers, or shall have other protective conditions to deter children from getting into unsafe areas;
(4) There shall be no open drainage ditches, wells, or holes into which children may fall;
(5) Drainage shall be adequate to prevent stagnant pools of water from accumulating;
(6) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisance;
(7) Sharp objects, household kitchen items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely;
(8) Cleaning materials shall be clearly labeled and stored in a secured area which is inaccessible to the children. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times;
(9) Open fireplaces shall not be used. Floor heaters and all heating elements, including hot water pipes, shall be insulated or installed in a manner which makes the pipes inaccessible to children;
(10) Children shall be supervised when using hot water taps;
(11) Stove top controls are not accessible by children;
(12) Emergency exits shall be clear of obstructions;
(13) Indoor and outdoor structures, equipment, and toys shall be sturdily constructed and furnishings that have hazardous sharp edges, rust, and splinters shall not be accessible to children;

(14) Electrical outlets accessible to children shall be covered with child-resistant outlet covers;
(15) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured;
(16) Lead based paint shall not be used or have levels greater than is recommended by the Environmental Protection Agency (EPA) on surfaces accessible to children;
(17) Poisonous plants shall be out of reach of children on the premises;
(18) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times;
(19) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, boarding house, or other business shall not be conducted at the facility; and
(20) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-64 Water supply. (a) The water supply shall be from a source approved by the health authority. The plumbing shall be installed and maintained in a manner approved by local plumbing codes.

(b) If running water is not available, the water shall originate from a source approved by the health authority, shall be transported to the child care setting in clean, sanitized, covered containers, and shall be protected from contamination. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-65 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

(1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;

(2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures and building sewers;

(3) Where water carried sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;

(4) Where water carried sewage disposal is available, water flush toilets shall be provided. Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating; and

(5) Lavatories shall be provided in quantities commensurate with toilet facilities. If hot water is available, water temperature shall not exceed one hundred degrees fahrenheit, thirty eight degrees celsius, at outlets accessible to children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-66 Food preparation. (a) Facilities that serve meals, or meals and snacks, shall meet all of the requirements of the department of health, chapter 11-50.

(b) Facilities serving only snacks, which are not potentially hazardous food, and which require minimal use of utensils, shall be exempt from the requirements of subsection (a). These facilities shall have access to a sink with running water. Lavatories in toilet rooms shall not be used for preparation or cleaning of snacks. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 9833)

§17-896.1-67 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and staff members.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty. Plain soap and water shall be an adequate cleansing agent.

(c) Cleaning materials shall be clearly labeled and stored in a secured area that is away from food preparation areas and is inaccessible to the children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896.1-68 Swimming activities and wading pools. (a) When swimming or wading pools are part of the child care facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are a part of the child care program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the caregiver, shall be on duty at all times when swimming activities or swimming pools are in use;

(2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (b). However, children shall be personally attended by a responsible adult at all times;
(3) Wading pools exempt under subsection (b)(2) shall be emptied immediately after each use; and
(4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the caregiver responsible for the care of children. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 9833)

§17-896.1-69 Handwashing. (a) The staff members and children shall wash their hands using water and soap before and after the following activities:

(1) Before and after eating, drinking, or feeding a child;
(2) Before handling clean utensils or equipment;
(3) Before and after preparing food or beverages;
(4) After using the toilet or helping a child in toileting;
(5) After handling bodily fluids or items containing bodily fluids;
(5) After handling pets or animals; or
(6) After outdoor play.

(b) Paper towels or separate cloth towels for each child shall be used for drying hands after handwashing. [Eff] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§§17-896.1-70 to 17-896.1-79 (Reserved)

SUBCHAPTER 8

PHYSICAL FACILITY STANDARDS

§17-896.1-80 Building codes and space requirements. (a) Programs using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be deemed to have satisfied the department's requirements relating to zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) Programs not using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be inspected for compliance with the zoning, building, electrical and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

(d) The indoor area required for each child is fifteen square feet. Lanai area which has both a roof and finished flooring may be counted for not more than fifty per cent of the required indoor area." [Eff] (Auth: HRS §346-20) (Imp: HRS §346-20; 42 U.S.C. §§2002, 2005, 9833)

2. The adoption of chapter 17-896.1, 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 Statues, which were adopted on April 8, 2020 and filed with the Office of the Lieutenant Governor.

_____
CATHY BETTS
Director of Human Services

APPROVED AS TO FORM:

_____
Deputy Attorney General

V. Administrative Matters

A. Discussion and Action on the Board's Investigative Taskforce's Resulting Findings and Recommendations on the Board's Proposed Phase II Website, in accordance with Section 92.2.5(b)(1)(B), HRS

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

(A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

Law Journals and Reviews

Hawai`i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

Case Notes

Even assuming that written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals constituted a permitted interaction under subsection (a), the memoranda violated the mandate under subsection (b) that no permitted interaction be used to circumvent the spirit or requirements of the sunshine law to make a decision or to deliberate toward a decision upon board business. The "express premise" of the sunshine law is that opening up the government process to public scrutiny is the only viable and reasonable way to protect the public. 130 H. 228, 307 P.3d 1174 (2013).

Written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals did not fall within the permitted interaction described in subsection (a) because the memoranda: (1) were distributed among all of the members of the Maui county council rather than among only two members of the board; and (2) sought a commitment to vote by asking for "favorable consideration" of the proposals contained within them and thus, violated the sunshine law. 130 H. 228, 307 P.3d 1174 (2013).

Although subsection (a) does not expressly preclude city counsel members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

PROPOSAL FOR THE SMALL BUSINESS REGULATORY REVIEW BOARD WEBSITE UPDATES

The purpose of this project is to assist with updates to the existing Small Business Regulatory Review Board (SBRRB) website. NIC Hawaii designed and launched the website on August 13, 2019. The site updates will include a homepage refresh, site content updates and assistance with MailChimp.

PROJECT DEVELOPMENT COSTS

TOTAL PROJECT COST

The total *cost* for this project is **$9,382.20** ($8,960 + $422.20 GET).
The total *hours* of work are estimated to be **101**.

INVOICE AND PAYMENT SCHEDULE

Fees will be invoiced according to the following schedule (dates shown are estimates, actual due dates will be determined by the project start date):

Date	Deliverable	Price	GE Tax	Total
Feb 2022	Payment upon deployment of functional test pages and SBRRB acceptance	$1,792	$84.44	$1,876.44 (20%)
Feb 2022	Payment upon completion of testing and SBRRB acceptance	$1,792	$84.44	$1,876.44 (20%)
March 2022	Payment after acceptance letter signed by SBRRB and submittal of application for launch to production environment	$1,792	$84.44	$1,876.44 (20%)
June 2022	Payment at end of 90-day warranty period	$3,584	$168.88	$3,752.88 (40%)

CURRENT PROCESS

The SBRRB website is located at: sbrrb.hawaii.gov. The website was built using the WordPress Content Management System and is hosted by ETS.

PURPOSE STATEMENT

The purpose of this project is to assist with updates to the existing Small Business Regulatory Review Board (SBRRB) website. NIC Hawaii designed and launched their existing website on August 13, 2019.

The site updates will include a homepage refresh, site content updates and assistance with MailChimp.

PROJECT GOALS

Goals for the site include:

- **Redesigned homepage**
  - Build out the small business section to add specific actions users can take to get involved with the board.
  - De-emphasize focus on meetings by moving its presence further down the page.
  - Revisit naming of menu items to make more actionable (ex: 'Get involved' instead of 'Resources')
  - Re-imagine the impactful events section, possibly convert to a more general news style feed and / or use more photos to accompany each story.
- **Mailchimp**
  - Update signup form to include user selected email preferences (appx ~25 state / county agencies including an 'all' option)
  - Create an email campaign for existing users to have them select their email preferences.
  - Design a MailChimp template that matches visual style of website.
- **Resources (Content updates)**
  - The final changes for each page will be uncovered through our weekly meetings and discovery sessions. The scope of changes will cover these pages:
    - Resources
      - Suggest removing this as a standalone page and incorporating the resources directly in to the Small Business and Government sections to give users a 'one stop shop' for content.
    - For small businesses and associations
      - Work with SBRRB to uncover additional actions and content needed for this page such as Chamber of Commerce and more info on trade associations.
    - For government agencies

        - Work with SBRRB to uncover additional actions and content needed for this page.
    - The rulemaking process
        - Put actions/links within the flowchart to better guide the user through the process.
    - Submit a regulation for review
        - No changes
    - Rule status
        - No changes
- **Add department level filtering to meetings/agendas/reports**
    - Updates will occur on this page:
        - https://sbrrb.hawaii.gov/meetings/agendas-minutes
    - Add another level of filtering so users can drill down in to which agency (state or county) is being discussed during each meeting.
        - Example: https://invest.hawaii.gov/buy-hawaii/hawaii-products-2/
    - This info would be added by SBRRB manually when uploading each months meeting agendas/minutes.
    - Limited to counties/departments only, not open ended tagging.
    - Will include redesigning the side menu and possibly removing Twitter to make space for the additional filtering.

DETAILED WORK BREAKDOWN

Below is the detailed breakdown of all hours by role necessary to accomplish all project goals.

Work Description	Role	Hours	Rate (h)	Total
Redesigned homepage - Revise homepage to focus on specific ways small biz can get involved with the board; de-emphasize focus on meetings	Sr PM	3	$120	$360
	Developer	25	$80	$2,000
Add department level filtering to meetings/agendas/reports - Allow users to drill down to which agencies are being discussed in each meeting (by agency or county) via filters/tags	Sr PM	3	$120	$360
	Developer	32	$80	$2,560
Updates to content pages - Content updates for resource pages (resources, small biz., gov't and rulemaking process). - Assist with content writing and updating rulemaking process graphic	Sr PM	7	$120	$840
	Developer	8	$80	$640
Mailchimp - Update signup form to include email preferences (by agency/county) - Create email campaign to send existing users to let them categorize their preferences - Design new email template to match site	Sr PM	1	$120	$120
	Developer	6	$80	$480
Testing, final review, training & deployment of new content to the live site	Sr PM	8	$120	$960
	Developer	8	$80	$640
Totals		**101**		**$8,960**

SCHEDULE ESTIMATES & NEXT STEPS

The project will be carried out according to a Milestone Schedule, which will be agreed upon by NIC Hawaii and SBRRB. The expected duration will be 2-4 months from start to finish.

Below is an overview of all steps needed in order to work with us if you determine you would like to proceed:

- If SBRRB approves estimate, NIC Hawaii will create a Statement of Work (SOW) then send to SBRRB for review.
- Once SBRRB approves SOW, SOW is both sent to ETS for additional review/feedback and reviewed internally by NIC Hawaii.
    - **SOW drafts / pricing must be approved by SBRRB before Friday, Nov 5th in order to make the Dec 2 AHC meeting.**
- Once SOW is agreed upon by all parties, SOW is presented during the AHC meeting (held quarterly). SBRRB is required to give a brief overview of the project / why they need to do the work to the committee members and answer any questions (we'll help prep you for this).
- Once SOW is approved by the AHC, the SOW is sent out for signature via eSign.
- Once all parties: NIC Hawaii, SBRRB and ETS have signed the SOW, the project can begin.
- The estimated project start date is in January 2022.

V. Administrative Matters

B. Discussion and Action on the Board's Draft 2021 *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS

STATE OF HAWAII • DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT SUMMARY

Results for Calendar Year 2021

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

In Compliance with
Chapter 201M, Hawaii Revised Statutes

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HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY 2021

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SECTION I

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SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT) Tel: (808) 586-2419
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
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Website: sbrrb.hawaii.gov

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

Garth Yamanaka
Hawai'i

William Lydgate
Hawai'i

James (Kimo) Lee
Hawai'i

Taryn Rodighiero
Kaua'i

Mark Ritchie
Director, DBEDT
Voting Ex Officio

MESSAGE FROM THE CHAIR

Robert Cundiff, Chair, 2021

2021 has continued the trend of being a highly unusual year due to the COVID-19 pandemic. Even so, we have continued our efforts to ensure that Hawaii's regulatory review process does not lose momentum in driving a strong small business friendly regulatory environment.

While we have successfully adjusted to virtual monthly meetings that are open to the public, beginning in January 2022, the State of Hawaii's Sunshine Law has been modified by allowing for open board meetings that are accessible to the public. For our board, this means that starting with our January 20, 2022 board meeting, Conference Room 436 at 250 S. Hotel Street, Honolulu, will be open for the public to attend; the Board is looking forward to this.

In June, we bid a fond farewell to long-time board member, Harris Nakamoto, who represented the Island of Oahu. I personally want to thank Harris for his participation and hard work over the years particularly in the areas of health and human services.

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

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OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January through December 2021. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

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

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

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ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

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

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

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

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

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

As of December 2021, the Board was operating with nine (9) members.

ADMINISTRATIVE RULE REVIEW

Over the past two years, the Board reviewed a lower than usual number of Hawaii Administrative Rules (HAR) largely as a result of COVID-19. From January through December, a total of 49 rules, before and after public hearing, were reviewed from State and County Agencies.

Since its inception, the Board reviewed a total of 983 sets of proposed new and amended HAR. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
Department of Accounting and General Services - Title 3	40	Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data	X		
Department of Agriculture – Title 4	161.1	Hemp Production	X		The Board recommended that the Quality Assurance Division directly reach out to Hawaii hemp licensees prior to public hearing for feedback on the proposed rules.
Department of Attorney General - Title 5	11	Notaries Public	X	X	

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Department of Business, Economic Development & Tourism – Title 15	218	Kakaako Reserved Housing Rules	X		
Department of Commerce and Consumer Affairs – Title 16	71	Certified Public Accountants and Public Accountants		X	
	171	Miscellaneous Insurance Rules	X	X	
	73	Barbers	X		
	78	Cosmetology	X		
Department of Hawaiian Home Lands – Title 10	4.1	Management of Water Systems / Management of Water Systems		X	
Department of Health – Title 11	53	Section 401 Water Quality Certifications		X	
	54	Water Quality Standards		X	
	55	Water Pollution Control		X	
		Water Pollution Control - Appendix B, Multi-Sector General Permit (MSGP) - Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per day - Appendix F, Authorizing Discharges of Hydrotesting Water - Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering	X	X	

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	56 60.1 219	- Appendix K, Small Municipal Separate Storm Sewer Systems Nonpoint Source Pollution Control Air Pollution Control Parking for Persons with Disabilities	 X X	 X X	
Department of Human Services – Title 17	Chapters 798.2 & 798.3 Chapter 800 Chapter 801 Chapter 891.2 Chapter 892.2 Chapter 895.1 Chapter 896.1	Child Care Services & Child Care Payments Listing of Exempt Center-Based Providers Background Checks Registration of Family Child Care Homes Licensing of Group Day Care Centers and Group Child Care Homes Licensing of Infant and Toddler Child Care Centers Licensing of Before and After School Child Care Facilities	 X X X	X X X X-? X-? X-? X-?	
Department of Land & Natural Resources – Title 13	Chapter 241 Chapter 256 Section 73	Vessel Registration Kaneohe Bay Ocean Waters		X X	

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	Chapter 256	Ocean Recreation Management Rules and Areas	X	X	
Department of Transportation – Title 19	Chapter 108	High Occupancy Vehicle Lanes		X	
	Chapter 150	Autonomous Vehicle Regulations	X		
County of Kaua'i	Section 5A-11.4 of the Kauai County Code	Home and Related Exemption Rules	X	X	
	Section 5A-6.4 of the Kauai County Code	Real Property Tax Classification Rules	X	X	After public hearing, the Board agreed to pass the proposal onto the Mayor for adoption with a recommendation to conduct an informational meeting/forum with the stakeholders who will be impacted.
	Kauai Liquor Control Commission	Rules and Regulations of the Liquor Control Commission of the County of Kauai	X		
City and County of Honolulu	Chapter I, Section 1-102	Board of Water Supply Rules and Regulations, Water and Water System Requirements	X		

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		for Developments, Water System Facilities Charges			
	Chapter II, Section 2-202	Water Service to Consumers, Installation of Water Service	X		
	Title 23, Chapter 5	Department of Transportation Services - Establishment and Administration of Right-of-Way Widths and Setback Lines for Planned Street and Transit Improvements	X		
	Title 3	Department of Budget and Fiscal Services, Subtitle 6 Liquor Commission, Rules of the Liquor Commission of the City and County of Honolulu, State of Hawaii: a. Part I. Chapter 80.1, General Provisions b. Part I. Chapter 81.1, Liquor Commissions c. Part III. Chapter 82.1 Licenses and Permits, General Provisions d. Part IV. Chapter 83.1, Procedure for Obtaining License e. Part V. Chapter 84.1, Duties of and Supervision Over Licensee	 X - ? X - ? X - ? X - ? X - ?		

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		f. Part VI. Chapter 85.1, Revocation of License g. Part VII. Chapter 86.1, General Violations and Prosecutions	X - ? X - ?		

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See "Legislative Review" at the end of the report for legislation the Board followed in 2021.

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

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

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

CHAIRPERSON / BOARD MEMBERS

During 2021, we said farewell to member Harris Nakamoto who served on the SBRRB for more than 7 years. Harris represented the County of Oahu and contributed significantly at the monthly board meetings in the areas of health and human services.

Under Section 201M-5 (c), "a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds

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vote of all members to which the board is entitled." The following elections were held at the June meeting:

- Chair – Robert Cundiff
- Vice Chair – Mary Albitz
- Second Vice Chair – Jonathan Shick

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

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

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

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

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

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

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

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

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

In addition, nominations shall be solicited from small business organizations, state and county chambers of commerce and other interested business and trade organizations. Except for

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the ex officio member, all members are either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government."

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

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

ACTIVITIES AND PROJECTS

The following activities and projects were accomplished in 2021:

- **Strategic / Marketing Plan** – In June 2020, the Board began a strategic plan for fiscal year 2020 – 2021. The plan, which is continuing to be followed throughout 2021, entails a comprehensive plan for the SBRRB's outreach activities to identified small business organizations and chambers of commerce throughout Hawaii.

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- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce, trade organizations and State legislators;

- **Facebook, Twitter, Instagram** – In 2021, the Board regularly sent out notices on Facebook, Twitter and Instagram to enhance its outreach efforts. As of the end of 2021, the Board can proudly boast 29 Friends on Facebook, has 104 followings on Twitter, and 30 followers on Instagram.

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

1) On March 16, 2021, *Pacific Business News* printed the following article, "Kauai's Lydgate Farms plans for a post-Covid future" featuring Board member, Will Lydgate.
2) On July 1, 2021, DBEDT submitted a press release announcing the recent election of new board officers, Robert Cundiff, Chair; Mary Albitz, Vice Chair; and Jonathan Shick, Second Vice Chair.
3) On July 27, 2021, the *Pacific Business News* announced the nomination of Second Vice Chair, Jonathan Shick to its prestigious "40 Under 40" business initiative.
4) On August 19, 2021, the University of Hawaii at Manoa announced the renaming of its School of Nursing and Dental Hygiene in honor of SBRRB member Nancy Atmospera-Walch to the "Nancy Atmospera-Walch School of Nursing."

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

Under Section 201M-5, HRS, 2021 had no requests from small business owners for review of any rule adopted by a state agency and recommendations made by the Board to an agency. It is believed that the COVID-19 pandemic had much to do with small businesses not approaching the Board on any regulations for review.

In 2021, two requests from small business owners were received. The first request was for review of Bill 41, Related to Transient Accommodation, Section 21-5.30.1, a City and County of Honolulu Ordinance. The SBRRB thanked the business owner for the request and referred him to the Honolulu City Council and the City and County of Honolulu's Department of Planning and Permitting as the SBRRB's purview is to review Hawaii Administrative Rules.

The second request was also for review of an Ordinance, GREAT-44, Relating to Bicycle-Tour Public Safety and Related Litigation Concerns, from the County of Maui. The SBRRB thanked the business owner for the request and referred him to the Maui Chamber of Commerce and several of the State legislators from Maui as the SBRRB's purview is to review Hawaii Administrative Rules.

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SECTION II

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LEGISLATIVE REVIEW

The Board submitted testimony on the following measures during the 2021 legislative session.

1. **House Bill 636 – Relating to the Small Business Regulatory Review Board** - This measure provides appropriation for staffing, commissioner interisland travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism. It was introduced by House Representative Gene Ward.

Background: The measure passed the first reading and was referred to the House Committee on Economic Development.

Recommendation: The Board voted to support the measure.

Result: The measure was deferred after the first reading.

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Appendix

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

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1. Chapter 201M, Hawaii Revised Statutes

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CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

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

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

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

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

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

"Board" means the small business regulatory review board.

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

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

(1) Is domiciled and authorized to do business in Hawaii;

(2) Is independently owned and operated; and

(3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

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

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

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

(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;

(2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

(3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;

(4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;

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

(6) How the agency involved small business in the development of the proposed rules; and

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

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

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

(1) A description of the public purposes to be served by imposing the standard under the proposed rule;

(2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;

(3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;

(4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and

(5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

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

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

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(1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;

(2) The number of persons who:

(A) Attended the public hearing;

(B) Testified at the hearing; and

(C) Submitted written comments; and

(3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

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

(1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or

(2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

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

(1) Specifically address each issue and concern raised in the board's request for a written response; and

(2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

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

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

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

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

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

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

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

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

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

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

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

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

(6) No more than two members shall be representative from the same type of business; and

(8) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

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

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

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

(1) Adopt any rules necessary to implement this chapter;

(2) Organize and hold conferences on problems affecting small business; and

(3) Do any and all things necessary to effectuate the purposes of this chapter.

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

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

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

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

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

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

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

(1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;

(2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;

(3) These impacts were not previously considered at the public hearing on the rules;

(4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;

(5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

(6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

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

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

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

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

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

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

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

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(1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
(2) The violation was unintentional or the result of excusable neglect; or
(3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

(b) Subsection (a) shall not apply:
(1) When a small business fails to exercise good faith in complying with the statute or rules;
(2) When a violation involves willful or criminal conduct;
(3) When a violation results in serious health and safety impacts;
(4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
(5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
(6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).

(c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

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

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2. Administrative Rule Review

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Administrative Rule Review

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
	FY 2000 to FY 2020	748	13	81	44	21	11	0
FY 2021	Jul-20	5						
	Aug-20	3						
	Sep-20	2						
	Oct-20	2						
	Nov-20	1			1			
	Jan-21	4						
	Feb-21	4						
	Mar-21	3						
	Apr-21	4						
	May-21	3						
	Jun-21	4						
FY 2022	Jul-21	6						
	Aug-21				1			
	Sep-21	1						
	Oct-21	9			1			
	Dec-21	11						
	SUPPORTED YTD 2021 SUPPORTED FYE 2000 thru YE 2021 GRAND TOTAL	39 787 960	13	81	47	21	11	0

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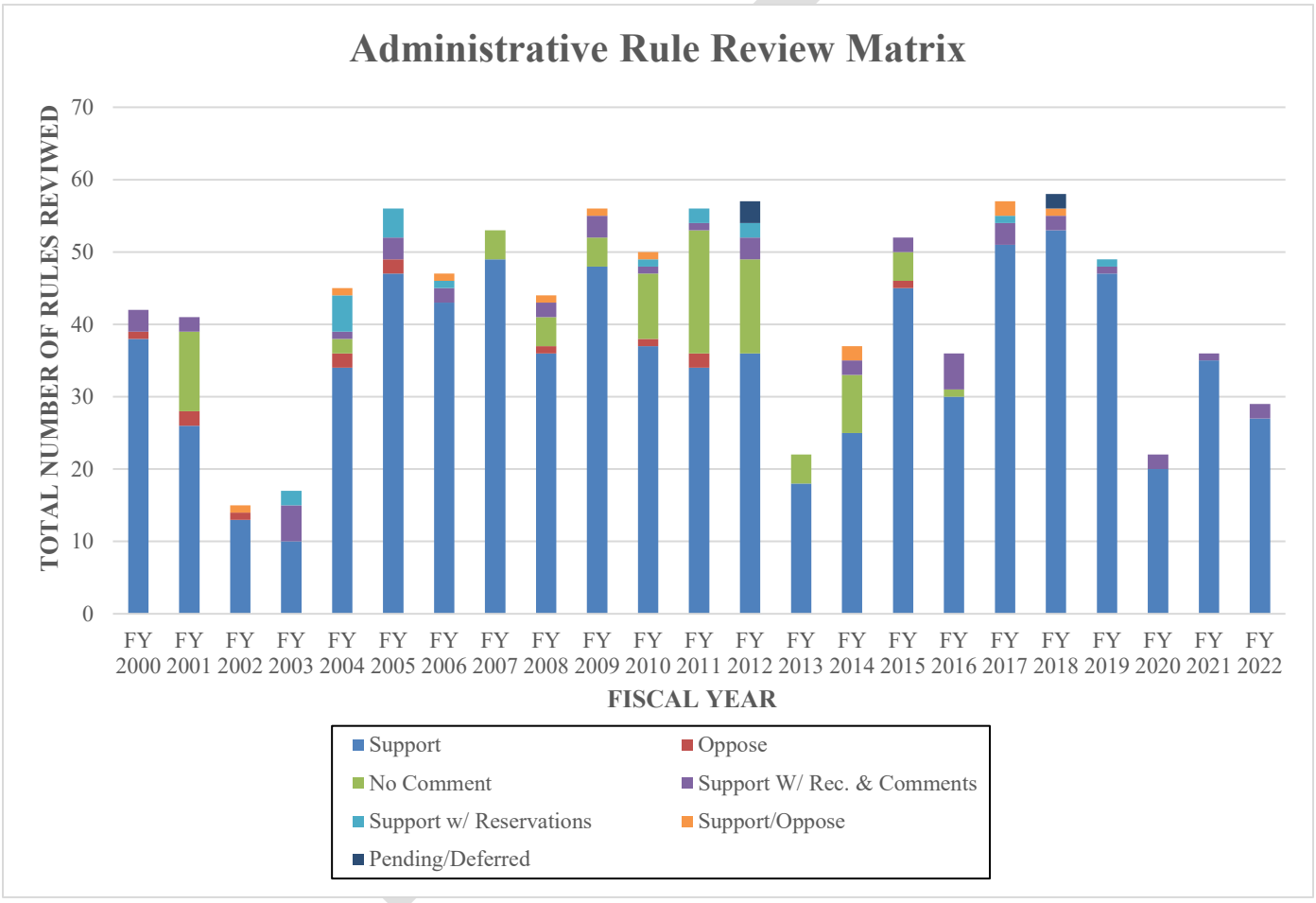
Administrative Rule Review Matrix
TOTAL NUMBER OF RULES REVIWED
0
10
20
30
40
50
60
70
FY 2000
FY 2001
FY 2002
FY 2003
FY 2004
FY 2005
FY 2006
FY 2007
FY 2008
FY 2009
FY 2010
FY 2011
FY 2012
FY 2013
FY 2014
FY 2015
FY 2016
FY 2017
FY 2018
FY 2019
FY 2020
FY 2021
FY 2022
FISCAL YEAR
Support
Oppose
No Comment
Support W/ Rec. & Comments
Support w/ Reservations
Support/Oppose
Pending/Deferred

3. Administrative Directive No. 18-02

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EXECUTIVE CHAMBERS

HONOLULU

DAVID IGE
GOVERNOR

January 1, 2018

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

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

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

Legal References:

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

Policy:

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

https://hawaiioimt.sharepoint.com/sites/gov/adminrules/

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

2. **Small Business Regulatory Flexibility Act**

In accordance with Chapter 201M, the department must complete the following steps

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before submitting a request to conduct public hearing if the proposed rule affects small business:

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

3. **Public Hearing Approval**

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

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

4. **Public Hearings**

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

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

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upon submittal of Final Rule.

5. **Final Rule**

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

a. Changes in Final Rule

   i. What changes were made in the Final Rule?

   ii. Why were these changes made?

b. Other

   i. Describe how the department has worked with stakeholders to gain support for the rule?

   ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?

   iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. **Filing of Final Rule**

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

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

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

a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.

b. BED will be required to provide response if the proposed rule has economic impact or affects small business.

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

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

Telephone: (808) 586-2419

Website: sbrrb.hawaii.gov
Email: DBEDT.sbrrb.info@hawaii.gov

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V. Administrative Matters

C. Discussion and Update on Chapter 92, HRS and Act 220, Session Law of Hawaii 2021 regarding in-person meeting locations where members of the public can observe the remote meeting or testify in person

Sunshine Law Amendments Allowing Remote Meetings

July 8, 2021

Governor David Ige signed into law landmark legislation allowing Sunshine Law boards to remotely conduct public meetings, effective January 1, 2022. Act 220, Session Laws of Hawaii 2021, enacts Senate Bill 1034, Senate Draft 1, House Draft 2, Conference Draft 1, which adds a new option to the Sunshine Law that will allow boards to hold remote meetings via interactive conference technology (ICT), such as online meeting platforms like Zoom or WebEx, teleconferences, videoconference, and voice over internet protocol. The new law also amends the existing option for boards to hold a public meeting at two or more physical locations connected by ICT, requires all meeting notices to list the board's contact information for submitting testimony, and requires the Office of Information Practices (OIP) to report on the implementation of remote meetings before the 2023 session. The bill's various drafts, committee reports, testimony have been posted on OIP's legislation page under the Sunshine Law's legislative materials as Act 220, SLH 2021.

New Meeting Option: Remote Meeting

As the Legislature and boards have been doing during the COVID-19 pandemic, boards will be given the option under the Sunshine Law to hold remote meetings so that members of the board and the public may participate from their homes, workplaces, or other locations without having to show up in person at a physical meeting site. While the bill thus expands public and board participation and access throughout our island state by allowing for remote meetings, it also recognizes that there is a digital divide that could affect members of the public or board who do not have the equipment, reliable internet connection, skills, or desire to participate online. Therefore, a board must also provide at least one physical location, with guaranteed connection via ICT to the remote meeting, where board members and the public can go to participate in person if they so desire. Although a board is not required to provide more than one physical location, it may choose to provide for the public's convenience additional physical locations with ICT connectivity to the remote meeting, but without being required to terminate the meeting if connectivity is interrupted or lost to those courtesy sites.

If the board's ICT connection for the remote meeting and mandated physical location are lost, however, the meeting must recess until the connection is restored. In the event the board is only able to re-establish an audio connection, the meeting can continue as audio-only, assuming the notice adequately explained how to access the reconvened meeting, but the board cannot act on items involving visual aids unless those are shared with all participants, and all speakers must state their name when making remarks. If the connection cannot be restored within 30 minutes, the board must either continue the meeting to a reasonable date and time as previously set out in the notice, or terminate the meeting. For transparency, board members who are participating remotely from their homes or other private locations must announce who is at the private location with them. The board must also announce the names of participating members at the beginning of the meeting, and voting must be by roll call except where a vote is unanimous. A quorum of board members must be visible online, except when full visibility cannot be restored after a connection problem, or during executive sessions closed to

the public when board members need only be audible. To ensure confidentiality for the executive session, the names of authorized participants must be announced and the participants must confirm that no unauthorized person is present, and if the online meeting platform is one that shows who is connected, the person running the meeting must confirm that only the authorized participants are connected.

Note that if the bill had required "all" board members to be visible at all times, boards may have been unable to conduct remote meetings if they had any member who was disabled, travelling or located on another island and lacked the online connectivity, equipment, or skills to be able to participate online or in person and could do so only by teleconference or voice over internet protocol. Moreover, the visibility requirement does not apply to members of the public, who can now participate more conveniently online from their homes, schools, workplaces, or other locations on any island. Finally, to take advantage of the recording ability offered by many online meeting platforms, a board must record a remote meeting "when practicable," and make the recording available to the public after the meeting until such time as the meeting minutes have been posted online.

Current Meeting Option as Revised: Multi-Site Meeting

The bill retains the Sunshine Law's existing option for a board to hold a multi-site meeting, in which the meeting is held across two or more physical locations connected by ICT. For this option, all meeting locations must be open to the public and listed on the notice, and board members can participate only from the noticed locations. Only a member hampered from in-person attendance by a disability can participate remotely from a private location after announcing who else is present with the member.
A substantive change this bill makes for multi-site meetings is that boards will not have to automatically terminate a meeting if ICT connectivity is lost between the official meeting sites. Boards will have 30 minutes to restore connectivity between the official meeting sites before having to either terminate or, with adequate notice, continue the meeting to a reasonable time and place.
These requirements, however, do not apply to the "additional locations" where no board members will be present and which OIP formerly referred to as "courtesy" sites. Boards may choose to expand convenient public access by setting up additional locations where, with advance notice to the public, an interruption in connectivity will not cause the termination or continuance of the official meeting.

New Requirement for Meeting Notice

For all types of meetings, a board's notice must now include its electronic and postal contact information for the public to submit testimony before the meeting.

Report on Remote Meeting Implementation

Finally, this bill requires OIP, in consultation with the Disability and Communication Access Board and the Office of Enterprise Technology Services, to assess and report on the implementation of remote meetings, including participation by members of the public who need an accommodation due to a disability, before the 2023 legislative session. Therefore, OIP hopes that the boards and the public will share their experiences with OIP next year when the new law goes into effect.

GOV. MSG. NO. 1348

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 6, 2021, the following bill was signed into law:

SB1034 SD1 HD2 CD1 — RELATING TO SUNSHINE LAW BOARDS.
ACT 220 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 06 2021

THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 220

S.B. NO. 1034 S.D. 1 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the coronavirus disease 2019 (COVID-19) pandemic forced the implementation of emergency measures suspending certain requirements of the State's sunshine law in order to allow boards to continue meeting and conducting necessary business while protecting participants' health and safety and expanding public access to meetings throughout the State. Due to the emergency stay-at-home orders and travel restrictions, board members, staff, or members of the public could not attend public meetings in person. In lieu of traditional in-person meetings, remote meetings connected people in different physical locations through the use of interactive conference technology and thus enabled and enhanced board and public participation.

The legislature further finds that, based on boards' experiences with remote meetings during the COVID-19 pandemic, the increased costs of staffing, technological equipment, and resources needed to conduct remote meetings are offset by the savings in time, convenience, and travel costs for board members

and participants, especially those from the neighbor islands. During the COVID-19 pandemic, remote meetings helped to prevent the spread of disease, and even when there is not an ongoing pandemic, remote meetings can be a way to protect the health and safety of participants, particularly those who have disabilities or medical conditions that would place them at greater risks during travel or attendance at in-person public meetings.

The legislature additionally finds that the benefits of remote meetings should continue in non-emergency times, requiring permanent amendments to the sunshine law. For remote meetings not held during times of emergency, there is a need for boards to provide for an in-person meeting location where members of the public can come to observe the remote meeting or testify in person using interactive conference technology equipment provided by the board, without requiring board members to be at the in-person location.

The purpose of this Act is to allow boards the option to use interactive conference technology to conduct remote meetings under the sunshine law, while still retaining the option to conduct traditional in-person meetings at a single meeting site

or at multiple meeting sites connected by interactive conference technology.

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§92- Remote meeting by interactive conference technology; notice; quorum.** (a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state who, if anyone, is

present at the nonpublic location with the member. The notice required by section 92-7 shall:

(1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and

(2) Inform members of the public how to contemporaneously:

(A) Remotely view the video and audio of the meeting through internet streaming or other means; and

(B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) For a remote meeting held by interactive conference technology pursuant to this section:

(1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;

(2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no other meeting participants shall be required to be visible during the meeting;

(3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;

(4) At the start of the meeting the presiding officer shall announce the names of the participating members;

(5) All votes shall be conducted by roll call unless unanimous; and

(6) When practicable, boards shall record meetings open to the public and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website.

(c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public

as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting

closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable."

SECTION 3. Section 92-2, Hawaii Revised Statutes, is amended by amending the definition of "interactive conference technology" to read as follows:

""Interactive conference technology" means any form of [~~audio or~~] audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members."

SECTION 4. Section 92-3.5, Hawaii Revised Statutes, is amended by amending its title and subsections (a) through (c) to read as follows:

"**§92-3.5 [~~Meeting~~] In-person meeting at multiple sites by interactive conference technology; notice; quorum.** (a) A board may hold [~~a~~] an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting,

whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by interactive conference technology under this section shall be [~~terminated~~] automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. [~~If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio only interactive conference technology is being used, within~~] The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is [~~used,~~] established, copies of nonconfidential visual aids that are required by or brought to

the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations [~~cannot~~] shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated."

SECTION 5. Section 92-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation

due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary."

SECTION 6. The office of information practices shall, in consultation with the disability and communication access board and the office of enterprise technology services, assess the implementation of meetings held using interactive conference technology, including participation by members of the public who need an accommodation due to a disability. The office shall submit a report of its assessment, including recommendations and

proposed legislation, to the legislature no later than forty days prior to the convening of the regular session of 2023.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 2022.

APPROVED this 06 day of JUL , 2021

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2021.

President of the Senate

Clerk of the Senate

SB No. 1034, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

V. Administrative Matters

D. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2022 Hawaii State Legislative Session

No Attachments Included