

Small Business Regulatory Review Board Meeting

February 20, 2020

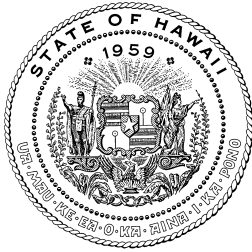
10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

Conference Room 405 – 235 South Beretania Street,

Honolulu, HI 96813



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

AGENDA

Thursday, February 20, 2020 ★ 10:00 a.m.
Leiopapa A Kamehameha Building - State Office Tower
Conference Room 405
South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

William Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of January 16, 2020 Meeting Minutes

III. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to **Rules & Regulations of the Liquor Control Commission of the County of Kauai**, promulgated by Department of Liquor Control – County of Kauai – **Back-up Discussion Leader – Chair Robert Cundiff**
- B. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 12 Chapter 45.4, **State Fire Code**, and Repeal of Chapter 45.3, **State Fire Code**, promulgated by Department of Labor and Industrial Relations – **Discussion Leader – Mary Albitz**
- C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 71, **Certified Public Accountants and Public Accountants**, promulgated by Department of Commerce and Consumer Affairs – **Discussion Leader – Nancy Atmospera-Walch**

IV. Legislative Matters

- A. Discussion and Action on the following Legislative Matters:
 - a. Update on Senate Bill 2078 Relating to the Small Business Regulatory Flexibility Act – Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism
 - b. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Nancy Atmospera-Walch to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023
 - c. Upcoming Governor's Message, Submitting for Consideration for the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 30, 2024
 - d. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Robert Cundiff to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023

- e. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024
- f. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Taryn Rodighiero to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023

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, Hawaii Revised Statutes including:
 - 1. Review of Board’s Interview on ThinkTech’s “Business in Hawaii” on January 23, 2020
 - 2. Discussion of Board’s Potential Outreach Opportunities

VI. Next Meeting: Thursday, March 19, 2020, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2419 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 January 16, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

January 16, 2020

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- Harris Nakamoto
- Mary Albitz
- James (Kimo) Lee
- Carl Nagasako

ABSENT MEMBERS:

- William Lydgate, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF NOVEMBER 21, 2019 MINUTES

Mr. Lee made a motion to accept the November 21, 2019 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 15, Chapter 120, Community-Based Economic Development Loan and Grants Programs, and Repeal of HAR Chapter 116, Community-Based Development Loan Program and HAR Chapter 126, Community-Based Development Grants Program, promulgated by Department of Economic, Development and Tourism (DBEDT)

Mr. Mark Ritchie, Branch Chief at DBEDT's Business Development and Support Division, explained that the proposed new rule was initially two separate rules, Chapter 116 Community-Based Development Loan Program and Chapter 126 Community-Based Development Grants Program; the new proposal combines the two rules.

One area where there is significant small business impact, albeit positive impact, is where the new rule requires small businesses to receive only one turndown; whereas the prior rules required two turndowns before the business could approach DBEDT for a loan. Overall, these two programs are good for small businesses to get off the ground.

Mr. Nakamoto made a motion to move the proposed rules onto the Governor for adoption. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Part 5, Facilities Reserve Charge, Section III Applicability, promulgated by Department of Water, County of Kauai, as follows:

1. e. The Facilities Reserve Charge for a Guest House; and
2. f. The Facilities Reserve Charge for an Additional Rental Unit

Messrs. Edward Doi and Michael Hinazumi, Engineers from the Department of Water, County of Kauai, explained that the County recently changed an ordinance allowing guesthouses to be converted into rental units. Impact studies, in the past, addressed single family dwellings as size-limited rental units and were assessed an impact fee of \$14,115. Kauai County is looking to reduce this impact fee for the affordable housing market size-limits such as residential size-limits; this will be consistent with the charge-down of \$4,000.

Regarding any small business impact, it will likely help stimulate the development of these types of rental units and lower future connection fees. In 2015, a rate study was performed based on water usage and impact to the system. In questioning the offsets, as discussed in the rules, Mr. Hinazumi stated they were created by percentages. If the department is unable to do the facility, any developer has the option to use the facility and then will receive the offset for the FRC (facilities reserve charge).

Vice Chair Yamanaka agreed that Kauai County is the “high-test” in the state, and because the level is being reduced, that is the reason it can be considered “low income housing.” Regarding outreach in the community, there was a sizeable amount of feedback that was received by the community, all of which was positive. Regarding growth capacity, Mr. Doi explained that based on the County’s general projection of the area, it appears there is enough water to service the community in the next five to seven years.

Ms. Albitz made a motion to move the proposed amendments forward to public hearing. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments (Repeal) of Title 13 Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, promulgated by Department of Land and Natural Resources (DLNR), as follows:

1. Subchapter 1, Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits
2. Subchapter 2, Suspension or Revocation of Operator Permits
3. Subchapter 3, Violation of Operator Permit Provisions
4. Subchapter 7, Special Operating Restrictions

Discussion leader, Ms. Mary Albitz introduced Ms. Meghan Statts, Assistant Administrator and Legal Fellow Mr. Todd Tashima from DLNR's Division of Boating and Outdoor Recreation (DOBOR), who explained that this proposal pertains only to Waikiki ocean waters - from Kewalo Basin to Diamond Head. The rule creates an operator card for anyone who wants to teach surf instructions or canoe paddling in Waikiki. Numerous surf schools were contacted and were asked by DOBOR to utilize the operator card for a while.

Overall, because businesses could not come to a consensus on changes to be made, DOBOR opted to repeal the operator permit requirements in the rules. The businesses that will directly benefit from the repeal are those operating commercially on Waikiki Beach and in Waikiki Ocean Waters. Further, removal of the operator permit requirements will allow businesses to independently review employee qualifications and remove the State from the qualification process. While "commercial" use permit requirements would remain, the State will not be involved in qualifying and certifying employees' ability to operate outrigger canoes and surfboards.

In response to an inquiry by Chair Cundiff as to how a small businessperson is qualified, Ms. Statts replied that First Aid and CPR training is required as well as practicing a certain number of years. These qualifications allow an instructor to provide better, safer, and proper service to clients. It is expected that most of the affected small businesses will likely support the rule change because it will provide businesses with more flexibility in hiring; DOBOR is planning to work closely with the Waikiki businesses.

Mr. Tashima explained that there is no need to go to public hearing because DOBOR is only repealing the subchapters, and Chapter 91-3, HRS provides agencies the authority to issue only public notice when it is a repeal. In order to repeal the existing rule, however, notice must be advertised in the paper. Therefore, DOBOR is requesting approval to publish notice but not to go to public hearing. Although it is believed that positive feedback is expected, if public notice results in comments that need to be responded to or acted upon, DOBOR will come back before this Board.

Vice Chair Yamanaka made a motion to issue public notice for repeal of the subject subchapters. Ms. Albitz 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, on the following:
 - a. Board to be Interviewed on ThinkTech Hawaii's "Business in Hawaii" scheduled on January 23, 2020

Chair Cundiff introduced Ms. Dailyn Yanagida, Consultant at ThinkTech Hawaii, and thanked her for attending today's meeting. He noted that this Board was on ThinkTech Hawaii at least twice before, but since then the Board has had several changes to report such as revamping the website and creating "Regulation for Review."

ThinkTech Hawaii is a 501(c) 3 organization. Part of its mantra is to bring small businesses to review as it is a great public service to get the message out about small business and to introduce available programs as many businesses are unaware of them. Beginning January 1st, the ThinkTech Hawaii studio was moved to the Finance Factors Building which allows its guests to be filmed remotely from wherever they are.

Various questions were sent to the Board by Ms. Yanagida in preparation of the segment; Chair Cundiff will provide responses prior to the recording. Also, an email with appearance guidelines will be forwarded. The Board's presentation can include up to 10 slides in JPEG format. The show will air live on January 23, 2020 on www.thinktechhawaii.com at 2:00 p.m., and it will be uploaded to YouTube later in the evening. A link to the segment recording will be provided to DBEDT to post on the Board's website.

Mr. Nakamoto made a motion for the SBRRB to participate in ThinkTech Hawaii on Thursday, January 23, 2020, with Chair Robert Cundiff and Ms. Albitz representing the Board. Mr. Carl Nagasako seconded the motion, and the Board members unanimously agreed.

b. 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 2020 Hawaii State Legislative Session

Mr. Nakamoto made a motion delegating Chair Robert Cundiff and Vice Chair Garth Yamanaka authority to testify on behalf of this Board during the 2020 Hawaii State Legislative Session. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

Chair Cundiff stated that the opening of Hawaii's legislative session was yesterday (January 15, 2020), and noted that it appears there is not much money left in the Board's budget; he requested that Mr. Carl Nagasako, ASO Administrator at DBEDT, explain the situation to the members.

Mr. Nagasako stated that this Board's budget is \$12,000 for the year. Although a ten percent (10%) budget "holdback" has been incurred for the remaining fiscal year 2020 on other DBEDT divisions and attached agencies, no holdback is incurred for this Board; therefore, the full \$12,000 is allotted.

He added that a big challenge for this Board is that its expenses are expected to increase due to the Board's projected spending of an extra \$15,000 for the remaining year. As a result, any excess monies spent over the allotted \$12,000 would need to come from another program's budget.

He suggested that one solution, which would be a benefit to the Board, is for the members to request additional monies from other resources. In response to Ms. Albitz's inquiry as to where those resources would come from, Mr. Nagasako stated that, although as a DBEDT Administrator he must support the Governor's budget (which did not include the Board's original \$12,000 budget or the extra \$15,000 funds request), the State Legislature is where to advocate for additional funds.

Legislative contacts would be House Representative Sylvia Luke, Chair of Finance, and Senator Donovan Della Cruz, Chair of Ways and Means. Also mentioned were Senator Gilbert Keith-Agaran who serves as Vice Chair of Ways and Means and House Representative Ty Cullen, Vice Chair of Finance.

As to whether this Board is restricted to any outside fundraising efforts, Deputy Attorney General Polk-Waihee stated that caution is needed for the Board to initiate outside fundraising efforts; there may also be ethical issues involved.

Chair Cundiff confirmed that DBEDT must support the Governor's budget. However, one option would be for the Board members to approach State legislators; it would be helpful if any of the Board members personally know legislators on the Finance and Ways and Means Committees.

Finally, Chair Cundiff mentioned that Senate President Kouchi recently submitted three Senate member nominations to Governor Ige - Nancy Atmospera-Walch, Taryn Rodighiero from Kauai, and Jonathan Young.

c. Meetings with Board Members and State Department Directors

Chair Cundiff indicated that this an on-going agenda item and he encouraged the members to continue to meet with state department directors.

- VI. **NEXT MEETING** – The next meeting is scheduled for Thursday, February 20, 2020 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. **ADJOURNMENT** – Mr. Lee made a motion to adjourn the meeting and Mr. Nagasako seconded the motion; the meeting adjourned at 11:00 a.m.

III. New Business – Before Public Hearing

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

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

RECEIVED
By JetaimeA at 12:04 pm, Feb 03, 2020

Date: 1/27/2020

Department or Agency: Department of Liquor Control-County of Kauai

Administrative Rule Title and Chapter: Rules & regulations of the Liquor Control Commission

Chapter Name: _____

Contact Person/Title: Gerald T. Rapozo/Director

E-mail: grapozo@kauai.gov Phone: 808-241-4969

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: _____

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.

All liquor licensees will be required to comply with established rules & regulations.

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.

No additional license fees are included in these amendments.

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.

N/A

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

N/A

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

N/A

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

N/A

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.

N/A

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.

Rule 2.5 & 2.6 will remove the requirement for licensees to obtain Federal tax clearances which was approved by the legislature.

Rule 7.1 will remove the "stacking" rule which was confusing to servers.

Rule 7.9 & 10.2 will remove requirement for licensees to submit annually a list of registered

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

N/A

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.

Input was provided by licensees

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

A committee of representatives from the different classes of licensees met and discussed the rule amendments and provided input that were incorporated in these amendments.

- 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.

Yes. Rule 7.1 indicated that a pitcher of beer could not exceed 48 ounces. The industry standard is 64 ounces. Agreed with industry representatives.

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.

Proposals attempt to be less restrictive.

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.
N/A

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

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

- 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.
N/A

- 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.
N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

DRAFT

**RULES & REGULATIONS
OF THE
LIQUOR CONTROL COMMISSION
OF THE
COUNTY OF KAUAI**

EFFECTIVE:

RULES & REGULATIONS
KAUAI LIQUOR CONTROL COMMISSION

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RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION
COUNTY OF KAUAI

RULE 1
DEFINITIONS

Rule 1.1. Definitions. Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license, renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an on-premises establishment.

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

"Catering" means a privilege extended to a restaurant (class 2), hotel (class 12), caterer (class 13), brewpub (class 14), or condominium hotel (class 15) licensee to provide liquor service off of its license premises in conjunction with its food service.

"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.

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

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

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter

using the "A" weighting network.

"Dancing" means "to move your body in a way that goes with the rhythm and style of music that is being played."

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

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

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Guest Room" means a room for the lodging of transient guests which is offered for adequate pay for period less than 30 days.

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

"Legal age" means someone over the age of 21 years of age.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes his or her clothing piece by piece.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

RULE 2 **RULES OF PRACTICE AND PROCEDURE**

Rule 2.1. Methods whereby public may obtain information. The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the department.

Rule 2.2. Petition for adoption, amendment, or repeal of rules. (a) Any interested persons may petition the commission requesting the adoption, amendment, or repeal of any rule of the commission.

(b) The petition shall be typewritten and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the Hawaii Administrative Procedure Act for the adoption, amendment, or repeal of the rule, as the case may be.

Rule 2.3. Declaratory ruling by the commission. (a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule or order of the commission.

(b) The petition shall be typewritten 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 facts;
- (5) A statement of the position or contention of the petitioner; and
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

(c) Any petition which 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 so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future; or
- (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief; or
- (3) The issuance of the declaratory ruling may adversely affect the interests of the County of Kauai or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission.

(e) Where any question of law is involved, the commission may refer the matter to the county attorney. The commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) Upon the disposition of his petition, the petitioner shall be informed in writing thereof by the commission.

(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. They shall not be applicable to a different fact situation or where additional facts not considered in the order exist.

Rule 2.4. Rules of practice. (a) Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, or the revocation or suspension of a license, or other disciplinary action by the commission, which by law is required to be determined after an

opportunity for a hearing, the following shall apply:

- (1) The applicant or licensee shall be notified in writing of the hearing and of his opportunity to be heard. Such notice shall conform to the requirements of the Hawaii Administrative Procedure Act, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice required by law to be published in a newspaper.
- (2) The hearing shall be conducted in conformity with the applicable provisions of the Hawaii Administrative Procedure Act.
- (3) The determination shall be subject to such limitations or standards as may be prescribed by law.
- (4) If the commission decides in favor of the applicant or licensee, the commission shall promptly notify the applicant or licensee.
- (5) If the commission decides against the applicant or licensee, it shall issue an appropriate decision and order. Such decision and order shall be accompanied by separate findings of fact and conclusions of law. The commission shall within a reasonable time send a certified copy of the findings of fact, conclusions of law, decision and order to the applicant or licensee.

(b) Any of the foregoing procedures may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) The department shall adopt rules by which contested case hearings will be conducted. Parties to a contested case hearing shall be provided with such rules ten (10) days prior to the date of the contested case hearing.

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

Rule 2.5. License application; notice of hearing; affidavits. (a) All applications for new licenses and all notices of public hearing sent and affidavits filed by applicants in connection with such applications, shall be in respective forms prescribed therefore from time to time by the department.

(b) An applicant for a new license or a transfer of license other than a special or temporary license shall file as part of its application:

- (1) Tax clearance from the state department of taxation[,] and the federal internal revenue service;
- (2) Personal history of all persons named in the application in the form prescribed by the department;

- (3) If the applicant is a partnership, a partnership agreement;
- (4) If the applicant is a corporation, the articles of incorporation which has been filed and accepted by the state department of commerce and consumer affairs;
- (5) If the applicant is a limited liability company, its articles of organization which has been filed and accepted by the state department of commerce and consumer affairs;
- (6) A floor plan which shall be drawn to scale and showing the detailed description of the proposed premises; and
- (7) Lease or rental agreement, if applicable.

(c) An applicant for a new license other than a transient vessel, tour or cruise vessel, or special license shall also file as part of its application,

- (1) A map drawn to scale showing all properties within five hundred (500) feet of the proposed premises; which shall also designate all properties within one hundred (100) feet of the proposed premises; and
- (2) A list of names and mailing addresses of property owners and lessees of record of the properties within five hundred (500) feet of the proposed premises; which list shall also designate all property owners and lessees of record within one hundred (100) feet of the proposed premises.
- (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 as prescribed for by HRS Section 281-31(s) except for Manufacture, Wholesale, Tour or Cruise, and Transient Vessel licenses prior to the issuance of a new license.
- (4) Written clearance from the Department of Planning indicating approved use of the premises where license is being applied for.

(d) An application for transfer of license shall also file as part of its application:

- (1) A statement of the price to be paid for the purchase of the licensed business; and
- (2) Tax clearances for the transferor from the state department of taxation[,] ~~and the federal internal revenue service.~~
- (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 for both the transferor and transferee as prescribed for by HRS Section 281-31 (s) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses.

(e) An applicant for a transfer of a class 5 and class 11 licenses shall also comply with requirements of Section 281-57 of the Hawaii Revised Statutes.

- (f) A temporary license of any class and kind may be granted under the following conditions:
- (1) The premises shall have been operated under a license of the same class, kind and category issued by the commission at least one year immediately prior to the date of filing of the application for a temporary license; the application must be filed within 90 days of the surrender of the previous license or the closing of business.
 - (2) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises.
 - (3) If the issuance of a temporary license is based upon a transfer or new license application, the temporary license shall terminate upon the issuance or denial of the transfer or new license application.
 - (4) Where a temporary license is issued and the application for an original license is denied or withdrawn, or the temporary license is canceled, the temporary licensee shall be responsible for filing a gross sales report together with percentage fee due for the duration that the temporary license was in effect.
- (g) Applicant for a special license shall file as part of its application:
- (1) A floor plan which shall be drawn with measurements and showing the detailed description of the proposed premises;
 - (2) A roster of all persons selling liquor, including their ages, and the name and age of the person in charge of those selling liquor;
 - (3) The name of the person in charge of security;
 - (4) The property owner's permission to sell liquor for consumption on its property.
 - (5) Method of disposal for the remaining liquor inventory.
- (h) An applicant for a transient vessel license shall file as part of its application:
- (1) A list of dates, ports of call, times of arrival and departure.
- (i) An applicant for a transient vessel, per day, license shall file:
- (1) One application for each vessel, and the application may be filed annually;
 - (2) Tax clearances shall be applicable to all applications for the Transient Vessel licenses that are filed by the agent or owner during that fiscal year; and.
 - (3) The application shall include a list of dates, ports of call, times of arrival and departure and payment of fee per port of call.

When inclement weather forces a vessel to shift its port of call to the island of Kauai, and the vessel has a valid transient vessel license issued by another jurisdiction within the State of Hawaii, said license shall be valid in the County of Kauai, provided that notification of such change of port is sent to the Department prior to arrival.

(j) An applicant for a tour or cruise vessel license shall file as part of its application:

- (1) Commercial permit;
- (2) Mooring permit; and
- (3) Coast Guard certification.

Tour or cruise vessel license, exception. A tour or cruise vessel licensee may, with the approval of the commission, sell and serve liquor to ticketed passengers while on board the vessel during the loading of passengers for a period of time as determined by the commission.

(k) All applicants shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

Rule 2.6. Renewal of license. Applications for renewal of licenses, except temporary licenses, shall be submitted no earlier than June 1 and no later than June 30 of each year. Current tax clearances from the state department of taxation and the federal internal revenue service, a deposit to cover the basic fee as prescribed by Rule 4.1 and proof of liquor liability insurance coverage in the amount of \$1,000,000 except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses as prescribed for by HRS, Section 281-31 (s) shall be submitted as part of the application.

An application for renewal of a temporary license shall be submitted prior to the expiration date of the license. A deposit to cover the temporary license fee as prescribed by Rule 4.1 shall be deposited as part of the application.

Rule 2.7. Deposit with application. A deposit to cover the cost of publishing the notice of public hearing must accompany all applications for a license.

Rule 2.8. Filing fee with application. A filing fee in the sum of one hundred dollars (\$100.00) shall be paid with any application for an initial issuance of a license or for a transfer of a license, except for Transient Vessel, per day and Special license applications the filing fee shall be the cost of the basic license fee as prescribed for in rule 4.1.

The filing fee shall become a realization of the county where the application is denied or withdrawn.

Rule 2.9. Knowledge of liquor laws, rules and regulations. (a) No license shall be issued or renewed until the commission is satisfied that the applicant is familiar with the liquor laws of Hawaii and

with the rules and regulations of the commission.

(b) Every licensee shall ensure that its employees involved with the sale of liquor are familiar with the rules of the commission and liquor laws of Hawaii.

Rule 2.10. Rehearing on application. An applicant desiring a rehearing after his application has been refused must file a petition with the commission within fifteen days from the date of such refusal.

Rule 2.11. Application for individual permits to receive shipments of liquor. (a) Any unlicensed person who is of legal age to purchase liquor may apply at the department on the form prescribed by the department and with the payment of a permit fee of ten dollars (\$10.00) or as required by Section 281-33.1(d) of the Hawaii Revised Statutes, whichever is greater, for a permit to receive a shipment of liquor from outside the state, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

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

- (1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity; and
- (2) Whether the liquor is an unsolicited gift, unavailable in the state, or part of the applicant's household goods.

Rule 2.12. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Kauai shall obtain a Direct Wine Shipper Permit from the Department of Liquor Control, County of Kauai. The permit may be granted by the Director 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 manufacture wine under section 281-31; or
 - B. A license to manufacture wine issued by another state.

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

1. An application form;
2. Copy of the State of Hawaii Department of Taxation general excise tax license;
3. Copy of the class 1 license to manufacture wine under section 281-31 or the license to manufacture wine issued by another state; and
4. Payment of an annual permit fee of \$48.00. For purposes of this rule, permit fees shall be prorated.

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

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

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY".
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment.
3. Report no later than January 31 of each year to the Department the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and;
5. Be subject to audit by the liquor commission.

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

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

Rule 2.13. Application for a permit for trade shows, tasting event or other exhibitions. (a) Any trade exhibitor or trade organization, may apply for a permit to have liquor for display and sampling on a not-for-sale basis at trade exhibitions. The director may permit the exhibitor or organization to receive liquor that is not available in the state from outside the state.

(b) The application for the permit shall include the following information:

- (1) The name and address of the applicant;
- (2) The location of the trade show;
- (3) The dates and hours of the trade show;
- (4) An inventory list of the liquors to be displayed and sampled, its value and the procedure to be used to dispose of any liquor remaining at the end of the function; and
- (5) Property owner's permission and floor plan detailing where the trade show, tasting event or exhibition will be taking place.

(c) The dispensing of liquors for consumption is permitted between the hours of 8:00 a.m. to 11:00 p.m. on any day of the week.

(d) Liquor shall be consumed within the approved area that the holder of the permit has exclusive control and clear view of, and any liquor being consumed shall not be removed from the area.

(e) Guidelines for sample servings are four ounces of beer per customer, two ounces of wine per customer, and one-half ounce of distilled spirit per customer, except as otherwise approved by the director.

(f) ~~[Samples shall be served in its original form.]~~

(g) An industry member may assist a licensee who conducts a product tasting event provided that in no case shall the industry member assume duties normally conducted by an employee of the licensee.

Rule 2.14. Applications for warehousing liquor off the licensed premises. Liquor may be warehoused off the licensed premises within an appropriately zoned area in the county with the written approval of the commission. An application for warehousing off the licensed premises shall include as part of the application:

- (1) Floor plan drawn to scale;
- (2) Lease agreement, if applicable;
- (3) List of all licensed premises which will be using the warehouse, if the applicant holds more than one liquor license; and
- (4) Street address and tax map key of warehouse location.

Rule 2.15. Application and cost for a duplicate license. (a) A license that has been lost, destroyed, or mutilated will be replaced upon application from the licensee. A licensee shall submit a letter stating the cause of the loss, destruction, or mutilation of the license when applying for a duplicate license.

(b) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to replace a license that was lost, destroyed, or mutilated because of negligence on the part of the licensee.

Rule 2.16. Authority vested to the director. (a) In the event that any licensee or any person submits a written application for a permit or renewal of an existing license or permit and the application cannot be brought before the commission at a regular meeting prior to the date of the event or function, the director may approve the application provided that all other applicable requirements of the liquor laws and the commission's rules and regulations have been met.

(b) The director may issue a notice of violation hearing to any licensee for any violation of the commission's rules and regulations or the liquor laws.

(c) When all applicable requirements of the liquor laws and the commission's rules and regulations have been met, the director shall have the authority to issue, suspend or revoke the following permits and issue the following licenses:

Permits for: All games, game machines; karaoke machines; temporary increase or decrease of premises; alteration of premises. Karaoke permit shall be limited to licensees whose category of license provides for live entertainment with applicable conditions, as it may exist.

Licenses: Special license, Transient Vessel, per day license.

Rule 2.17. Emergency rules and regulations. In the event of a national, statewide, or local emergency, the commission may adopt emergency rules and regulations, with the approval of the Mayor, for the protection of life and/or property. All emergency rules and regulations shall be scheduled for public hearing at the earliest possible date.

If the commission is unable to hold a meeting to meet the emergency, the Mayor may authorize the director to act for the commission.

Rule 2.18. Free one-day special license. (a) Notwithstanding any other rule to the contrary, the director may issue a free one-day special license of any class and kind at no cost to any nonprofit organization for a fundraising event from which no member is entitled to or takes, directly or indirectly, any share of the profits there from. Issuance of such license shall not exempt the licensee from any other provision of the liquor laws.

(b) An applicant for this free one-day special license shall file an application on the form prescribed by the department.

(c) The applicant shall obtain the property owner's permission to dispense and/or retail liquor on its property.

(d) The director may issue a free one-day special license to any applicant if the event for the license is to occur prior to a commission meeting.

Rule 2.19. Notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license.

Corporate licensees shall notify the Commission, in writing, within thirty 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, within 30 days of any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, must request a Criminal History Clearance from the Hawai'i Criminal Justice Data Center within thirty 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 (i.e. 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 days of any change of limited partners holding twenty-five percent or more interest or members and submit a personal history of the new limited partner holding twenty-five percent or more interest or member, on the forms prescribed by the Commission.

RULE 3
RULES OF GENERAL APPLICATIONS

Rule 3.1. Posting of license and availability of rules and regulations and Liquor Laws of the State of Hawaii. (a) The original liquor license shall be conspicuously posted on the licensed premises.

(b) Every licensee shall have a current copy of the rules and regulations of the commission and a copy of the liquor laws of the State of Hawaii available at all times on the licensed premises for examination by employees and customers. A copy viewed on a computer is not acceptable unless the computer is located in a general sales area accessible to all employees and customers.

(c) Licensees and employees shall familiarize themselves with said rules and laws.

Rule 3.2. Alteration of premises. A licensee shall obtain approval [a permit] from the commission prior to making any substantial physical alteration, such as adding or removing walls, changes in entrances and/or exits, relocating wet bars, changing floor levels, etc., to its licensed premises.

Rule 3.3. Unauthorized liquor. The possession of any liquor by a licensee on any licensed premises, other than that authorized by the license, is prohibited. The finding of such unauthorized liquor on the licensed premises will be considered prima facie evidence of illegal possession thereof by the licensee.

Rule 3.4. Surrender of license. The holder of any license must immediately surrender its license to the commission upon suspension or revocation thereof, or within five days after closing his business if it be otherwise discontinued.

Rule 3.5. Free goods prohibited, exception. No licensee 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 which is tied in to the sale of liquor, except "pupus" (appetizers) offered in on premises establishments and advertising specialties which are available to all consumers are exempt from this provision.

Rule 3.6. Advertisements, posters, and signs. (a) No licensee shall, directly or indirectly, cause obscene, lewd, or immoral matter to be shown, displayed or distributed either on or from the premises.

(b) Any exterior poster or sign advertising liquor by brand name either in whole or part and maintained on the exterior of a licensed premises shall conform to the sign ordinances of the County government.

Rule 3.7. Attire and conduct of persons within a licensed premises, exception. No licensee shall at any time:

- (1) Employ or use any person or permit any person to remain in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areole or any portion

of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, except as provided by Rule 8.5;

- (2) Permit any person to perform or simulate sexual acts in its licensed premises.
- (3) Permit the showing of film, still pictures, or electronic reproductions depicting:

(a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(b) Nudity or scenes wherein a person displays the anus, genitalia or female breast below the top of the areole;

(c) Any person being touched, caressed or fondled on the anus or genitalia; and

(d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawing are employed to portray, any of the prohibited activities described above.

Rule 3.8. Sales to persons below the legal age to purchase liquor prohibited. No licensee shall sell or furnish any liquor to any person who is below the legal age to neither purchase liquor nor accept any payment, including the signing of any charge slip, from any person who is below the legal age to purchase liquor for any liquor sold.

Rule 3.9. Warehousing of liquor off the licensed premises. (a) Any licensee with warehousing off his licensed premises shall keep within the warehouse invoices for all liquor received at the warehouse, and a record of all liquor distributed from the warehouse. All records shall be kept for no less than three years.

(b) Any liquor distributed from the warehouse must be delivered directly to the licensed premises of the licensee.

(c) If a warehouse building is used by more than one licensee, each licensee's space shall be separated with permanent partitions.

Rule 3.10. Pool buying. The agent of a pool buying agreement shall file a copy of the agreement with the department and receive its approval prior to exercising the agreement. The agreement shall name the licensee who is to be the agent, the address of the delivery location, and a list of participants, their license number and street addresses.

A pool buying agreement shall expire on June 30 of each year or upon the addition of a new party to the agreement, whichever occurs first.

The agent shall inform the department of the date of transaction made under the pool buying agreement prior to the transaction date. Each pool buying transaction shall be completed on the day transacted which means that all members of the pool must take possession and pay for their merchandise on the day that the agent receives the liquor at his premises.

Where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensee.

The agent shall provide a list to the wholesaler and/or manufacturer of all members of the pool buying agreement and a list of purchases to be made by each member.

The wholesaler and/or manufacturer shall prepare separate invoices for each member of the pool buying agreement.

Participants of the pool buying agreement shall maintain records of its liquor purchases pursuant to the pool buying agreement within the licensed premises for a period of three years and the records shall be made available forthwith for inspection by the department or its authorized personnel.

Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws, liquor laws, or rules of the commission.

Rule 3.11. Waiving of rights to a violation hearing. A licensee who is cited by the commission as having violated any one of the following rules:

- (1) Rule 3.1. Posting of license and availability of rules and regulations;
- (2) Rule 3.2. Alteration of premises;
- (3) Rule 3.6. Advertisements, posters, and signs;
- (4) Rule 7.9 Manager registration;
- (5) Rule 7.1[0]4. Bar employee records;
- (6) Rule 7.13. Fight and disturbance reports;
- (7) Rule 8.4. Minimum requirements of a hotel condominium licensee
- (8) Rule 9.1. Membership list of club; and
- (9) Rule 10.3. Manager registration

may waive its right to a hearing and admit to the charge prior to the hearing without appearing before the commission.

For the first violation of any one of the above-mentioned rules, the licensee shall pay a penalty of one hundred fifty dollars (\$150.00) to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period, whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of three hundred dollars (\$300.00) to the

department at the time that the licensee admits to the charge.

The licensee may not waive its right to a hearing pursuant to this rule and shall be required to appear before the commission where the licensee has committed more than two rule violations of the commission's rules within the previous twelve-month period.

Rule 3.12. Commission orders. All licensees shall comply with all lawful orders of the commission.

Rule 3.13. Contests and prizes, prohibitions. (a) No licensee shall promote or permit any contests which involve the consumption of liquor.

(b) No licensee shall at any time give any liquor as a prize for any contest.

Rule 3.14. Suspension or revocation of blue card or red card. The Commission may at any time for good cause suspend or revoke a blue card or red card.

Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises. The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

Rule 3.16. Legal age to sell liquor. The legal age for an employee to begin selling liquor is 18 years old.

Rule 3.17 Restrictions or Conditions on Licenses: Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time. Licensees shall comply with any restrictions or conditions placed on the license by the Commission.

RULE 4 **LICENSE FEES, GROSS SALES REPORTS**

Rule 4.1. License fees. The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

<u>Class</u>	<u>Kind</u>	<u>Basic Fees</u>
1. Manufacturer (including rectifiers)	(a) Beer	\$ 408
	(b) Wine	\$ 408
	(c) Wine manufactured from agricultural products grown in the State	\$ 120
	(d) Alcohol	\$ 204
	(e) Other Liquors	\$ 648
	(f) Distilled spirits manufactured from agricultural products grown in the State	\$ 180

2. Restaurant	(a) General	\$	480
	(b) Beer & Wine	\$	180
	(c) Beer	\$	120
3. Wholesale Dealer	(a) General	\$	1,200
	(b) Beer & Wine	\$	324
	(c) Alcohol	\$	18
4. Retail Dealer	(a) General	\$	480
	(b) Beer & Wine	\$	180
	(c) Alcohol	\$	18
5. Dispenser	(a) General	\$	480
	(b) Beer & Wine	\$	180
	(c) Beer	\$	120
6. Club		\$	240
7. Transient Vessel, per day		\$	33
Transient Vessel, per year		\$	900
8. Tour or Cruise Vessel		\$	240
9. Special, per day	(a) General	\$	33
	(b) Beer & Wine	\$	24
	(c) Beer	\$	16
10. Cabaret		\$	600
11. Hotel		\$	900
12. Caterer		\$	120
13. Brewpub		\$	900
14. Condominium Hotel		\$	900
15. Winery		\$	900
16. Small Craft Producer Pub		\$	900

The fee for a temporary license of any class and kind shall be sixty dollars (\$60.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional sixty dollars (\$60.00) for a renewal of not more than sixty days of the license.

Rule 4.2. Fees for solicitors' and representatives' permits. The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

Rule 4.3. Special license sales report. Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the

license.

Rule 4.4. Percentage Fee. Licensees in Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Fee}$$

EE = Estimated Expenditures (current fiscal year)
BF = Basic Fees (current fiscal year)
C = Carryover (excess fees from prior fiscal year)
TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall file with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

Rule 4.5. License Fees; When Due; How Received. (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term shall be forfeited.

Rule 4.6. Payment of fees upon transfer of license. (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales and payment of its percentage fees due. The past fiscal year's percentage figure shall be used to calculate the percentage fee owed by the transferor. The transferor shall be notified of the percentage fee due and the transfer shall not be completed until the percentage fee is paid.

(b) Final report and percentage by transferee; when. If the transferor fails to submit a final report of gross liquor sales and/or fails to pay the percentage fees upon transfer of such a license, the transferee shall be responsible for any percentage fee based on the total gross liquor sales for the entire term for which the license was exercised by the transferor.

Rule 4.7. Gross liquor sales report, percentage fee, and records. (a) Filing. Licensees holding Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall file, on a form provided by the Department, a report showing the true and accurate gross sales of liquor including complimentary liquor as defined in Rule 1 for the license year.

Gross sales of liquor under a temporary license shall be included as part of the transferee's or new licensee's gross sales report for the fiscal year.

Reports shall be completed and filed with the department as follows:

- (1) On or before July 31, a final gross sales report for that license year.
- (2) Within 30 days of the closing of business or cancellation or revocation of the license, a final gross sales report.
- (3) At such other time as the Commission or Director may direct.

For purposes of this rule, reports postmarked on the due date shall be acceptable. Where the due date falls on a holiday or weekend, the report shall be delivered to the office of the Department on the first working day thereafter.

(b) Percentage fee due; when. The percentage fee based on gross sales of liquor shall be due and payable in full on September 30.

In case of revocation or cancellation of such license, the percentage fee chargeable against such license shall be the past fiscal year's percentage figure and the percentage fee due shall become due and payable within 30 days from the date of the Notice of Percentage Fee Due.

Any licensee who fails to pay its percentage fee on the due date may be issued a notice of

violation for every day payment has not been made and be subject to penalties as stated in Section 281-91, Hawaii Revised Statutes.

(c) Percentage fee amount due; when. All licensees required to pay an annual percentage fee as prescribed in rule 4.4 shall be mailed a Notice of Percentage Fee Due stating the amount due to the department by the due date.

Any licensee whose annual percentage fee exceeds \$5,000 may pay to the department either in full or in two equal payments with the first payment being due no later than September 30 and the final payment being due no later than January 31 of the same fiscal year.

(d) Records and accounts. All licensees shall keep, within the State of Hawaii, a set of books or records, which show all income, purchases and expenses of the liquor licensed business for a period of three years. These books and records, including but not limited to daily sales records, employee time sheets, and invoices, shall be made available for inspection and/or auditing by the department within forty-eight (48) hours from the time the licensee is notified by the department.

RULE 5 **TERM OF LICENSE AND PERMIT**

Rule 5.1. Terms of licenses and permits. (a) Every license issued, except classes 8 and 10 and temporary licenses, shall expire at 12:00 midnight on June 30 next succeeding its issue.

(b) Transient vessel, special, temporary licenses, and solicitors' and representatives' permits shall expire at 12:00 midnight on the expiration day of the licenses.

(c) All liquor licenses not exercised within one hundred eighty (180) days of approval by the commission shall, ~~except for good cause~~, become void. Applications approved prior to January 1, 2020 will be exempt from this rule.

(d) A licensee who applies for a license to change its class or category of license shall exercise the new license within seven (7) days of approval by the commission or it will become void.

RULE 6 **HOURS OF BUSINESS**

Rule 6.1. Hours during which licensed premises may be open for transaction of business are as follows:

(a) Dispenser, restaurant, club, tour or cruise vessel: Every day from 6:00 a.m. to 2:00 a.m. the following day. For Restaurant class from 6:00 a.m. to 11:00 p.m. for retailing of "growlers".

(b) Cabaret, hotel, transient vessel, and condominium hotel: Every day from 6:00 a.m. to 4:00 a.m. the following day. Exception: Cabaret in a location zoned other than resort shall be from 6:00 a.m. to 2:00 a.m. the following day.

- (c) Retail dealers: Every day from 6:00 a.m. to 11:00 p.m.
- (d) Wholesale dealers and manufacturers: Every day from 6:00 a.m. to 11:00 p.m.
- (e) Caterer: Every day from 6:00 a.m. to 12:00 midnight.
- (f) Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- (g) Free One-Day Special Retail Dealer: From 6:00 a.m. to 11:00 p.m.
- (h) Free One-Day Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- i) Brewpub: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.
- j) Winery: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for Retailing.
- k) Small Craft: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

Rule 6.2. Sales, service, or consumption before or after hours of business, exception.

There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after hours established by the commission, except that employees who were on duty at the legal closing time in on premises establishments may consume liquor immediately after closing with the permission of the licensee, and at no cost, if no other person is in the liquor service area of the premises.

RULE 7
RELATING TO ON PREMISES ESTABLISHMENTS

Rule 7.1. Number of drinks per person and liquor content of drinks, exception. (a) ~~[The stacking of liquor for consumption by patrons is prohibited. For the purpose of this rule, the word "stacking" is defined as more than two standard servings to a customer at one time. This rule shall not apply to authorize showroom facilities as defined in rule 1, which may serve the minimum drinks at the same time to lessen disturbance to the show.~~

~~————— A standard serving shall be a drink containing distilled spirits and mixes not to exceed 10 ounces, five ounces of wine or twelve ounces of beer. A drink in excess of a standard serving shall be limited to one drink per person at one time.]~~

Distilled spirits containing no mixes shall be limited to not more than two ounces per person at one time.

A pitcher of beer or mixed drink containing distilled spirit, not to exceed [48] 64 ounces, may be served to no less than two or more persons when seated together.

Distilled spirits may be served from its original package of up to 1 liter in capacity for any special occasion upon obtaining a permit from the director.

A bottle of wine, not to exceed 750 milliliters, may be served to one person at one time with a meal as it applies to a hotel, restaurant, club, cabaret, condominium hotel, brewpub, and dispenser class licensee engaged in meal service as provided for in section 281-31 (u) of the Hawaii Revised Statutes. The law allows for a patron to remove from the licensed premises any portion of wine, liquor, or beer that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. A licensee wishing to exercise this privilege shall inform the customer of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes.

(b) A drink consisting of one or more kinds of liquor and water or any other mix which is served, sold, or offered for sale by any on premises licensee, or prepared for such purpose, shall contain not less than one fluid ounce of liquor; except when selling a specialty drink which requires less than one ounce of liquor; in which case the licensee shall present to the patron a recipe or have in plain view of the patron ordering the drink a menu which specifies the amount of liquor in the drink.

When liquor is poured into a service glass by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mix or water has not been added.

(c) A straight drink shall have not less than one fluid ounce of liquor.

Rule 7.2. Sanitary conditions. (a) All licensed premises, including all furnishings, equipment, and paraphernalia within the premises, shall be kept in a strictly clean and sanitary condition, and all drinking glasses must be un-cracked and effectively sterilized.

(b) All on premises establishments shall have access to adequate toilet facilities, which have been approved by the ~~[State Department of Health]~~ [Department of Public Works-Building Division](#). Special license establishments shall have toilet facilities as may be required by the commission.

Rule 7.3. Draught beer. Draught beer sold or served shall be freshly drawn. The selling and serving of stale or slop beer is prohibited.

Rule 7.4. Condition of premises. (a) The main entrance of an on premises establishment must be kept unlocked whenever there is any non-employee or any employee who was not on duty at the closing time in the premises.

(b) Entrance to booths must be open and unobstructed.

(c) Lighting in all parts of the licensed premises shall be sufficient to make easily discernible the appearance and conduct of all persons in the premises and the main entrance of licensed premises shall be well and properly lighted.

(d) All interior rooms or enclosed areas in a Restaurant, Dispenser, Brewpub, Winery, Small Craft

Producer Pub or Cabaret licensed premises 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. Tinted windows are prohibited.

(e) No licensee that is authorized for on-premise consumption shall have an opening, transparent window or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.

~~(f) Paragraph (d and e) above to the contrary notwithstanding, 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.~~

(g) An on premises establishment shall be constructed in such a way that the sound from the licensed premises shall not disturb the nearby residents with unreasonable noise in excess of the following noise levels in decibels (dBA) for more than ten percent of the time within any 20-minute period at the boundary line of the complainant's property which is closest to the licensed premises. For this purpose, any sound having duration of less than one second shall be deemed to last one second.

<u>Zoning Districts</u>	<u>7 a.m. to 10 p.m.</u>	<u>10 p.m. to 7 a.m. the following day</u>
Residential (R-1 to R-6)	55 dBA	45 dBA
Open (O)	55 dBA	45 dBA
Residential (R10 & R20)	60 dBA	50 dBA
Resort (RR10 & RR20)	60 dBA	50 dBA
Commercial (Neighborhood and General)	60 dBA	50 dBA
Agricultural	70 dBA	70 dBA
Industrial (Limited and General)	70 dBA	70 dBA

Where the allowable noise level between two adjacent zoning districts differ, the lower allowable noise level shall be used. This rule shall be enforced if a complaint of noise from the premises is received by the department from any resident or property owner with rental units within the area.

Rule 7.5. Music, dancing, and entertainment, exception. (a) In any on premises establishment, radios, television sets, jukeboxes, and any other system of providing recorded background music in the premises may be installed and operated without commission approval, provided that the sound does not disturb the neighborhood. Programs that are not offensive to common propriety and programs that are rated G or PG may be shown within the premises.

(b) Impromptu entertainment which is unpaid and unscheduled entertainment by a person who is not less than eighteen years of age is permitted without commission approval if said entertainment is not offensive to common propriety and the sound does not disturb the neighborhood.

(c) Any and all games and other forms of entertainment provided by management, such as music, shows, and game machines are prohibited except where and when specifically permitted by the

commission in writing.

(d) A standard bar or a dispenser, category (C) or a restaurant, category (2) without dancing premises that wishes to have dancing in its premises as part of its normal operations shall be subject to Section 281-51 to 281-60 of the Hawaii Revised Statutes.

(e) In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than one hundred fifty (150) square feet suitable for ballroom dancing. The designated area may be utilized for other purposes when not used for dancing. However, when used for dancing, the designated area must be totally cleared of all obstructions and utilized only for dancing.

(f) Dancing by 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 its employees.

(g) Paragraph (c) above to the contrary notwithstanding, no permit shall be required by a hotel or condominium hotel licensee for live entertainment, games, movies, etc., if the entertainment, games, movies, etc., are not offensive to common propriety.

Rule 7.6. Repealed.

Rule 7.7. Clearing of tables at closing time. Any and all vessels containing liquor shall be removed from all areas of the licensed premises which is open to the public no later than the legal closing time for liquor sales, except as permitted by Rule 6.2.

Rule 7.8. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age [~~and who is duly registered by the licensee as a manager and approved by the commission~~] must be in active charge of any on premises establishment at all times when there is anyone who is not an employee in the premises.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test [~~in the English language~~] covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a blue card. Any blue card issued [~~on or after April 15, 1983~~] shall be valid for a period of five years from the date of issuance and must be in the employee's possession or be readily available on the premises for inspection at all times, while on duty. [~~Any blue card issued prior to April 15, 1983 shall remain valid until the holder, on or after April 15, 1983, changes his place of employment and is registered as a manager by the licensee of his new place of employment.~~] The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 7.9. Manager registration. (a) The manager on duty is strictly accountable for the conduct of all employees, including other management personnel, and for the sales of liquor in the licensed premises.

~~(b)~~ An on premises licensee shall notify the commission of the employment of a manager prior to

his employment by submitting a notice of employment of such person to the department. A manager must have a valid blue card prior to his employment as manager. ~~[A person does not qualify as a manager unless he is registered as a manager by the licensee].~~

(c) The commission may require the licensee to suspend or terminate the employment of any employee for good and sufficient reason. Good and sufficient reason shall include but not be limited to conviction for an offense against the public health and morals as set out in the Hawaii Penal Code.

~~(d) Every on premises licensee shall submit a typewritten list of all its management personnel to the department no later than July 31 of each year on the forms provided by the department.]~~

Rule 7.10. Bar employee records. An on premises licensee shall have available at all times in the licensed premises a current record showing all bar employees, including management personnel, who are on duty.

Rule 7.11. Employees drinking on duty and entertaining patrons prohibited. In an on premises establishment, no employee, while on duty and within the premises, shall consume liquor or sit or dance with or play games with patrons. This restriction shall not apply to the overall manager who is in active charge of the premises if he does not work at selling or serving liquor.

For the purpose of this rule, "while on duty" shall mean from the time an employee starts work on any day until the employee is through for that day. It shall include any time during a split shift, a meal break and a rest break.

Rule 7.12. A person below the age of eighteen years in an on premises establishment prohibited, exceptions. (a) A person below the age of eighteen years is not permitted in an on premises establishment where liquor sales account for seventy-five percent (75%) or more of the total revenues of the establishment, excluding revenues from coin operated machines and logo items or when there is a show or televised program that exposes to view the female breast below the top of the areole, or a strip tease show, or a show that is offensive to common propriety.

The revenue figures for the immediate past calendar month shall be used to determine if a licensed premises is qualified to have persons below the age of eighteen years in its premises. A new licensee or a licensee who changes its operation to include sales of other merchandise shall be automatically qualified to permit persons below the age of eighteen years in its premises during its first month of operation.

(b) A minor below the age of 18 years shall not be permitted in any area of any licensed premises where liquor is served after 12 o'clock midnight. This paragraph shall not apply to such minor who is attending a private party with a parent or a guardian.

(c) The commission may exempt any licensee from this rule upon application and review of a proposed special event.

Rule 7.13. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in [his] their licensed

premises. The report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.

The report shall include the name of the licensee and business, the date and time of the incident, the location of the incident, the name(s) of person(s) involved, the condition of those involved, the details of the incident and action taken by the licensee to prevent or suppress the occurrence. The report shall be signed by the licensee or its authorized agent.

For the purpose of this rule, the word "disturbance" shall mean any incident of quarrelsome behavior that causes the licensee, his employees, or police officers to evict a person from the premises or to request a person to leave the premises. Also for the purpose of this rule, the word "fight" shall mean a physical confrontation.

Rule 7.14. Review by patron of charge slip for liquor purchased. Any on premises licensee who does not collect payment for each drink as it is served shall upon request, inform the patron the amount owing each time liquor is served.

Rule 7.15. Practices that promote excessive consumption of liquor prohibited. (a) Licensees shall use good judgment in serving liquor to patrons to prevent excessive consumption of liquor by patrons.

(a) No alcoholic beverage shall be sold unless the consuming patron consents to accept said beverage prior to service.

(b) No licensee shall sell to any person an unlimited quantity of liquor during any set period of time for a fixed price. This paragraph shall not apply to private functions for which a hosted bar is utilized such as a wedding receptions, or public functions such as luaus and brunches where liquor is inclusive, or other similar events where liquor service is incidental to food service.

(d) Before serving liquor in an on-premises establishment the licensee shall have received a bona fide and specific order before preparing and serving the order from its service bar.

RULE 8 **RELATING TO CABARET, HOTEL AND CONDOMINIUM HOTEL LICENSEES**

Rule 8.1. Minimum requirements of cabaret license. (a) A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. A cabaret establishment shall have an adequate kitchen facility where hot meals are prepared and available to patrons from the time the premises is open for business to midnight unless the premises closes before midnight. A dance floor of not less than one hundred fifty (150) square feet suitable for dancing and clearly designated for such purpose or professional entertainment shall be provided for the benefit of the patrons.

(b) No cabaret licensed premises shall remain open after 2:00 a.m. without dancing or professional entertainment being provided. The commission reserves the right to regulate and control professional entertainment in cabarets. The licensee will be strictly accountable for the conduct of all entertainers in the licensed premises.

Rule 8.2. Cabaret license not issued, when. No application for a new cabaret license which is to be located in an area which is not a resort zoned area shall be approved if there is any residential property located within 500 feet of the proposed premises.

Rule 8.3. Minimum requirements of hotel license. (a) Minimum requirements for hotel license shall be an establishment consisting of one or more buildings which contain (1) at least forty rooms in which sleeping accommodations are provided and offered for adequate pay to transients or timeshare ownerships.

(b) A hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.4. Minimum requirements of condominium hotel license. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS Sec. 281-1, containing: at least forty condominium hotel guest rooms. Room service, self-service, and service at private parties 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 percent (50%) of the total number of 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 subparagraph (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 shall notify the Liquor 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.

(e) A condominium hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.5. Strip shows, exotic dancers. Rule 3.7 to the contrary notwithstanding, cabaret and hotel licensed premises may allow scheduled entertainers whose breasts and/or buttocks are exposed to view to perform, if they perform on a stage that is not less than twelve inches above the immediate floor level and not less than six feet from the nearest patron, but at no time under any circumstances shall an entertainer expose his or her genitals, pubic hair, or anus, or perform or simulate sexual acts in the licensed premises. A tip of money or other gifts on the performer's person during the performance while in such attire that exposes to view the female breast below the top of the areole and/or performer's buttocks is prohibited. The licensee shall submit the names of all entertainers who are to perform to the department

not less than twenty-four hours prior to their performance and the performers shall be 18 years of age or older. The licensee shall not permit any nude impromptu entertainment under this rule.

Rule 8.6. Mini bars in guest rooms and room service. A hotel or a condominium hotel licensed premises shall be restricted from selling liquor in its original package except via mini bars installed in guest rooms and room service. Said service shall be initiated at the request of an occupant twenty-one years of age or older.

Rule 8.7. Recognizable security person. (a) Every cabaret and hotel licensee shall have recognizable security personnel within the premises to prevent anyone from selling, distributing, or using illegal drugs within the premises where liquor is being sold during the time the premises is open for business after 2:00 a.m.

(b) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(c) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 8.8. Change of Hotel or Cabaret license. Any hotel class or cabaret class license failing to meet the minimum requirements of a hotel class or cabaret class license, respectively, may be reclassified by the commission to a dispenser or restaurant class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 9 **RELATING TO THE CLUB LICENSE**

Rule 9.1. Membership list of club. Each licensed club shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.

Rule 9.2. Guest-card privileges of club. Any individual enjoying guest-card privileges of a club and to whom liquors may be sold must be a bona fide guest of the club. Each club shall keep records as to registration of all such bona fide guests, which records shall be produced whenever required by the commission, or by any member thereof, or by any investigator. Guest-card privileges extended to such guest shall be limited, in each case, to not more than four weeks within any twelve consecutive months.

RULE 10 **RELATING TO MANUFACTURERS, WHOLESALERS, AND RETAILERS**

Rule 10.1. Retail dealer licensed premises. (a) If the retail dealer licensed premises remains open to the public during the hours when the sale of liquor is prohibited, the licensee shall post conspicuous signs about all areas displaying liquor giving notice that the sale of liquor is prohibited.

(b) An off premises licensee shall have available at all times in the licensed premises a current record showing all employees, including management personnel, who are on duty.

(c) Drive-in retail sale is prohibited. Customers making a purchase at a retail dealer's premises must enter the licensed premises to purchase liquor. 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.

(d) A Retail Dealer licensee may make deliveries of liquor to private residences or businesses with a bona fide order 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.

Rule 10.2. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age ~~[and who is duly registered by the licensee as a manager and approved by the commission]~~ must be in active charge of any off premise establishment at all times that liquor can be legally sold.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test ~~[in the English language]~~ covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a red card. Any red card issued shall be valid for a period of five years from the date of issuance and must be in the employee's possession or be readily available on the premises for inspection at all times, while on duty. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 10.3. Manager registration. (a) An off premises licensee shall notify the commission of the employment of a manager prior to employing the individual by submitting a notice of employment of such person to the department. A manager must have a valid red card prior to employment as a manager. ~~A person does not qualify as a manager unless the licensee registers the individual as a manager.~~

~~(b) Every off premises licensee shall submit a typewritten list of all its managers to the department no later than July 31 of each year on the forms provided by the department.~~

Rule 10.4. Prohibition against peddling, exception. Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing liquor from licensed premises for delivery to a customer under a manufacturer's or wholesale or retail dealer's license, the licensee must have received a bona fide and specific order therefore. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefore, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquor at retail in their original package or dispense liquor for consumption on the premises.

Rule 10.5. Record keeping by wholesalers. All wholesale dealers shall keep a separate and distinct book account, wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made and the quantity of liquor sold to each licensee, and shall, upon the specific request therefore, submit to the commission a list of such sales data as may be required from time to time.

Rule 10.6 Manufacture, Wholesale or Retail Dealer licensee; Free One-Day Special license, exception. (a) The rules of the commission do not prohibit a manufacturer, wholesaler or retail dealer licensee from giving financial or other forms of event sponsorship assistance to any bona fide nonprofit organization owning and exercising a Free One-Day Special license issued by this department for purposes of charitable fundraising.

(b) An industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the site of the special licensed premises, and may assist in the connection and maintenance of the draft kegs and its tapping accessories, but may not assist the licensee in the selling, serving, or furnishing of liquor to patrons.

RULE 11 **RELATING TO RESTAURANT LICENSE**

Rule 11.1. Minimum requirements for a restaurant license. A restaurant license may be issued to an establishment which is regularly used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenues must derive from the sale of foods.

Rule 11.2. Catering privilege. A restaurant licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor authorized by its license while performing food catering functions, subject to Rules 12.2. to 12.4.

Rule 11.3. Categories of license. A restaurant license shall be either category A or category B, a premises in which live entertainment or recorded music is provided. A category B premises shall be further described as a premises with dancing or a premises without dancing. A licensee who wishes to change from one category to a different category will be required to apply for a new license.

Rule 11.4. Change to a restaurant license. (a) A license of a different class, which qualifies for a restaurant class license, may be issued a restaurant, category A or B license by the commission. The category assigned will be according to the permitted activities of the license to be changed.

(b) Any restaurant class license failing to meet the minimum requirements of a restaurant class license may be reclassified by the commission to a dispenser class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 12 **RELATING TO CATERER LICENSE**

Rule 12.1. Minimum requirements for a caterer license. A general license may be issued to any applicant operating a kitchen facility where food is prepared for the sale of liquor while performing food catering functions off of the licensed premises subject to rule 12.2 to 12.4.

Rule 12.2. Notification of catering function. The licensee shall notify the department of all catering functions that will be held away from the licensee's premises at least five days prior to the function on the form provided by the department. The notification shall include a written statement from the owner or representative of the property giving the applicant permission to sell liquor for consumption on its property.

Rule 12.3. Location of catering function, restrictions. (a) The commission may deny the use of any specific location for catering functions for good cause as stated in paragraph (c) below.

(b) The licensee may provide catering service to any location if the property owner is not compensated for the use of the property and there is no charge to anyone to attend the function.

(c) If the property owner of the location for the catering event is compensated for the use of the property or if the caterer is the property owner, the property owner shall acknowledge that the property is properly zoned or be a government facility where liquor may be sold. The property may be used for catering functions provided the department does not receive any complaints, such as noise, dust, traffic, parking, etc., as the result of the catered function.

Rule 12.4. No host bar prohibited. The caterer shall not at any catered function which is held away from its licensed premises open or operate a no host bar. A no host bar means a bar where each person who orders a drink is charged for the drink.

RULE 13 **SEVERABILITY**

Rule 13.1. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.

III. New Business – Before Public Hearing

B. Discussion and Action on Proposed new Hawaii Administrative Rules (HAR) Title 12 Chapter 45.4, State Fire Code, and Repeal of Chapter 45.3, State Fire Code, promulgated by Department of Labor and Industrial Relations

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes §201M-2)

RECEIVED
By JetaimeA at 6:17 am, Jan 29, 2020

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

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: _____

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.

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.

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.

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

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

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

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.

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

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.

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

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.

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.

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

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

- 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.

- 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.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

RECEIVED

By JetaimeA at 6:22 am, Jan 29, 2020

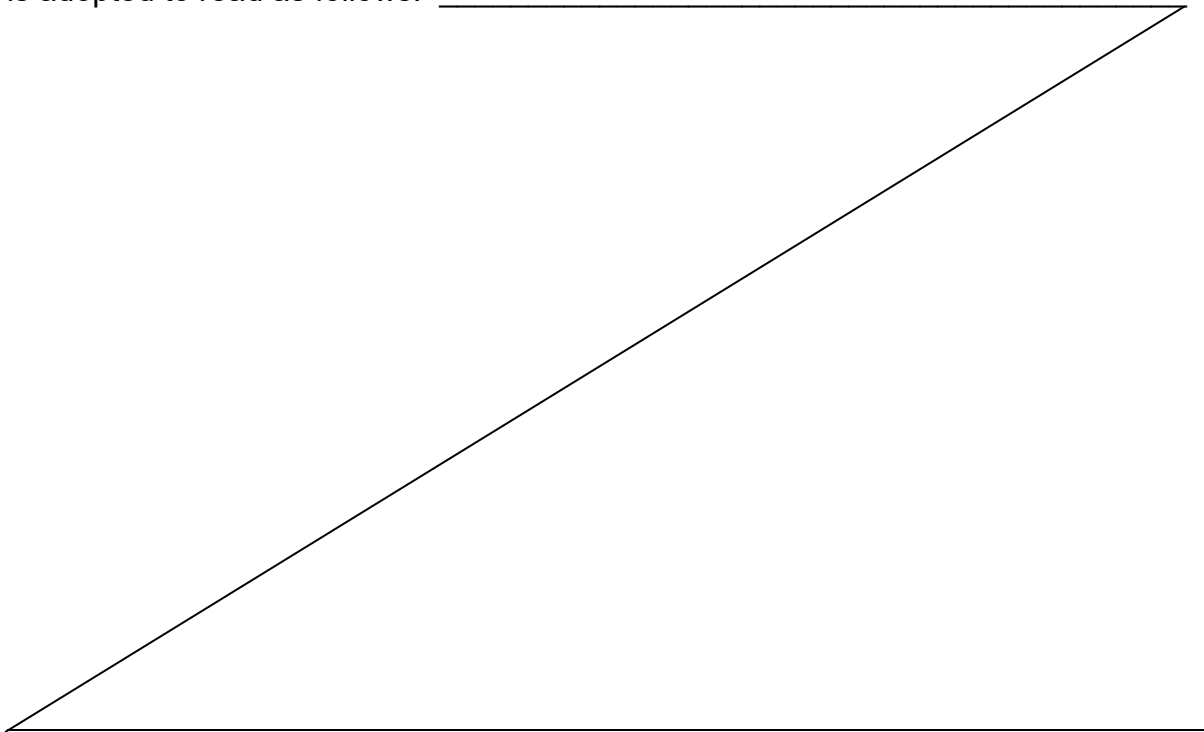
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Repeal of Chapter 12-45.3 and adoption of Chapter 12-45.4
Hawaii Administrative Rules

(Date of adoption by agency)

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

2. Chapter 12-45.4, Hawaii Administrative Rules, entitled "State Fire Code," is adopted to read as follows: _____



“HAWAII ADMINISTRATIVE RULES (HAR)

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 45.4

STATE FIRE CODE

Subchapter 1 Rules of General Applicability

§12-45.4-1	Purpose
§12-45.4-2	Scope
§12-45.4-3	Definitions
§12-45.4-4	Adoption of the 2018 National Fire Protection Agency (NFPA) 1, Fire Code
§12-45.4-5	County permit authorization

Subchapter 2 Amendments to the 2018 NFPA 1, Fire Code

§12-45.4-6	Title
§12-45.4-7	Conflicts
§12-45.4-8	Building code
§12-45.4-9	Administration and enforcement authority
§12-45.4-10	Fire insurance records and reports
§12-45.4-11	Permits
§12-45.4-12	Certificates of fitness authorization
§12-45.4-13	Mandatory certificates of fitness
§12-45.4-14	Certification of applicant general
§12-45.4-15	Certification of applicant transfer
§12-45.4-16	Certification of applicant issuing period
§12-45.4-17	Revocation or suspension of certificates of fitness conditions
§12-45.4-18	Revocation or suspension of certificates of fitness new issuance period
§12-45.4-19	Revocation or suspension of certificates of fitness appeals

§12-45.4-20	NFPA publications
§12-45.4-21	NFPA official definitions
§12-45.4-22	Electrical code
§12-45.4-23	Mechanical code
§12-45.4-24	Plumbing code
§12-45.4-25	Maintenance, inspection, and testing general requirements
§12-45.4-26	Authorization to witness maintenance, inspection, and testing
§12-45.4-27	Owner/occupant responsibilities of unsafe buildings
§12-45.4-28	On-premises fire fighting organization fire reporting
§12-45.4-29	Posting of emergency action plans
§12-45.4-30	Open flame, candle, open fire, and incinerator permits
§12-45.4-31	Open flame, candle, open fire, and incinerator hazardous conditions
§12-45.4-32	Outdoor fires
§12-45.4-33	Open fires
§12-45.4-34	Cooking equipment on balconies
§12-45.4-35	Storage of combustible materials
§12-45.4-36	Elevators, escalators, and conveyors
§12-45.4-37	Waste chute, incinerator, and laundry chute installations and maintenance
§12-45.4-38	Emergency command center
§12-45.4-39	Roof access for one- and two-family dwellings and townhouses
§12-45.4-40	Fire door identification
§12-45.4-41	Fire protection systems general
§12-45.4-42	Fire protection systems hose connection
§12-45.4-43	Fire protection systems records
§12-45.4-44	Fire protection systems authority having jurisdiction (AHJ) reports
§12-45.4-45	Fire protection systems out of service
§12-45.4-46	Fire protection systems advanced notification
§12-45.4-47	Fire protection systems inspection, testing, and maintenance labeling
§12-45.4-48	Fire protection systems reference dates table
§12-45.4-49	Fire protection systems existing assembly occupancies
§12-45.4-50	Fire protection systems existing educational occupancies
§12-45.4-51	Fire protection systems existing health care occupancies
§12-45.4-52	Fire protection systems existing detention and correctional facilities
§12-45.4-53	Fire protection systems existing hotels and dormitories
§12-45.4-54	Fire protection systems existing residential board and care facilities
§12-45.4-55	Fire protection systems existing mercantile occupancies
§12-45.4-56	Fire protection systems existing high-rise buildings

§12-45.4-57	Fire protection systems table
§12-45.4-58	Stationary fire pump inspection, testing, and maintenance
§12-45.4-59	Private fire service mains inspection, testing, and maintenance
§12-45.4-60	Private service mains inspection, testing, and maintenance schedule
§12-45.4-61	Annual maintenance record keeping
§12-45.4-62	Extinguisher maintenance six-year internal examination label
§12-45.4-63	Extinguisher maintenance service collar information
§12-45.4-64	Positive alarm sequence occupant notification
§12-45.4-65	New and existing lodging and rooming houses
§12-45.4-66	Existing apartment buildings
§12-45.4-67	Existing mercantile occupancies
§12-45.4-68	Existing business occupancies
§12-45.4-69	Existing day care and health care occupancies
§12-45.4-70	Fire alarm systems inspection, testing, and maintenance notification
§12-45.4-71	Fire alarm systems inspection, testing, and maintenance labels
§12-45.4-72	Fire alarm systems inspection, testing, and maintenance tag
§12-45.4-73	Fire alarm systems manually activated alarm-initiating devices
§12-45.4-74	Other fire protection systems compliance
§12-45.4-75	Other fire protection systems inspection, testing, and maintenance label
§12-45.4-76	Means of egress application
§12-45.4-77	Screen door assemblies and storm door assemblies
§12-45.4-78	Locks, latches, and alarm devices
§12-45.4-79	Allowable occupant load increases
§12-45.4-80	Egress capacity
§12-45.4-81	Special signs at elevators
§12-45.4-82	Water supply during construction
§12-45.4-83	Required access
§12-45.4-84	Fire department access road widths
§12-45.4-85	Fire department access road vertical clearance
§12-45.4-86	Fire department access roads, bridges, or culverts
§12-45.4-87	Fire department access roads, bridges, or culverts live loads
§12-45.4-88	Water supply fire flow
§12-45.4-89	Minimum number of fire hydrants for fire flow
§12-45.4-90	Hydrants out of service
§12-45.4-91	Nonmetallic containers
§12-45.4-92	Flame-retardant requirements
§12-45.4-93	Means of egress floor plan
§12-45.4-94	Means of egress inspection overcrowding
§12-45.4-95	Assembly open flame devices and pyrotechnics general
§12-45.4-96	Assembly open flame devices and pyrotechnics fire prevention

§12-45.4-97	Use of school facilities for sleeping
§12-45.4-98	Emergency egress drills in schools
§12-45.4-99	Manufactured housing
§12-45.4-100	Tents and temporary membrane structures
§12-45.4-101	Physical protection for outside aboveground tanks
§12-45.4-102	Emergency electrical disconnect signs
§12-45.4-103	Fuel dispensing age limitation
§12-45.4-104	Fuel dispensing prohibition of foreign objects
§12-45.4-105	Fuel dispensing signs
§12-45.4-106	Attended self-service fuel dispensing prohibition of foreign objects
§12-45.4-107	Unattended self-service fuel dispensing prohibition of foreign objects
§12-45.4-108	Flammable finish spray booth inspection, testing, and maintenance
§12-45.4-109	Commercial cooking extinguishing system acceptance test
§12-45.4-110	Inoperable commercial cooking extinguishing or exhaust system
§12-45.4-111	Commercial cooking inspection, testing, and maintenance reference table
§12-45.4-112	Commercial cooking extinguishing system inspection, testing, and maintenance reports
§12-45.4-113	Commercial cooking extinguishing system inspection, testing, and maintenance tag
§12-45.4-114	Hazardous materials management plan (HMMP) on site
§12-45.4-115	Hazardous materials protection from vehicles
§12-45.4-116	Fireworks removal
§12-45.4-117	Fireworks regulation
§12-45.4-118	Fireworks permits
§12-45.4-119	Consumer fireworks retail sales
§12-45.5-120	Flammable and combustible liquid tank permits
§12-45.4-121	Unpermitted flammable and combustible liquid tank prohibition
§12-45.4-122	Underground flammable and combustible liquid tank closure in place
§12-45.4-123	Unpermitted liquefied petroleum gases and natural gases tank prohibition

Historical Note: Chapter 12-45.4 is based substantially upon chapter 12-45.3. [Eff 6/6/86; am and comp 8/13/87; am and comp 4/18/92; R]

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§12-45.4-1 Purpose. The purpose of this chapter is to adopt the state fire code as required by section 132-3, Hawaii Revised Statutes (HRS).
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-2 Scope. This chapter sets forth minimum requirements necessary to establish a reasonable level of fire and life safety and property protection from the hazards created by fire, explosion, and dangerous conditions.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-3 Definitions. In this chapter, unless the context otherwise requires:

“Annex” means the explanatory material attached to the NFPA 1, Fire Code.
“Authority having jurisdiction” or “AHJ” means an organization, office, or individual responsible for enforcing the requirements of a code or standard or for approving equipment, materials, an installation, or a procedure.

“NFPA” means the National Fire Protection Association.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-4 Adoption of the 2018 NFPA 1, Fire Code. The NFPA 1, Fire Code, 2018 edition is made a part of this chapter subject to the amendments provided in this chapter. The annexes to the NFPA 1, Fire Code are not adopted except as provided in this chapter.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-5 County permit authorization. Each county may, by ordinance, require that a permit be obtained from the AHJ for any area regulated by this chapter. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

SUBCHAPTER 2

AMENDMENTS TO THE NFPA 1, FIRE CODE

§12-45.4-6 Title. Section 1.1.2 is amended to read as follows: 1.1.2 Title. This code shall be known as the State Fire Code, may be cited as such, and will be referred to in this chapter as “this code”. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-7 Conflicts. Section 1.3.3.3 is added to read as follows: 1.3.3.3 When a difference occurs in the requirements for design and construction for new construction of buildings between this code and the building code, the building code shall apply.

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

§12-45.4-8 Building code. Section 1.3.6.3 is amended to read as follows: 1.3.6.3 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with the building code. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-9 Administration and enforcement authority. Section 1.6 is amended to read as follows: 1.6 Administration and enforcement authority. This Code shall be administered and enforced by the AHJ designated by Chapter 132, HRS. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-10 Fire insurance records and reports. Section 1.11.5 is added to read as follows: 1.11.5 Upon the AHJ’s request, every company or agent transacting the business of fire insurance in this state shall be required to file with the AHJ in each county a monthly record of fire losses paid or incurred on forms prescribed, permitted, or furnished by the AHJ. These forms shall contain information on each fire loss, such as the name of the insured, name of the adjuster,

date and time of fire, construction of building or structure burned, amount of insurance paid, and apportionment of the loss where more than one company insured the risk. The current National Fire Incident Reporting System report forms may be used. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-11 Permits. Section 1.12.8 and Tables 1.12.8(a), (b), (c), and (d) are deleted in their entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-12 Certificates of fitness authorization. Section 1.13.1 is amended to read as follows: 1.13.1 Certificates of fitness authorization. The AHJ shall have the authority to require certificates of fitness and collect fees for individuals performing any of the following activities:

- (1) Maintenance and testing of portable fire extinguishers;
- (2) Maintenance and testing of water-based fire protection systems;
- (3) Other fire protection systems;
- (4) Private fire hydrants; and
- (5) Maintenance and testing of fire alarm systems.

[Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-13 Mandatory certificates of fitness. Section 1.13.2 is amended to read as follows: 1.13.2 Mandatory certificates of fitness. The AHJ shall require certificates of fitness and collect fees for individuals performing any of the following activities:

- (1) Maintenance and testing of portable fire extinguishers;
- (2) Maintenance and testing of water-based fire extinguishing systems;
- (3) Maintenance and testing of other fire extinguishing systems;
- (4) Maintenance and testing of private fire hydrants; and
- (5) Maintenance and testing of fire alarm systems.

[Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-14 Certification of applicant general. Section 1.13.5.1 is amended to read as follows: 1.13.5.1 Individuals applying for a certificate of fitness shall furnish to the AHJ evidence of familiarity with applicable codes, regulations, standards, listings, guidelines, and construction and safety

practices for the activity for which the certificate of fitness is issued. Documentation of satisfactory completion of courses, classes, and testing and experience shall be submitted to the AHJ. In addition, a completed application and a copy of a current driver's license shall be submitted to the AHJ. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-15 Certification of applicant transfer. Section 1.13.6 is amended to read as follows: 1.13.6 Certificates of fitness shall not be transferrable.

- (1) The AHJ shall provide the applicant with an identification of their certificate of fitness which shall be presented by the individual when performing inspection, testing, and maintenance for the licensed activity to any person seeking services, or the AHJ, upon request.
- (2) The fee for the certificate of fitness is payable by check or money order to the county fire department and is nonrefundable. Cash will not be accepted.
- (3) Classification of certificate of fitness and fees are as follows:
 - (A) Portable fire extinguisher - \$100;
 - (B) Fire protection systems:
 - (i) Water-based fire extinguishing system - \$100; and
 - (ii) Other fire extinguishing systems - \$100;
 - (C) Private fire hydrants - \$100;
 - (D) Fire alarm system - \$100; and
 - (E) Certificate of fitness renewals - \$100 every three years for each category and/or subcategory. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-16 Certification of applicant issuing period. Section 1.13.7 is amended to read as follows: 1.13.7 Certificates of fitness shall be issued in accordance with section 12-44.1 HAR and renewed every three years. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-17 Revocation or suspension of certificates of fitness conditions. Section 1.13.12.1 is amended to read as follows: 1.13.12.1 (a) The county fire department may revoke or suspend the certificate of fitness

for just cause if, after notice, it finds that the certificate of fitness holder:

- (1) Violated any portion of the State Fire Code;
 - (2) Performed any work in an unsafe manner;
 - (3) Misrepresented services rendered;
 - (4) Rendered inoperative a portable fire extinguisher, fire protection system, or fire alarm system required by statute or administrative rule without notification to the AHJ. The individual shall present an alternative plan or appliance acceptable to the AHJ before leaving the property. The system may be rendered inoperative during such time the system is being maintained or tested or pursuant to court order;
 - (5) Falsified any record required to be maintained by this chapter; and
 - (6) Improperly maintained or tested any portable fire extinguisher, fire protection system, or fire alarm system.
- (b) Upon revocation, no new certificate of fitness shall be issued to the individual for a period of up to one year from the date of the revocation during which time the individual shall cease all related activities as a licensed contractor.
- [Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-18 Revocation or suspension of certificates of fitness new issuance period. Section 1.13.12.1.1 is added to read as follows: 1.13.12.1.1 Upon revocation, no new certificate of fitness shall be issued to the individual for a period of up to one year from the date of the revocation during which time the individual shall cease all related activities as a certificate of fitness holder.

[Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-19 Revocation or suspension of certificates of fitness appeals. Section 1.13.12.4 is amended to read as follows: 1.13.12.4 Decisions for denial, revocation, or suspension may be appealed in accordance with each county's appeal process. [Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-20 NFPA publications. Section 2.2 is amended to read as follows: 2.2 NFPA 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2013 Edition. [Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-21 NFPA official definitions. Section 3.2 is amended by adding as follows: “Inoperable system sign” means a weather-resistant sign denoting “Inoperable” having a white background with red letters. The letters shall be a minimum height of three inches and a minimum width of one-fourth of an inch stroke. “Water-based fire extinguishing system” means any Class I, II, and III and combined standpipe system, automatic sprinkler system, fire pumps or automatic water spray fixed system utilizing water as an extinguishing agent. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-22 Electrical code. Section 3.3.54.2 is amended to read as follows: 3.3.54.2 Electrical Code. The electrical code is the electrical code adopted by the jurisdiction. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-23 Mechanical code. Section 3.3.54.3 is amended to read as follows: 3.3.54.3 Mechanical Code. The mechanical code is the mechanical code adopted by the jurisdiction. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-24 Plumbing code. Section 3.3.54.4 is amended to read as follows: 3.3.54.4 Plumbing Code. The plumbing code is the plumbing code adopted by the jurisdiction. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-25 Maintenance, inspection, and testing general requirements. Section 4.5.8.1 is amended to read as follows: 4.5.8.1 Whenever or wherever any device, equipment, system, condition, arrangement, level of protection, fire-resistive construction, or any other feature is required for compliance with the provisions of this code, such device, equipment, system, condition, arrangement, level of protection, fire-resistive construction, or other feature shall thereafter be continuously maintained. Maintenance shall be provided in accordance with applicable NFPA requirements and the building code or requirements developed as part of a performance-based design or as directed by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-26 Authorization to witness maintenance, inspection, and testing. Section 4.5.8.8 is added to read as follows: 4.5.8.8 The AHJ is authorized to witness any maintenance or test of a portable fire extinguisher, fire protection system, and fire alarm system by a certificate of fitness holder to determine if the maintenance or test meets the minimum requirements set forth by this code, applicable rules, and statutes. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-27 Owner/occupant responsibilities of unsafe buildings. Section 10.2.4 is amended by adding a sentence at the end to read as follows: For abatement of unsafe buildings, see the building code. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-28 On-premises fire fighting organization fire reporting. Section 10.6.1.2 is amended to read as follows: 10.6.1.2 Facilities that have established on-premises fire-fighting organizations and have coordinated and arranged procedures approved by the AHJ, shall notify the fire department in accordance with the approved plan. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-29 Posting of emergency action plans. Section 10.8.2.1 is amended as follows: 10.8.2.1 (7) Posting of emergency evacuation diagrams and other items required by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-30 Open flame, candle, open fire, and incinerator permits. Sections 10.10.1, 10.10.1.1, 10.10.1.2, 10.10.1.3, and 10.10.1.4 are deleted and replaced with sections 10.10.1 and 10.10.1.1 to read as follows: 10.10.1 Agricultural Burning. See Department of Health, Clean Air Branch, regulation of fires for agricultural burning.

- (1) Except for closed incinerators approved by the state health department, private incineration is prohibited by state health laws. Clearance by the state health department for and notification of all agricultural fires either by telephone or written notice shall be on file with the AHJ before these fires are permitted.

- (2) For fire safety regulations, see county requirements and 10.10.1.1.

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

- (1) Fires for agricultural purposes;
- (2) Fires for recreational, decorative, or ceremonial purposes;
- (3) Fires to abate a fire hazard;
- (4) Fires for prevention or control of disease or pests;
- (5) Fires for training of fire fighting personnel;
- (6) Fires for disposal of dangerous materials;
- (7) Fires for residential bathing purposes; and
- (8) Fires for cooking of food. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-31 Open flame, candle, open fire, and incinerator hazardous conditions. Section 10.10.2 is amended to read as follows: 10.10.2 The AHJ shall have the authority to prohibit any or all open flames; candles; and open, recreational, and cooking fires or other sources of ignition or establish special regulations on the use of any form of fire or smoking material where circumstances make such conditions hazardous. Open flame devices utilizing gas or liquid fuel, such as, but not limited to, tiki torches, shall keep a minimum three-foot clearance from the flame to combustibles and maintain a vertical height of seven feet from grade to flame. The AHJ is authorized to modify these clearances based on site conditions. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-32 Outdoor fires. Section 10.10.3.1 is amended to read as follows: 10.10.3.1 Outdoor fires shall not be built, ignited, or maintained in or upon hazardous fire areas without approval from the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-33 Open fires. Section 10.10.4.1 is amended to read as follows: 10.10.4.1 Open fires shall be located no less than 50 feet (15 meters) from structures or as approved by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-34 Cooking equipment on balconies. Section 10.10.6.2 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-35 Storage of combustible materials. Section 10.18.1.1 is added to read as follows: 10.18.1.1 Signage posting. In storage and mercantile occupancies, a sign shall be posted on the automatic sprinkler riser stating the maximum allowable storage height for the design of the sprinkler system as approved by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-36 Elevators, escalators, and conveyors. Section 11.3 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-37 Waste chute, incinerator, and laundry chute installations and maintenance. Section 11.6.2 is amended to read as follows: 11.6.2 Waste chute, incinerator, and laundry chute maintenance standards. Waste chutes, laundry chutes, and incinerators shall be maintained in accordance with NFPA 82, unless such installations are approved existing installations, which shall be permitted to be continued in service. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-38 Emergency command center. Section 11.9.5 is amended by adding Items 12, 13, and 14 to read as follows:

- (12) The room shall be accessible from the exterior of the building.
 - (13) Control panels in the emergency command center shall be permanently identified as to its function.
 - (14) Alarm, supervisory, and trouble signals shall be annunciated in compliance with the State Fire Code in the emergency command center by means of an audible and visual indicator.
- [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-39 Roof access for one- and two-family dwellings and townhouses. Section 11.12.2.2 is amended to read as follows: 11.12.2.2 Roof access for one- and two-family dwellings and townhouses for photo-voltaic systems. One- and two-family dwellings need not comply with this section.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-40 Fire door identification. Section 12.4.7 is added to read as follows: 12.4.7 Fire door identification. When required by the AHJ, a sign shall be displayed permanently near or on each required fire door in letters no less than one inch (25.4 millimeters) high. The wording of the required sign can only be modified with prior written approval of the AHJ. The sign shall read as follows:

**FIRE DOOR
DO NOT OBSTRUCT
KEEP CLOSED**

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

§12-45.4-41 Fire protection systems general. Section 13.1 is amended by adding a new first paragraph and exception to read as follows: 13.1 Fire protection systems general. The provisions of this chapter for new construction do not apply. For new construction, see the building code. Existing buildings shall be maintained to the requirements to which it was built, unless specifically indicated it applies to existing facilities.

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

§12-45.4-42 Fire protection systems hose connection. Section 13.1.5.2 is added to read as follows: 13.1.5.2 Fire department hose connections serving standpipe and sprinkler systems shall be located within 20 feet of a fire apparatus access road, no less than 18 inches, and no more than 4 feet above grade or as approved by the AHJ. Appropriate identification signs shall be provided as required by the AHJ. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-43 Fire protection systems records. Section 13.1.6 is amended to read as follows: 13.1.6 Detailed records documenting all systems and equipment inspections, testing, and maintenance shall be kept by the property owner and be made available upon request for review by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-44 Fire protection systems authority having jurisdiction (AHJ) reports. Section 13.1.6.1 is added to read as follows: 13.1.6.1 A copy of a system's unsatisfactory inspection and maintenance test report shall be submitted to the AHJ by the testing company within five working days after the completion of the test. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-45 Fire protection systems out of service. Section 13.1.10 is amended to read as follows: 13.1.10 The AHJ shall be verbally notified immediately when any fire protection system is out of service and on restoration of service. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-46 Fire protection systems advanced notification. Section 13.1.10 is amended by adding Sections 13.1.10.1, 13.1.10.2, and 13.1.10.3 as follows: 13.1.10.1 The county fire department shall be given a 72-hour notification prior to a scheduled inspection, testing, maintenance, or retesting of any fire protection system (including Class I, II, and III and combined systems; automatic fire sprinkler systems; and other fire extinguishing systems) and fire alarm systems within their respective jurisdiction in the state.

13.1.10.2 Failure to comply with the requirements of this section will result in the county fire department deeming it an invalid test. A retest may be required at the testing company's expense.

13.1.10.3 The certificate of fitness holder shall immediately notify the county fire department of any system inspection, testing, or maintenance cancellations or changes to the scheduled date and time. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-47 Fire protection systems inspection, testing, and maintenance labeling. Section 13.2.3 is amended by adding sections 13.2.3.3.1, 13.2.3.3.2, 13.2.3.3.2.1, 13.2.3.3.3, 13.2.3.3.3.1, 13.2.3.3.4, 13.2.3.3.4.1, 13.2.3.3.5, 13.2.3.3.5.1, and 13.2.3.3.5.2 as follows: 13.2.3.3.1 Inspection Label and Collar. An approved label and verification collar signifying successful passing of the system shall be provided when inspecting, testing, or maintaining any Class I, II, and III and combined standpipe fire extinguishing system.

13.2.3.3.2 Five-Year Inspection Label

13.2.3.3.2.1 Class I, II, and III and combined standpipe fire extinguishing systems passing a five-year inspection (annual inspection for Class II hoses) shall have an approved, weatherproof inspection label affixed to the fire department connection. If the system does not have a fire department connection, labels shall be affixed to hose cabinets located on the ground floor and the top-most floor.

- (1) The label shall indicate the type of system; month and year the system was inspected, tested, and maintained; the certificate of fitness holder's name and certificate number; and the company name, address, and contact information.
- (2) The label shall be yellow, at least two and one-fourth inches in width and three and one-fourth of an inch in length and clearly visible without obstructing the operation of the fire extinguishing system.
- (3) The label shall be constructed of a durable material approved by the AHJ.
- (4) The label shall be punched with no more than one year and one month.

13.2.3.3.3 Verification Service Collar.

13.2.3.3.3.1 The verification of service collar shall be a circular, solid of continuous plastic with at least a three-inch diameter hole in the center and slide onto each hose length approximately midway from the male and female couplings after the physical inspection has been completed and deemed satisfactory. The verification service collar shall:

- (1) Indicate the month and year the hose was inspected; the certificate of fitness holder's name and number; and company name, address, and contact information; and
- (2) Be constructed of other suitable materials when approved by the AHJ.

13.2.3.3.4 Inoperable system sign

13.2.3.3.4.1 Systems that cannot be utilized for fire fighting operations shall have an inoperable system sign affixed to the fire department connection.

- (1) The sign shall have a white background with red lettering and be constructed of wood, metal, or plastic.
- (2) The letters shall be a minimum height of three inches and a minimum width of one-fourth of an inch stroke.
- (3) If the system does not have a fire department connection, inoperable system signs shall be affixed to hose cabinets located on the ground floor and the top-most floor.
- (4) The sign shall remain in place until all repairs have been made and a satisfactory system test is completed.

13.2.3.3.5 Inspection, Testing, and Maintenance Report.

13.2.3.3.5.1 An inspection, testing, and maintenance report Annex G, Exhibit A entitled “Class I System Five-Year Test Report,” or Annex G, Exhibit B entitled “Class II, Class III, and Combined Systems Test Report,” or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after the inspection, testing, and maintenance date.

13.2.3.3.5.2 An electronic copy of the unsatisfactory test report shall be submitted to the AHJ within five working days of the inspection, testing, and maintenance date. Submittals of satisfactory inspection, testing, and maintenance report shall be determined by the AHJ. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-48 Fire protection systems reference dates table. Sections 13.2.3.4.3 and 13.2.3.4.4 are added to read as follows: 13.2.3.4.3 Table 13.2.3.4.3A, entitled “Fire Protection Systems Reference Dates” dated 7/18/2019 may be used as a reference for applicable codes and standards in effect when the building was permitted.

13.2.3.4.4 Fire department connection gaskets shall be replaced with new gaskets during the required inspection, testing, and maintenance of the system. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16; SLH 2014, Act 165)

Table 13.2.3.4.3A Fire Protection Systems Reference Dates (7/18/2019)

Building Permit Date	Codes	NFPA References
All Buildings up to March 15, 1988	Ordinance 4598 (June 14, 1976) and the "Rules of the Fire Department City and County of Honolulu on Matters Related to the Testing of Fire Extinguishing Systems" (January 12, 1977). 1967 UBC Vol.1	1. NFPA 13
March 16, 1988 to July 20, 1992	1985 Uniform Fire Code (UFC) Appendix III-A and referenced NFPA standards	<p>Water-Based Systems</p> <ol style="list-style-type: none"> 1. NFPA 25 - Water-Based Fire Protection Systems - Not Applicable 2. NFPA 13A - Recommended Practice for the Care and Maintenance of Sprinkler System - 1978 Edition. Referenced by 1985 UFC Standard, Appendix B. 3. NFPA 15 - Water Spray Fixed Systems for Fire Protection - 1979 Edition. As referenced by 1985 UFC Standard, #79-2
		<p>Other Systems</p> <ol style="list-style-type: none"> 1. NFPA 11 - Low-Expansion Foam – 1983 Edition 2. NFPA 11A - Medium- and High-Expansion Foam Systems - 1983 Edition 3. NFPA 12 - Carbon Dioxide Extinguishing Systems - 1985 Edition 4. NFPA 12A - Halon 1301 Fire Extinguishing Systems - 1980 Edition 5. NFPA 17 - Dry Chemical Extinguishing Systems - 1985 Edition 6. NFPA 96 - Removal of Smoke and Grease Laden Vapors from Commercial Cooking Equipment - 1984 Edition

Building Permit Date	Codes	NFPA References
July 21, 1992 to October 9, 2002	1988 Uniform Fire Code Appendix III-C and referenced NFPA standards	<p>Water-Based Systems</p> <ol style="list-style-type: none"> 1. 1988 Uniform Fire Code - Appendix III-C (Testing Fire-Extinguishing Systems, Standpipes and Combination Systems). 2. NFPA 13A – Recommended Practice for the Care and Maintenance of Sprinkler Systems - 1978 Edition. As referenced by 1985 UFC Standards, Appendix B.

		<p>3. NFPA 15 - Water Spray Fixed Systems - 1988 UFC Standards (Volume II) which references NFPA 15, 1979 Edition with amendments. NOTE: The 1988 UFC references the 1985 Edition.</p>
		<p>Other Systems</p> <p>1. NFPA 11 - Foam Extinguishing Systems - 1988 UFC Standards (Volume II) which references NFPA 11, 1978 Edition with amendments.</p> <p>2. NFPA 11A - Medium and High-Expansion Foam Systems - 1988 Edition.</p> <p>3. NFPA 12 - Carbon dioxide Extinguishing Systems - 1985 Edition.</p> <p>4. NFPA 12A - Halon 1301 Fire Extinguishing Systems - 1987 Edition.</p> <p>5. NFPA 17 - Dry Chemical Extinguishing Systems - 1985 Edition.</p> <p>6. NFPA 17A - Wet Chemical Extinguishing Systems - 1986 Edition.</p> <p>7. NFPA 96 - Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment - 1987 Edition.</p>

Building Permit Date	Codes	NFPA References
October 10, 2002 to January 1, 2010	1997 Uniform Fire Code Appendix III-C and referenced NFPA standards	<p>Water-Based Systems</p> <p>1. NFPA 25 - Water-Based Fire Protection Systems - 1997 UFC Appendix Standard A-III-C-1 (Volume II) which references and amends NFPA 25, 1992 Edition</p> <p>2. NFPA 15 - Water Spray Fixed Systems - 1997 UFC Standards (Volume II) which references NFPA 15, 1990 Edition</p>
		<p>Other Systems</p> <p>1. NFPA 11 - Low-Expansion Foam - 1997 UFC Standards (Volume II) which references NFPA 11, 1988 Edition</p> <p>2. NFPA 11A - Medium and High-Expansion Foam Systems - 1994 Edition</p> <p>3. NFPA 12 - Carbon Dioxide Extinguishing Systems - 1993 Edition</p> <p>4. NFPA 12A - Halon 1301 Fire Extinguishing Systems - 1997 Edition</p> <p>5. NFPA 17 - Dry Chemical Extinguishing Systems - 1994 Edition</p> <p>6. NFPA 17A - Wet Chemical Extinguishing Systems - 1994 Edition</p>

		<ol style="list-style-type: none"> 7. NFPA 96 - Ventilation Control and Fire Protection of Commercial Cooking Operations - 1994 Edition 8. NFPA 2001 - Clean Agent Fire Extinguishing Systems - 1996 Edition <p style="text-align: center;">Fire Alarm Systems</p> <ol style="list-style-type: none"> 1. NFPA 72 - Installation, Maintenance, and Use of Fire Protection Signaling Systems -1997 UFC Standard 10-2 which references NPFA 72, 1993 Edition
Building Permit Date	Codes	NFPA References
January 2, 2010 to July , 2014	Hawaii State Fire Code (NFPA 1, 2006 edition) and referenced NFPA standards	<p style="text-align: center;">Water-Based Systems</p> <ol style="list-style-type: none"> 1. NFPA 15 - Standard for Water Spray Fixed Systems for Fire Protection, 2001 Edition 2. NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2002 Edition. <p style="text-align: center;">Other Systems</p> <ol style="list-style-type: none"> 1. NFPA 11 - Standard for Low-, Medium-, and High-Expansion Foam - 2005 Edition 2. NFPA 12 - Standard on Carbon Dioxide Extinguishing Systems, 2005 Edition 3. NFPA 12A - Standard on Halon 1301 Fire Extinguishing Systems, 2004 Edition 4. NFPA 17 - Standard for Dry Chemical Extinguishing Systems, 2002 Edition 5. NFPA 17A - Standard for Wet Chemical Extinguishing Systems, 2002 Edition 6. NFPA 96 - Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 Edition 7. NFPA 2001 - Standard on Clean Agent Fire Extinguishing Systems, 2004 Edition <p style="text-align: center;">Fire Alarm Systems</p> <ol style="list-style-type: none"> 1. NFPA 72 - National Fire Alarm Code, 2002 Edition

Building Permit Date	Codes	NFPA References
July 2014 to Present	Hawaii State Fire Code (NFPA 1, 2012 edition) and referenced NFPA standards	<p style="text-align: center;">Water-Based Systems</p> <ol style="list-style-type: none"> 1. NFPA 15 - Standard for Water Spray Fixed Systems for Fire Protection, 2012 Edition 2. NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 Edition.
		<p style="text-align: center;">Other Systems</p> <ol style="list-style-type: none"> 1. NFPA 11 - Standard for Low-, Medium-, and High-Expansion Foam - 2010 Edition 2. NFPA 12 - Standard on Carbon Dioxide Extinguishing Systems, 2011 Edition 3. NFPA 12A - Standard on Halon 1301 Fire Extinguishing Systems, 2009 Edition 4. NFPA 17 - Standard for Dry Chemical Extinguishing Systems, 2009 Edition 5. NFPA 17A - Standard for Wet Chemical Extinguishing Systems, 2009 Edition 6. NFPA 96 - Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 Edition 7. NFPA 2001 - Standard on Clean Agent Fire Extinguishing Systems, 2012 Edition
		<p style="text-align: center;">Fire Alarm Systems</p> <ol style="list-style-type: none"> 1. NFPA 72 - National Fire Alarm Code, 2010 Edition

§12-45.4-49 Fire protection systems existing assembly occupancies.
 Section 13.3.2.8 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-50 Fire protection systems existing educational occupancies.
 Section 13.3.2.10 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-51 Fire protection systems existing health care occupancies.
Section 13.3.2.12 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-52 Fire protection systems existing detention and correctional facilities. Section 13.3.2.14 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-53 Fire protection systems existing hotels and dormitories.
Section 13.3.2.16 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-54 Fire protection systems existing residential board and care facilities. Section 13.3.2.22 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-55 Fire protection systems existing mercantile occupancies.
Section 13.3.2.24 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-56 Fire protection systems high-rise buildings. Section 13.3.2.26.2 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-57 Fire protection systems table. Sections 13.3.3.2.1, 13.3.3.2.2, 13.3.3.2.3, 13.3.3.2.4, 13.3.3.2.5, and 13.3.3.2.6 are added to read as follows: 13.3.3.2.1 Table 13.2.3.4.3A entitled “Fire Protection Systems Reference Dates” dated 7/18/2019 may be used as a reference for applicable codes and standards in effect when the building was permitted.

13.3.3.2.2 Pretest. The following requirements apply to all pretesting procedures:

- (1) An air test shall be conducted on the piping between the fire department connection and the sprinkler riser;
- (2) The piping shall be filled with 25 pounds per square inch of air and held for 15 minutes. No drop in pressure is allowed;
- (3) An air test need not be conducted when the piping is above ground and less than five feet in length; and
- (4) Automatic fire sprinkler system without a fire department connection does not require an air test.

13.3.3.2.3 Inspection, Testing, and Maintenance Label. It shall be unlawful to inspect, test, or maintain any automatic fire sprinkler system without providing an approved label signifying successful testing of the system.

- (1) An approved inspection, testing, and maintenance label shall be affixed to the fire department connection and the sprinkler riser. Automatic fire sprinkler systems that do not have a fire department connection shall have the label affixed to the riser.
- (2) The label shall indicate the type of system; month and year the system was tested; certificate of fitness holder's name and number; and the company's name, address, and contact information.
- (3) The label shall be clearly visible and punched with no more than one year and one month.

13.3.3.2.4 The fire department shall be verbally notified immediately of any system determined to be out of service. Systems that cannot be utilized for fire fighting operations shall have an inoperable system sign affixed to the fire department connection. The sign shall remain in place until all repairs have been made and a satisfactory inspection, test, and maintenance system test is completed.

13.3.3.2.5 Inspection, Testing, and Maintenance Report. Annex G, Exhibit C, entitled "Automatic Fire Sprinkler System Annual Test Report," or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after the test.

13.3.3.2.6 An electronic copy of the unsatisfactory report shall be submitted to the AHJ within five working days. Submittal of a satisfactory inspection, testing, and maintenance report will be determined by the AHJ. [Eff]
(Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-58 Stationary fire pump inspection, testing, and maintenance.

Section 13.4.8 is amended to add sections 13.4.8.1 and 13.4.8.2 as follows:

13.4.8.1 Inspection, Testing, and Maintenance Label. Satisfactory inspection, testing, and maintenance system's tests shall have an approved inspection label affixed to the fire pump controller. The label shall follow the guidelines found in the water-based fire extinguishing systems inspection labels, tags, and collars.

13.4.8.2 Inspection, Testing, and Maintenance report. Annex G, Exhibit D, entitled "Fire Pump Annual Test Report," or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after the test.

[Eff] (Auth : RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.4-59 Private fire service mains inspection, testing, and maintenance.

Section 13.5.4.2 is amended to read as follows: 13.5.4.2 A private fire service main installed in accordance with this code or the AHJ's water department shall be inspected, tested, and maintained in accordance with NFPA 25 and the AHJ's water department's inspection, testing, and maintenance standards.

[Eff] (Auth: RCH §4-10; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.4-60 Private service mains inspection, testing, and maintenance schedule.

Sections 13.5.4.3, 13.5.4.4, 13.5.4.5, 13.5.4.6, and 13.5.4.7 are added to read as follows: 13.5.4.3 Testing. Annual inspection, testing, and maintenance shall be conducted by the certificate of fitness holder. If, during use, the hydrant does not perform adequately, it shall be tested and, if needed, restored to its proper operation by a licensed certificate of fitness holder.

13.5.4.4 Fire hydrants that fail the inspection, test, and maintenance shall have a readily visible, attached "OUT OF SERVICE" sign. The sign shall have a yellow background with black letters and be constructed of wood, metal, or plastic. The letters shall be a minimum height of three inches and a minimum width of one-fourth of an inch stroke. The sign shall remain in place until all repairs have been made and a satisfactory hydrant inspection, test, and maintenance is completed.

13.5.4.5 The fire department shall be verbally notified immediately of any fire hydrant determined to be out of service. Fire hydrants deemed to be permanently inoperable or unusable shall be replaced.

13.5.4.6 Inspection, test, and maintenance report. An inspection, test, and maintenance report Annex G, Exhibit E entitled “Wet Barrel Hydrant Maintenance Report” or Annex G, Exhibit F entitled “Dry Barrel Hydrant Maintenance Report” or similar report approved by the AHJ, shall be provided to the property owner or agent within 14 days after the test.

13.5.4.7 An electronic copy of the unsatisfactory test report shall be submitted to the AHJ within five working days of the test. The AHJ shall determine if the submittal of a satisfactory inspection, test, and maintenance report will be required. [Eff _____] (Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.4-61 Annual maintenance record keeping. Section 13.6.4.3.4.1.1 is amended to read as follows: The tag or label, at minimum, shall entail the following:

- (1) Removal of the previous tag or label;
- (2) Indication of the month and year the maintenance was performed;
- (3) Type of portable fire extinguisher tested;
- (4) Certificate of fitness holder’s name and number;
- (5) Certificate of fitness holder’s company name, address, and contact information;
- (6) Be yellow, at least two and one-fourth of an inch in width, three and one-fourth of an inch in length, and clearly visible without opening any cabinets;
- (7) Be constructed of a durable material approved by the AHJ;
- (8) Be punched with no more than one year and one month of the date of service; and
- (9) Not obstruct the portable fire extinguisher classification or instructions for use. [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-62 Extinguisher maintenance six-year internal examination label. Section 13.6.4.3.6.5.3 is amended to read as follows: 13.6.4.3.6.5.3 The six-year internal examination label, at minimum, shall entail the following:

- (1) Removal of the previous six-year internal examination label;
- (2) Indication of the month and year the six-year internal examination was performed;
- (3) Certificate of fitness holder’s name and number;

- (4) Certificate of fitness holder's company name, address, and contact information;
 - (5) Type of portable fire extinguisher tested;
 - (6) Be silver or white and at least two and one-fourth of an inch in width and three and one-fourth of an inch in length; and
 - (7) Not obstruct the portable fire extinguisher classification, instructions for portable fire extinguisher use, or manufacturer's labels.
- [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-63 Extinguisher maintenance service collar information.

Section 13.6.4.11.3 is amended to read as follows: 13.6.4.11.3 The verification of service collar shall, at minimum:

- (1) Indicate the month and year the examination was performed;
 - (2) Display the certificate of fitness holder's name and number;
 - (3) Display the certificate of fitness holder's company name, address, and contact information;
 - (4) Be a single, circular piece of uninterrupted material forming a hole of a size that does not permit the collar assembly to move over the neck of the container, unless the valve is completely removed; and
 - (5) Not interfere with the operation of the fire extinguisher.
- [Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-45.4-64 Positive alarm sequence occupant notification. Section 13.7.1.9.4 is amended to read as follows: 13.7.1.9.4 Where permitted by Chapters 11 through 43 of NFPA 101, a positive alarm sequence shall be permitted, provided it is in accordance with NFPA 72. The following additional requirements shall also apply:

- (1) An automatic fire sprinkler system installed in conformance with the building code shall be provided throughout the building or facility;
- (2) Written fire emergency procedures and an evacuation plan for the building or facility shall be reviewed by the AHJ prior to approval testing. The procedures and plan shall include, but not be limited to, immediate notification to the fire department, use of primary and secondary exits, and use of fire protection appliances for the building(s) or facility(ies);
- (3) Trained personnel shall respond to emergencies on a 24-hour basis. The staff shall be instructed in fire emergency procedures and the use and operation of in-house fire appliances. Documentation of such training shall be maintained and filed on the premises;

- (4) Immediate notification of the fire department shall take place upon activation of any fire alarm-initiating device;
- (5) The AHJ shall conduct a test of the positive alarm sequence prior to implementation; and
- (6) The AHJ may disapprove or rescind approval of the positive alarm sequence of the fire alarm system if all of the above requirements are not met and shall require the fire alarm system to be reprogrammed to meet a general alarm notification at the owner's expense.
[Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-65 New and existing lodging and rooming houses. Sections 13.7.2.14.1, 13.7.2.14.2, 13.7.2.14.3, and 13.7.2.14.4 are deleted in their entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-66 Existing apartment buildings. Sections 13.7.2.18.1, 13.7.2.18.2, 13.7.2.18.3, and 13.7.2.18.4 are deleted in their entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-67 Existing mercantile occupancies. Section 13.7.2.24 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-68 Existing business occupancies. Section 13.7.2.26 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-69 Existing day care and health care occupancies. Sections 13.7.2.6 and 13.7.2.8 are deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-70 Fire alarm systems inspection, testing, and maintenance notification. Section 13.7.3.2.4 is amended by adding section 13.7.3.2.4.1.1 to read as follows: 13.7.3.2.4.1.1 The county fire department shall be given a 72-hour notification prior to a scheduled inspection, testing, maintenance, or retesting of any fire alarm systems within their respective jurisdiction. [Eff]
(Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-71 Fire alarm systems inspection, testing, and maintenance labels. Section 13.7.3.2.4 (this was misnumbered) is amended by adding sections 13.7.3.2.4.4.1, 13.7.3.2.4.4.2, 13.7.3.2.4.4.3, and 13.7.3.2.4.4.4 to read as follows: 13.7.3.2.4.4.1 Labels. Fire alarm systems passing an annual inspection, testing, and maintenance test shall have an approved label affixed to the annunciator panel or, if not present, the fire alarm system control panel in accordance with section 13.7.3.2. Information on the label, at a minimum, shall entail the following:

- (1) Removal of the previous label;
- (2) Indication of the month and year the satisfactory test was performed;
- (3) Certificate of fitness holder's name and number;
- (4) Certificate of fitness holder's company name, address, and contact information;
- (5) Be yellow, at least two and one-fourth of an inch in width, and three and one-fourth of an inch in length;
- (6) Be clearly visible without obstructing the visibility or operation of the annunciator panel or, if not present, fire alarm system control panel; and
- (7) The label shall be clearly visible and punched with no more than one year and one month.

13.7.3.2.4.4.2 Fire alarm systems failing an annual inspection, test, and maintenance test shall leave the expired inspection tag or label in place on the annunciator panel or, if not present, the fire alarm system control panel until the system is repaired.

13.7.3.2.4.4.3 The AHJ and the building owner shall be verbally notified immediately when a fire alarm system becomes inoperable. Alternative notification and response plans shall be implemented after approved by the AHJ until the fire alarm system is fully operational.

13.7.3.2.4.4.4 Annex G, Exhibit G entitled "Fire Alarm System Inspection, Maintenance, and Testing Report" or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after a satisfactory test.

[Eff _____] (Auth: HRS §132-16) (Imp: HRS §132-16; SLH 2014, Act 165)

§12-45.4-72 Fire alarm systems inspection, testing, and maintenance tag. Section 13.7.3.2.4.7 is amended by adding as follows: Section 13.7.3.2.4.7 Tag. A tag shall be placed on the fire alarm panel when tested in accordance with NFPA 72. Information on the tag shall include the date of testing, testing company and contact information, technician performing the test and certificate of fitness number, and indicate satisfactory test result. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-73 Fire alarm systems manually activated alarm-initiating devices. Section 13.7.3.3.8.4 is amended to add a new sentence at the end to read as follows: The location of manual fire alarm boxes may be modified by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-74 Other fire protection systems compliance. Section 13.8 is amended to read as follows: Section 13.8. Other Fire Protection Systems. Where other fire protection systems are required to be installed by the provisions of this code or are installed with the approval of the AHJ as an alternative or equivalency, the design and installation of the system shall comply with the appropriate standards listed in Table 13.8. The systems shall be inspected, tested, and maintained in accordance with the appropriate NFPA standard. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-75 Other fire protection systems inspection, testing, and maintenance label. Section 13.8 is amended to add as follows: Section 13.8.1 Inspection, Testing, and Maintenance Label. Other fire protection systems satisfactorily passing an inspection, testing, and maintenance test shall have an approved label affixed to the manual activation device or, if not present, actuator valve to the extinguishing agent. The label shall, at a minimum, entail the following:

- (1) Removal of the previous label;
- (2) Indication of the type of system and the month and year the system was tested;

- (3) Certificate of fitness holder's name and number;
- (4) Certificate of fitness holder's company name, address, and contact information;
- (5) Be yellow, at least two and one-fourth of an inch in width, and three and one-fourth of an inch in length;
- (6) Be constructed of a durable material approved by the AHJ;
- (7) Be clearly visible without obstructing the visibility or operation of the system; and
- (8) Be punched with no more than one year and one month.

13.8.2 Hydrostatic Testing. Every 12 years from the date of manufacture, stored pressure extinguishing agent cylinders shall be hydrostatically tested.

13.8.3 Hydrostatic Testing Label. Stored pressure extinguishing agent cylinders satisfactorily passing a 12-year hydrostatic test shall, at a minimum, have a label attached to the cylinder as follows:

- (1) Removal of the previous label;
- (2) Indication of the type of system and the month and year the system was tested;
- (3) Certificate of fitness holder's name and number;
- (4) Certificate of fitness holder's company name, address, and contact information;
- (5) Be yellow, at least two and one-fourth of an inch in width, and three and one-fourth of an inch in length;
- (6) Be constructed of a durable material approved by the AHJ;
- (7) Be clearly visible without obstructing the visibility or operation of the system; and
- (8) Be punched with no more than one year and one month.

13.8.4 The fire department shall be verbally notified immediately of any systems determined to be out of service. Systems that cannot be utilized for fire fighting operations shall have an inoperable system sign affixed to the manual activation device. The sign shall remain in place until all repairs have been made and a satisfactory system test is completed.

13.8.5 Inspection, testing, and maintenance report. Annex G, Exhibit H, entitled "Other Fire Protection System Inspection, Testing, and Maintenance Report"

or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after the test.

13.8.6 Inspection Report. An electronic copy of the unsatisfactory test report shall be submitted to the AHJ within five working days. The AHJ shall determine if the submittal of a satisfactory test report will be required.

13.8.7 Table 13.2.3.4.3A entitled “Fire Protection Systems Reference Dates” dated 7/18/2019 may be used as a reference for applicable codes and standards in effect when the building was permitted. [Eff] (Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.4-76 Means of egress application. Section 14.1 is amended to read as follows: 14.1 Means of egress application. Means of egress in existing buildings shall comply with this code and NFPA 101, Life Safety Code. The provisions of this chapter do not apply to new construction. For new construction, see the building code. Existing buildings shall be maintained to meet the requirements of the building code at the time the structure was built, unless specifically indicated for existing facilities. Provisions in this chapter are provided for maintenance purposes.

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

§12-45.4-77 Screen door assemblies and storm door assemblies. Section 14.5.1.4 is amended by adding an exception at the end to read as follows: Exception: Double-acting screen doors used in conjunction with exit doors having panic hardware in school cafeteriums do not need to comply with this provision. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-78 Locks, latches, and alarm devices. Section 14.5.2.13 is added to read as follows: 14.5.2.13 In accordance with the building code, security gates may be permitted across corridors or passageways in school buildings if there is a readily visible durable sign on or adjacent to the gate stating “THIS GATE IS TO REMAIN SECURED IN THE OPEN POSITION WHENEVER THIS BUILDING IS IN USE.” The sign shall be in letters no less than one inch high on a contrasting

background. The use of this exception may be revoked by the building official for due cause. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-79 Allowable occupant load increases. Section 14.8.1.3.1 is amended to read as follows: 14.8.1.3.1 The occupant load in any building or portion thereof shall be allowed to be increased from the occupant load established for the given use in accordance with the building code where all other requirements of this code are also met based on such increased occupant load. Occupant load increases shall be approved by the AHJ. The fire department shall be notified of any increase in occupant load. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-80 Egress capacity. Section 14.8.3.1 is amended to read as follows: 14.8.3.1 Egress capacity for approved components of means of egress shall be based on the capacity factors shown in the building code. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-81 Special signs at elevators. Section 14.14.8 is amended to add as follows: 14.14.8.4 At all elevator locations on each floor level above and below the floor of exit discharge, there shall be displayed in a conspicuous location a sign reading: "IN CASE OF FIRE, USE EXIT STAIRWAYS. DO NOT USE ELEVATORS." Lettering shall be no less than 5/8-inch high.

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

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

§12-45.4-82 Water supply during construction. Section 16.4.3.1.1 is amended to read as follows: 16.4.3.1.1 A water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material is present. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-83 Required access. Section 18.2.3.1.3 is amended to read as follows: 18.2.3.1.3 The provisions of 18.2.3.1 through 18.2.3.2.2.1 shall be permitted to be modified by the AHJ where any of the following conditions exists:

- (1) No more than two one- and two-family dwellings protected by an approved automatic sprinkler system in accordance with Section 13.1;
- (2) No more than two existing one- and two-family dwellings;
- (3) Private garages having an area not exceeding 1,000 square feet;
- (4) Carports having an area not exceeding 1,000 square feet;
- (5) Agricultural buildings having an area not exceeding 1,000 square feet; and
- (6) Sheds and other detached buildings having an area not exceeding 1,000 square feet. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-84 Fire department access road widths. Section 18.2.3.5.1.1 is amended to read as follows: 18.2.3.5.1.1 Fire department access roads shall have an unobstructed width of no less than 20 feet (6.1 meters) or as approved by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-85 Fire department access road vertical clearance. Section 18.2.3.5.1.2 is amended to read as follows: 18.2.3.5.1.2 Fire department access roads shall have an unobstructed vertical clearance of no less than 13 feet six inches (4.1 meters) or as approved by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-86 Fire department access roads bridges, or culverts. Section 18.2.3.5.5.1 is amended to read as follows: 18.2.3.5.5.1 When a bridge or culvert is required to be used as part of a fire apparatus access road, it shall be constructed and maintained in accordance with county requirements. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-87 Fire department access roads bridges, or culverts live loads. Section 18.2.3.5.5.2 is amended to read as follows: 18.2.3.5.5.2 The bridge or culvert shall be designed for a live load sufficient to carry the imposed loads of a fire apparatus. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-88 Water supply fire flow. Section 18.3.1 is amended to read as follows: 18.3.1 An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. The approved water supply shall be in accordance with Section 18.4. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-89 Minimum number of fire hydrants for fire flow. Section 18.5.4.1 is amended to read as follows: 18.5.4.1. The minimum number of fire hydrants needed to deliver the required fire flow for new buildings in accordance with Section 18.4 shall be determined in accordance with Section 18.5.4 or as approved by the AHJ. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-90 Hydrants out of service. Section 18.5.9.1 is amended by adding a paragraph to read as follows: The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance. Records shall be made available for review by the AHJ upon request. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-91 Nonmetallic containers. Section 19.2.1.2.1 is amended by adding an exception at the end to read as follows:
Exception: Containers used by one- and two-family dwellings for refuse pickup. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-92 Flame-retardant requirements. Section 20.1.2.1 is amended by adding a new sentence at the end to read as follows: A record of fire-resistant treatment shall be kept on the premises for review by the AHJ. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-93 Means of egress floor plan. Section 20.1.5.1.4 is added to read as follows: 20.1.5.1.4 A floor plan indicating the seating arrangements, and location and width of exit ways and aisles shall be submitted to the AHJ for review

for places of assembly with an occupant load of 300 or more persons. A copy of the plan shall be kept on display on the premises. An exit plan shall also be posted in a conspicuous location near the main entrance and maintained in a legible condition by the building owner or agent. The building owner or agent shall be responsible for the inspection before each show or event of all required means of egress from each part of the building, including stairways, egress doors, and any panic hardware installed thereon, aisles, and corridors. Passageways and similar elements of the means of egress shall be available for immediate use and free of obstructions before each show or event. The building owner or agent shall inform patrons of required exit locations before each show or event in places of assembly with an occupant load of 300 or more persons. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-94 Means of egress inspection overcrowding. Section 20.1.5.1.5 is added to read as follows: 20.1.5.1.5 Authority to Stop Performance. Overcrowding and admittance of persons beyond the approved capacity of a place of assembly are prohibited. The AHJ, upon finding overcrowding conditions or obstructions in aisles, passageways, or other means of egress or upon finding a condition which constitutes an imminent danger, is authorized to cause the performance, presentation, spectacle, or entertainment to be stopped until such conditions or obstructions are corrected. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-95 Assembly open flame devices and pyrotechnics general. Section 20.1.5.3, Item (1) is amended to read as follows:

- (1) Pyrotechnic special effect devices shall be permitted to be used on stages before proximate audiences for ceremonial or religious purposes as part of a demonstration in exhibits or as part of a performance, provided that all of the following criteria are met:
 - (a) Precautions satisfactory to the AHJ are taken to prevent ignition of any combustible material;
 - (b) Use of the pyrotechnic device complies with Section 65.3;
 - (c) Use of pyrotechnic devices indoors shall only be allowed in buildings protected throughout with automatic fire sprinklers; and
 - (d) Use of pyrotechnic devices indoors shall only be allowed in buildings where all fire and life safety systems are deemed appropriate as determined by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-96 Assembly open flame devices and pyrotechnics fire prevention. Section 20.1.5.3 is amended by adding paragraphs (7) and (8) to read as follows:

- (7) When approved by the AHJ, open-flame devices may be used by performers, provided adequate precautions are taken to prevent ignition of combustible materials. Such devices shall not be used, except in areas protected by an automatic sprinkler system. In addition, a minimum 20 foot clearance to the viewing audience shall be provided or an approved barrier shall be erected to prevent accidental release onto the viewing audience. Performances with fire shall provide a plan approved by the AHJ. The plan shall address fuel use and storage, device ignition, device usage, and extinguishment procedures.
- (8) Portable heating equipment, not flue-connected, shall be allowed only as follows: Equipment fueled by small heat sources, which can be readily extinguished by water, such as candles or alcohol-burning equipment (including solid alcohol), may be used provided adequate precautions approved by the AHJ are taken to prevent ignition of any combustible materials. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.4-97 Use of school facilities for sleeping. Section 20.2.2.6 is added to read as follows: 20.2.2.6 Use of Educational Facilities for Sleeping. Educational occupancies that allow sleeping on a temporary basis shall:

- (1) Have the sleeping location approved by the AHJ;
- (2) Notify the AHJ no less than five days prior to the event;
- (3) Prohibit smoking and open flames and shall provide one of the following:
 - (a) Smoke alarms in the designated sleeping area. When the facility is provided with a fire alarm system, the smoke alarms shall be connected to the fire alarm system; and
 - (b) A fire watch approved by the AHJ. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-98 Emergency egress drills in schools. Section 20.2.4.2.3, paragraph (1) is amended by adding a new exception at the end to read as follows:

Exception: Fire drills at high schools, middle schools, and intermediate schools shall be conducted at least quarterly during school sessions.

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

§12-45.5-99 Manufactured housing. Section 20.11.5 is deleted in its entirety. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-100 Tents and temporary membrane structures. Section 25.1.1 is amended by adding an exception at the end to read as follows:

Exception: The provisions of this section do not apply to tents and temporary membrane structures having an area 700 square feet or less.

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

§12-45.5-101 Physical protection for outside aboveground tanks. Section 42.3.3.7.2 is amended to read as follows: 42.3.3.7.2 Guard posts or other approved means shall be provided to protect tanks and appurtenances that are subject to vehicular damage in accordance with section 60.5.1.9.

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

§12-45.5-102 Emergency electrical disconnect signs. Section 42.5.7 is amended by adding the following sentences at the end as follows: Such devices shall be distinctly labeled as “EMERGENCY FUEL SHUTOFF DEVICE.” Signs shall be provided in approved locations. The signs shall be in red letters on a white background and no less than two inches high with a one-fourth inch stroke.

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

§12-45.5-103 Fuel dispensing age limitation. Section 42.7.1 is amended to read as follows: 42.7.1.1 Age Limitation. Persons under the eligible age to obtain a driver’s license are prohibited from dispensing fuel.

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

§12-45.5-104 Fuel dispensing prohibition of foreign objects. Section 42.7.1 is amended to read as follows: 42.7.1.2 Foreign Objects. The placement of a foreign object(s) that allows the fuel-dispensing lever to remain in the open position is prohibited at all times. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-105 Fuel dispensing signs. Section 42.7.2.6.4 is amended to read as follows: 42.7.2.6.4 Signs. Warning signs shall be conspicuously posted in the dispensing area and incorporate the following or equivalent wording:

WARNING:

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

No smoking.

Stop motor.

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

Place container on ground before filling.

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

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

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

Do not allow individuals under licensed age to use the pump.

The placement of a foreign object(s) that allows the fuel-dispensing lever to remain in the open position is prohibited at all times.

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

§12-45.5-106 Attended self-service fuel dispensing prohibition of foreign objects . Section 42.7.4 is amended to read as follows: 42.7.4.3.2 The placement of a foreign object that allows the fuel-dispensing lever to remain in the open position is prohibited at all times. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-107 Unattended self-service fuel dispensing prohibition of foreign objects. Section 42.7.5.4.1 is added to read as follows: 42.7.5.4.1 The placement of a foreign object that allows the fuel-dispensing lever to remain in the open position is prohibited at all times. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-108 Flammable finish spray booth inspection, testing, and maintenance. Section 43.1.7 is amended to read as follows: 43.1.7.1.4 Flammable finishing spray booth and spray room installed in accordance with this code shall be inspected, tested, and maintained in accordance with NFPA 17, 25, 33, 34, and 2001.

43.1.7.1.5 Inspection tag, label, and collar. Refer to the chapter on automatic fire sprinklers and other fire protection systems.

43.1.7.1.6 Inspection Report. Refer to the chapter on automatic fire sprinklers and other fire protection systems for requirements.
[Eff] (Auth: Revised Charter of Honolulu [RCH] §4-105; Revised Ordinances of Honolulu [ROH] §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.5-109 Commercial cooking extinguishing system acceptance test. Section 50.4.3 is amended by adding as follows: 50.4.3.4. Prior to the commencement of initial cooking operations, a satisfactory acceptance test of the system shall be made in accordance with the manufacturer's instructions. The acceptance test shall be of an approved method and witnessed by the AHJ.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-110 Inoperable commercial cooking extinguishing or exhaust system. Section 50.5.1.6.1 is amended to read as follows: Where the fire extinguishing system or exhaust system is inoperable, the AHJ shall be verbally notified immediately. Where systems are tested as unsatisfactory, the systems' owner or owner's representative shall be notified in writing of the impairment.
[Eff] (Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.5-111 Commercial cooking inspection, testing, and maintenance reference table. Section 50.5.2.2 is amended to read as follows: 50.5.2.2.1 A list of the appropriate commercial cooking extinguishing systems are found in Table 13.2.3.4.3.A entitled "Fire Protection Systems Reference Dates." Other systems shall be approved by the AHJ. [Eff] (Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.5-112 Commercial cooking extinguishing system inspection, testing, and maintenance reports. Section 50.5.2 is amended by adding Sections 50.5.2.8.2 and 50.5.2.8.3 to read as follows:

50.5.2.8.2 Annex G, Exhibit I entitled “Commercial Cooking Extinguishing System Inspection, Testing, and Maintenance Report” or similar report approved by the AHJ shall be provided to the property owner or agent within 14 days after the test.

50.5.2.8.3 An electronic copy of the unsatisfactory test report shall be submitted to the AHJ within five working days. The AHJ shall determine if the submittal of a satisfactory test report will be required. [Eff]
(Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.5-113 Commercial cooking extinguishing system inspection, testing, and maintenance tag. 50.5.3.3 is amended by adding Section 50.5.3.3.3 to read as follows: 50.5.3.3.3 Inspection tag. Commercial cooking extinguishing systems passing an inspection shall have an approved tag affixed to the hood’s extinguishing system piping near the manual activation device. The tag or label, at a minimum, shall entail the following:

- (1) Removal of the previous label;
 - (2) Type of system tested;
 - (3) Month and year the system was tested;
 - (4) Certificate of fitness holder’s name and number;
 - (5) Certificate of fitness holder’s company name, address, and contact information;
 - (6) Be yellow, at least two and one-fourth of an inch in width, and three and one-fourth of an inch in length without any visual obstructions;
 - (7) Be constructed of a durable material approved by the AHJ; and
 - (8) Be punched with no more than one year and one month.
- [Eff] (Auth: RCH §4-105; ROH §1-9.1; HRS §132-2) (Imp: HRS §132)

§12-45.5-114 Hazardous materials management plan (HMMP) on site. Section 60.1.6 is amended by adding Section 60.1.6.4 to read as follows: The HMMP shall be made available on site. [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-115 Hazardous materials protection from vehicles. Section 60.5.1.9.2, item (2) is amended to read as follows:

- (2) They shall be spaced no more than three feet between posts on center.
 [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-116 Fireworks removal. Section 65.1 is amended by adding Section 65.1.3 to read as follows: 65.1.3 The AHJ is authorized to require the owner to remove, at the expense of the owner, all fireworks offered for sale, stored, or possessed in violation of Chapter 65 or other applicable state or county laws or rules. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-117 Fireworks regulation. Section 65.1 is amended by adding Section 65.1.4 to read as follows: 65.1.4 Importation, storage, possession, sale, purchase, transfer, public displays, and discharge of fireworks shall be in accordance with Chapter 132D, HRS. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-118 Fireworks permits. Section 65.9.2.2 is deleted in its entirety. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-119 Consumer fireworks retail sales. Section 65.10 is added to read as follows: Section 65.10 Retail sales of consumer fireworks in new and existing buildings, structures, and facilities shall comply with the requirements of Chapter 6 and 7 of NFPA 1124, 2013 Edition. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-120 Flammable and combustible liquid tank permits. Section 66.1.5 is amended to read as follows: 66.1.5 Permits and Plans. Permits, where required, shall comply with Section 1.12, and applications for permits shall be submitted with a proposed site plan. [Eff _____] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-121 Unpermitted flammable and combustible liquid tank prohibition. Section 66.1.5 is amended by adding Section 66.1.5.1 to read as follows: 66.1.5.1. Filling Unpermitted Tanks Prohibited. No fuel supplier shall fill or cause to be filled an unpermitted storage tank. It is the supplier's responsibility to request and be presented with a copy of the approved permit issued by the AHJ.
[Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-122 Underground flammable and combustible liquid tank closure in place. Section 66.21.7.4.3.3 is amended to read as follows:
66.21.7.4.3.3 Underground Tanks Permanently Closed in Place. Underground tanks may be permanently closed in place only if a certified structural engineer confirms that the removal of the tank will jeopardize the structural integrity of the existing building. An affidavit attesting to this determination shall be submitted to the AHJ prior to taking permanent closure measures. Tanks permanently closed in place shall meet the following requirements:

- (1) Applicable AHJs shall be notified;
 - (2) A safe workplace shall be maintained throughout the prescribed activities;
 - (3) Flammable and combustible liquids and residues shall be removed from the tank, appurtenances, and piping and disposed of in accordance with regulatory requirements and industry practices using a written procedure;
 - (4) The tank, appurtenances, and piping shall be made safe by purging them of flammable vapors or inerting the potential explosive atmosphere. Confirmation that the atmosphere in the tank is safe shall be by testing of the atmosphere using a combustible gas indicator if purging, or an oxygen meter if inerting, at intervals in accordance with written procedures;
 - (5) Access to the tank shall be made by careful excavation to the top of the tank;
 - (6) Exposed piping, gauging and tank fixtures, and other appurtenances, except the vent, shall be disconnected and removed;
 - (7) The tank shall be completely filled with an inert solid material;
 - (8) The tank vent and remaining underground piping shall be capped or removed;
 - (9) The tank excavation shall be backfilled; and
 - (10) A record of tank size and location and date of permanent closure shall be retained by the owner and a copy submitted to the AHJ.
- [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

§12-45.5-123 Unpermitted liquefied petroleum gases and natural gases tank prohibition. Section 69.1.2 is amended by adding Section 69.1.2.1 to read as follows: 69.1.2.1. Filling Unpermitted Tanks Prohibited. No fuel supplier shall fill or cause to be filled an unpermitted storage tank. It is the supplier's responsibility to request and be presented with a copy of the approved permit issued by the AHJ." [Eff] (Auth: HRS §132-3) (Imp: HRS §132-3)

3. The repeal of Chapter 12-45.3 and the adoption of Chapter 12-45.4 shall take effect ten days after its 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, HRS, which were adopted on January 12, 1982, and filed with the Office of the Lieutenant Governor.

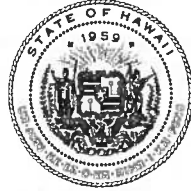
Manuel P. Neves, Chair
State Fire Council

APPROVED AS TO FORM:

Deputy Attorney General

III. New Business – Before Public Hearing

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 71, Certified Public Accountants and Public Accountants, promulgated by Department of Commerce and Consumer Affairs



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

February 11, 2020

MEMORANDUM

TO: Chairperson Kundiff
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

FROM: Catherine P. Awakuni Colón, Director
Department of Commerce and Consumer Affairs

SUBJECT: Small Business Impact Review of the Proposed Amendments to Chapter 71, Title 16, Hawaii Administrative Rules, Relating to Certified Public Accountants and Public Accountants

Attached for your review is the proposal to amend Chapter 16-71, HAR, relating to certified public accountants and public accountants.

I. Proposed Rules:

The Board of Public Accountancy (“Board”) proposes the following amendments to Hawaii Administrative Rules (“HAR”) Chapter 16-71. The reasons for the changes are as follows:

Section 16-71-8 Definitions. This amendment proposes to use consistent language by adding the word “section” to all numerical sections indicated in the definition of “Public accounting practice”. Currently all references to Hawaii Revised Statutes (“HRS”) 466-7 do not include the term “section” or the section symbol “§” prior to the statutory section reference. As such, this amendment would create consistency throughout this section.

Section 16-71-19 Computer-based examination. This amendment to subsection (i) proposes to allow an examination candidate to retake a failed section in the same quarter if the candidate’s grade for the previous attempt of that same section has been released. For your information, the Board utilizes the uniform CPA examination conducted by the National Association of State Board of Accountancy (“NASBA”). An applicant must pass all four sections of the exam before being considered for licensure in the State.

NASBA recently changed their examination policy to allow for “continuous testing”, which would allow an applicant to retake a failed section of the exam upon release of those failed exam scores. NASBA has approved these changes and will be made uniformly available across the United States of America beginning July 1, 2020.

The current language in section 16-71-19 stipulates that Hawaii-based applicants are unable to retake the failed section within the three-month period in which the applicant has an opportunity to take the exam. The Board proposes the amendments to allow Hawaii-based applicants the opportunity to participate in NASBA’s new “continuous testing” policy.

Section 16-71-21 Experience. This amendment to subsection (c)(3) and (d) proposes to change the word license to “permit” to clarify that the supervisors of an applicant holds a permit rather than a license.

Currently, to engage in the practice of public accountancy in the State, a person must obtain both a CPA license and a permit to practice. (See, HRS section 466-7(a)) The Board proposes this amendment to ensure that applicants have experience under the supervision of a person with a PTP who performs public accountancy work as opposed to someone who simply has their CPA license and does not perform public accountancy work.

Section 16-71-33 Basic requirements of study hours. This amendment to subsection (a) proposes to add the requirement of completing a minimum of 20 hours of continuing professional education (“CPE”) within each calendar year to ensure that licensees are earning CPE every year of the biennium. This 20-hour requirement is modeled after the Uniform Accountancy Act (“UAA”) and has been adopted by many other states. The UAA is a model licensing law developed to provide a uniformed approach to regulating the accounting profession and is the foundation for various sections in HRS Chapter 466

Section 16-71-39 Sponsors whose programs automatically qualify. This amendment proposes to update the current names of sponsors from National Society of Public Accountants to “National Society of Accountants” and American Society of Women Accountants to “Accounting and Financial Women’s Alliance”.

For your information, the National Society of Accountants’s name change occurred in 1995, while the Accounting and Financial Women’s Alliance name change occurred in 2013.

Section 16-71-64 Other responsibilities and practices. This amendment to subsection (e) proposes to add “manager of a manager managed limited liability company” to clarify another legal form of firms and positions of responsibility for that firm.

II. Small Business Impact Statement pursuant to section 201M-2, HRS:

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

We do not anticipate any adverse effects on businesses or any additional direct costs for businesses to bear.

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

We do not anticipate any adverse effects.

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

No additional direct or indirect costs are anticipated.

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?

Monetary benefits to the department are not anticipated.

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?

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process we hope to address any concerns.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on the proposed rules.

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

There are no mandated federal, state, or county standards applicable to this area.

III. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to implement and clarify the statutory requirements.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

Chairperson Kundiff
February 11, 2020
Page 4

The department submits these proposed rules and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

If you have any questions, please contact Relley Araceley, Executive Officer, Board of Public Accountancy, (808) 586-2692.

Very truly yours,



CATHERINE AWAKUNI CÓLON
Director

CPAC:RA:la

Attachment

cc: Relley Araceley, Executive Officer

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

Date: 2/11/2020

Department or Agency: DCCA - Professional and Vocational Licensing Division

Administrative Rule Title and Chapter: Title 16 Chapter 71

Chapter Name: Certified Public Accountants and Public Accountants

Contact Person/Title: Relley Araceley - Executive Officer

E-mail: raracele@dcca.hawaii.gov Phone: 586-2692

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: _____

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.

We do not anticipate any adverse effects.

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.

No additional direct or indirect costs are anticipated.

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.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

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.

Monetary benefits to the department are not anticipated.

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.

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process we hope to address any concerns.

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

Currently there are no alternatives to the prospective rule changes.

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.

No direct costs or affects are expected for small businesses.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on the proposed rules.

- 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.

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.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- 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.
- 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.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT_sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 71

CERTIFIED PUBLIC ACCOUNTANTS AND PUBLIC ACCOUNTANTS

Subchapter 1 General Provisions

- §16-71-1 Objective
- §16-71-2 Biennial renewal; continuing professional education in ethics or professional conduct
- §16-71-3 Notification and filing of names and addresses and changes
- §16-71-4 Evidence of authority to practice
- §16-71-4.5 Minimum insurance requirements for a professional corporation

Subchapter 2 Definitions

- §16-71-8 Definitions
- §16-71-9 Repealed
- §16-71-10 Repealed

Subchapter 3 License of Certified Public Accountant

- §16-71-14 Issuance
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- §16-71-16 Competence, trustworthiness, and fairness (references)
- §16-71-17 Education
- §16-71-18 Examination
- §16-71-19 Computer-based examination
- §16-71-19.1 Examination misconduct
- §16-71-20 Repealed
- §16-71-21 Experience
- §16-71-22 Knowledge of laws and rules

Subchapter 4 Permit to Practice

- §16-71-24 Permit to practice
- §16-71-25 Repealed
- §16-71-26 Control and reporting
- §16-71-27 Temporary permit to practice

Subchapter 5 Continuing Professional Education

- §16-71-31 Basic concept
- §16-71-32 Persons covered
- §16-71-33 Basic requirements of study hours
- §16-71-34 Hours which qualify
- §16-71-35 Deficiency in hours and carryover hours
- §16-71-36 Program classifications
- §16-71-37 Requirements for group programs
- §16-71-38 Requirements for individual self-study programs
- §16-71-39 Sponsors whose programs automatically qualify
- §16-71-40 Repealed
- §16-71-41 Requirements for approval by the board
- §16-71-42 Repealed
- §16-71-43 Duration of approval
- §16-71-44 Repealed
- §16-71-45 Information requirements
- §16-71-46 Exceptions
- §16-71-47 Certification to other jurisdiction
- §16-71-48 Exception for temporary permits

Subchapter 6 Repealed

- §16-71-52 Repealed
- §16-71-53 Repealed
- §16-71-54 Repealed
- §16-71-55 Repealed
- §16-71-56 Repealed
- §16-71-57 Repealed

Subchapter 7 Rules of Conduct

- §16-71-61 Independence, integrity, and objectivity
- §16-71-62 Competence and technical standards
- §16-71-63 Responsibilities to clients
- §16-71-64 Other responsibilities and practices

Subchapter 8 Practice and Procedure

§16-71-66 Administrative practice and procedure

Subchapter 9 Oral Testimony

§16-71-69 Oral testimony

SUBCHAPTER 1

GENERAL PROVISIONS

§16-71-1 Objective. This chapter has been adopted by the board of public accountancy, hereafter referred to as [~~"board,"~~] "board", and is intended to clarify chapter 466, Hawaii Revised Statutes, and to implement the administration thereof to the end that chapter 466, HRS, may be best effectuated and the public interest most effectively served. [Eff 1/1/74; am and ren §16-71-1, 6/25/81; am and comp; 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; am and comp] (Auth: HRS §466-4) (Imp: HRS §466-4)

§16-71-2 Biennial renewal; continuing professional education in ethics or professional conduct. (a) Each license of a certified public accountant and a public accountant shall be renewed biennially on or before December 31 of each odd-numbered year by submitting an application, paying a renewal fee, and attesting that the applicant has completed at least four hours of continuing professional education in ethics or professional conduct.

(b) Each permit to practice of a certified public accountant or public accountant shall be renewed biennially on or before December 31 of each odd-numbered year by submitting an application, paying a renewal fee, and complying with the continuing professional education requirements in section 16-71-33.

(c) Each firm permit to practice shall be renewed biennially on or before December 31 of each odd-numbered year by submitting an application and paying a renewal fee. [Eff 11/21/74; ren §1.02, 3/6/80; am and ren §16-71-2, 6/25/81; am and comp 6/8/84, am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp

1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth:
HRS §466-4) (Imp: HRS §§466-4, 466-5, 466-6)

§16-71-3 Notification and filing of names and addresses and changes.

The current mailing address of each certified public accountant, registered public accountant, public accounting firm, and permit holder shall be registered with the board. The board shall be immediately notified in writing, of all changes. [Eff 1/1/74; ren §1.03, 3/6/80; am and ren §16-71-3, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-4)

§16-71-4 Evidence of authority to practice. Each permit holder and

public accounting firm shall at all times display evidence of the authority to practice, together with the certificate or registration and other evidence of current validation, in the permit holder's and public accounting firm's place of business. [Eff 1/1/74; ren §1.05, 11/21/74; ren §1.04, 3/6/80; am and ren §16-71-4, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§466-4, 466-7)

§16-71-4.5 Minimum insurance requirements for a professional corporation. (a) Pursuant to section 415A-11, HRS, a professional accounting corporation may provide security for professional responsibility by procuring errors and omissions insurance or a surety bond issued by an insurance company, or any combination thereof, as the corporation may elect.

(b) The minimum amount of errors and omissions insurance or surety bond issued by an insurance company for a professional accounting corporation shall be \$100,000 for each shareholder; provided that the minimum amount for each professional accounting corporation shall not be less than \$250,000. [Eff and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§415A-11, 466-4)

SUBCHAPTER 2

DEFINITIONS

§16-71-8 Definitions. As used in this chapter:

"Continuing professional education" or "CPE" means a formal course or program of learning from a sponsor approved by the board as provided in this chapter.

"Incidental to a person's practice in such other state or country", as used in section 466-7(c)(4), HRS, means services rendered in this State by a non-licensee for work performed for a client outside the State, such as the audit of a Hawaii subsidiary of an out-of-state parent corporation or an audit of a Hawaii branch or division of an out-of-state partnership, joint venture, or individual proprietorship.

"Not in a public accounting practice" or "not in public practice" means the status of a certified public accountant licensed under section 466-5, HRS, or a public accountant licensed under section 466-6, HRS, or a public accounting firm under section 466-7, HRS, that:

- (1) Does not have a permit to practice under chapter 466, HRS, or this chapter; or
- (2) Is not engaged in any form of public accounting in this State.

"Public accounting practice" or "public practice" means performing, offering to perform, or holding oneself out as being able to perform for a fee one or more types of services involved in the practice of public accountancy by a certified public accountant licensed under section 466-5, HRS, who has a permit to practice under section 466-7, HRS, and section 16-71-24; a public accountant licensed under section 466-6, HRS, who has a permit to practice under section 466-7, HRS, and section 16-71-24; or by a public accounting firm that has a permit to practice under section 466-7, HRS, and section 16-71-24, including but not limited to:

- (1) A sole proprietor or sole practitioner engaged in public accounting practice;
- (2) A partner in a domestic or foreign general, limited, or limited liability partnership of certified public accountants or public accountants, or a combination of both;
- (3) A principal in a domestic or foreign professional accounting corporation;
- (4) A member of a domestic or foreign limited liability company;
- (5) A staff employee of a domestic or foreign public accounting firm as defined in section 466-3, HRS;
- (6) A domestic or foreign professional accounting corporation;

- (7) A domestic or foreign general, limited, or limited liability partnership of certified public accountants or public accountants, or a combination of both; or
- (8) A domestic or foreign limited liability company. [Eff 1/1/74; am and ren §16-71-8, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; am and comp] (Auth: HRS §466-4) (Imp: HRS §§466-4, 466-5, 466-6)

§16-71-9 Repealed.

§16-71-10 Repealed.

SUBCHAPTER 3

LICENSE OF CERTIFIED PUBLIC ACCOUNTANT

§16-71-14 Issuance. A person shall be entitled to the issuance of a license of certified public accountant upon application to the board and upon the satisfactory fulfillment of the requirements set forth in section 466-5(a), HRS. [Eff 1/1/74; am and ren §16-71-14, 6/25/81; am and comp 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-5)

§16-71-15 Application for license. After satisfactorily fulfilling the requirements of section 466-5(a), HRS, an application for a license of certified public accountant shall be filed in accordance with deadline dates established by the board and be accompanied by a fee as provided by the department of commerce and consumer affairs in chapter 16-53. [Eff 1/1/74; am and ren §16-71-15, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; am and comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§466-5, 466-8)

§16-71-16 Competence, trustworthiness, and fairness (references).

Each applicant for a license of a certified public accountant shall submit three letters of reference, from persons not related to the applicant, attesting to the applicant's competence, trustworthiness, and fairness. [Eff 1/1/74; am and ren §16-71-16, 6/25/81; am and comp 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§466-4, 466-5)

§16-71-17 Education. (a) An applicant for a license of certified public accountant shall:

- (1) Present satisfactory evidence that the applicant has received a baccalaureate degree from a university, college, or other four-year institution of learning accredited by a regional or national accrediting agency or association recognized by the Secretary of Education under the requirements of 20 United States Code section 1099b, as amended; or
- (2) Present satisfactory evidence that the applicant has received a baccalaureate or comparable degree from a foreign or U.S. university, college, or other four-year institution of learning and provide evidence that the baccalaureate or comparable degree qualifies the applicant for acceptance for an advanced degree at an accredited university, college, or other four-year institution of learning as specified in paragraph (1).

(b) An applicant who passed the examination prior to December 31, 2000, or who earned conditional credits prior to December 31, 2000 and subsequently passed the examination before the conditional credits expired, shall, in addition to meeting the requirements in subsection (a), present evidence of satisfactory completion of at least thirty semester hours of upper division or graduate level study comprised of such subjects as:

- (1) Accounting and auditing;
- (2) Taxation;
- (3) Management services;
- (4) Computer science;
- (5) Economics;
- (6) Business law;
- (7) Functional fields of business (e.g., finance, production, marketing, personnel relations, business organization, and business management); or

- (8) Other business related subjects as approved by the board, at an accredited university, college, or four-year institution of learning as specified in subsection (a).

The baccalaureate degree and the thirty semester hours of additional study shall have included a minimum of eighteen semester hours of upper division or graduate level accounting and auditing subjects.

In the event the additional studies of thirty semester hours are completed before the baccalaureate degree is conferred, the applicant shall furnish the board a letter from the university, college, or four-year institution of learning indicating that the additional studies were not counted toward the baccalaureate degree.

(c) An applicant who did not earn conditional credits prior to December 31, 2000 and who passed the examination after December 31, 2000, shall, in addition to meeting the requirements in subsection (a), present evidence of satisfactory completion of at least one hundred fifty semester hours of college education which shall include:

- (1) At least twenty-four semester hours in accounting courses, of which at least eighteen semester hours are upper division or graduate level accounting courses, including without limitation courses in:
- (A) Financial accounting;
 - (B) Auditing;
 - (C) Taxation; and
 - (D) Managerial accounting; and
- (2) At least twenty-four semester hours in upper division or graduate level accounting or non-accounting business-related courses including without limitation courses in:
- (A) Economics;
 - (B) Legal and social environment of business;
 - (C) Business law;
 - (D) Marketing;
 - (E) Finance;
 - (F) Organizational, group, and individual behavior;
 - (G) Quantitative applications in business;
 - (H) Communication skills;
 - (I) Business ethics;
 - (J) Globalization;
 - (K) Total-quality management;
 - (L) Computer science;
 - (M) Human relations; or
 - (N) Other business related courses.

(d) Each applicant shall present evidence satisfactory to the board that the requirements provided in section 466-5(f), or 466-5.5, HRS, as applicable, have been met. Satisfactory evidence shall take the form of a certified copy of a diploma, a certified transcript (date and degree granted), or a statement from a college official indicating that the applicant will graduate within one hundred twenty days after the examination.

(e) An applicant requesting an exemption from the educational requirements pursuant to section 466-5(c), HRS, shall arrange to provide direct confirmation to the board, from an appropriate source, that the applicant meets the requirements stated therein. [Eff 1/1/74; am 5/12/78; am 3/6/80; am and ren §16-71-17, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; am and comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§466-5, 466-5.5)

§16-71-18 Examination. The examination prescribed in section 466-5(e), HRS, shall consist of the American Institute of Certified Public Accountants (AICPA) examination. [Eff 1/1/74; am and ren §16-71-18, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; am and comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-5)

§16-71-19 Computer-based examination. (a) The board shall use the examination prescribed by the AICPA, and shall make all necessary arrangements with the AICPA including the grading of the examination. The grades issued by the AICPA are advisory only and shall be ratified by the board to be official.

- (b) Applications for the examination shall be:
- (1) Made on a form provided by the board and filed with the board by the date specified in the application form; and
 - (2) Accompanied by the examination fee specified in chapter 16-53 which shall not be refundable. For each section of the examination, the applicant shall pay a candidate testing fee that includes the actual fees charged by the AICPA, NASBA, and the test delivery service provider, as well as the application fees specified in chapter 16-53. An application shall not be accepted for consideration unless the application is completed properly, and the correct fee and supporting documents required under this chapter and chapter 466, HRS, are

attached to the application. In the case of an applicant who will complete the educational requirements within one hundred twenty days after the first examination, a transcript of the last semester shall be sent to the board immediately upon the school's release of the grades.

- (c) An applicant who, subsequent to filing a completed application, wishes to reschedule the applicant's appointment to take the examination, may reschedule at no charge if the applicant notifies the board at least thirty days prior to the date of the appointment to take the examination. [-] Rescheduling an appointment within thirty days before the date of the appointment to take the examination shall result in the assessment of a fee specified in chapter 16-53 which shall not be refundable. Failure to appear for the examination shall cause the forfeiture of all fees charged for the application and the examination.

- (d) Each applicant shall present evidence satisfactory to the board that the requirements set forth in section 466-5, HRS, have been met. Satisfactory evidence shall take the form of a certified copy of a diploma, a certified transcript (date and degree granted), or a statement from a college official indicating that the applicant will graduate within one hundred twenty days after the examination.

- (e) In the case of an applicant admitted to the examination on the expectation that the applicant will complete the educational requirements within one hundred twenty days, no grades shall be released and no credit shall be given for any part of the examination unless the educational requirement is met within one hundred twenty days of the examination and evidence of completion is submitted to the board.

- (f) The examination for the license of certified public accountant shall be held in the State at places designated by the board.

- (g) The board may apply reasonable security measures which are deemed necessary to confirm the identification of the applicants for examination. Notwithstanding any other provision of this chapter, the board may postpone a scheduled examination, the release of grades, or the issuance of a license due to a breach of examination security or examination misconduct.

- (h) An applicant shall attain a grade of at least seventy-five, or the uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the board, in all sections of the examination in order to satisfactorily complete the entire examination.

- (i) An applicant may take the required sections of the examination individually and in any order. Credit for any section passed shall only be valid for eighteen months from the last day of the [~~examination window~~] quarter in which the

applicant took that section, and the applicant shall not be required to maintain a minimum score on any failed section(s). [~~An examination window means the three-month period in which an applicant has an opportunity to take the examination, and is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed.~~]

- (1) An applicant shall pass all four sections of the examination within a rolling eighteen-month period, which begins on the last day of the [~~examination window~~] quarter in which the first section(s) passed is taken.
- (2) An applicant [~~shall not~~] can retake a failed section in the same [~~examination window.~~] quarter if the applicant's grade for the previous attempt of that same section has been released.
- (3) In the event all four sections of the examination are not passed within the rolling eighteen-month period, credit for any section(s) passed outside the rolling eighteen-month period shall expire and that section(s) shall be retaken.
- (j) The board shall accept conditional credits for any section or sections of the examination earned by the applicant and given under the authority of another state; provided that the applicant meets the educational requirements in section 466-5, HRS and further provided that the conditional credits for any section or sections earned in another state would have been given if the applicant had taken the section or sections in this State.
- (k) Notwithstanding any other provision to the contrary, conditional credits that have expired may be extended only for good and valid reasons as determined by the board.
- (l) The board may waive the examination for a license of certified public accountant in accordance with section 466-5(h), HRS; provided that with respect to the holder of a valid certificate or license of certified public accountant issued under the laws of another state, the board shall obtain written confirmation from an appropriate source in the other state that the certificate or license upon which an application for exemption is based is currently valid and in good standing. [Eff 1/1/74; am 11/21/74; am 3/11/76; am 5/12/79; am and ren §16-71-19, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; am and comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; am and comp] (Auth: HRS §466-4) (Imp: HRS §§466-5, 466-8)

§16-71-19.1 Examination misconduct. (a) Any misconduct by an applicant in applying for, taking, or subsequent to the examination shall be prohibited and shall invalidate any grade earned by an applicant on any section of the examination, and may warrant summary expulsion from the test site, disqualification from taking the examination permanently or for a specified period of time, and other action deemed appropriate by the board.

(b) Acts of misconduct include but are not limited to any of the following:

- (1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;
- (2) Failure to follow examination instructions or procedures;
- (3) Communication between applicants or with others inside or outside the test site while the examination is in progress;
- (4) Copying another applicant's answers or allowing one's answers to be copied;
- (5) Copying the examination questions or answers;
- (6) Substitution of another person to sit in the test site;
- (7) Reference to crib sheets, outlines, textbooks, or other material or electronic media (other than those provided to the applicant as part of the examination) inside or outside the test site while the examination is in progress;
- (8) Leaving the test site without prior approval;
- (9) Violating the nondisclosure prohibitions of the examination, or aiding or abetting another in doing so; or
- (10) Retaking or attempting to retake a section by an individual holding a valid license of certified public accountant, or by an applicant who has unexpired conditional credit for having already passed the same section, provided that this may be allowed if the individual has been expressly authorized by the board to do so.

(c) In any case where it appears that misconduct has occurred or is occurring, the board or its designee may either summarily expel the applicant involved in the misconduct from the examination, or move the applicant to a separate area in the test site where the applicant can be more closely observed. In any case where the board or its designee permits an applicant to continue taking the examination, it may:

- (1) Admonish the applicant;
- (2) Seat the applicant in a segregated location for the remainder of the examination;

- (3) Keep a record of the seat location and identifying information of the applicant, and the names and identifying information of other applicants in close proximity to the applicant; or
- (4) Notify the national candidate database, the AICPA, and the test delivery service provider of the circumstances, so that the applicant may be more closely monitored in future examination sessions.
- (d) In any case where the board believes that it has evidence that an applicant has been involved in examination misconduct, the board shall conduct an investigation and may conduct a hearing consistent with the provisions of section 16-71-66, chapter 16-201, and chapter 91, HRS.
- (e) If an applicant is refused credit for any section(s) of the examination, disqualified from taking any section, or barred from taking the examination in the future, the board or its designee may provide information on its findings and actions taken to the board of accountancy of another state or jurisdiction of the United States. [Eff and comp 1/30/10; comp 2/13/12; comp _____] (Auth: HRS §466-4) (Imp: HRS §§466-5, 466-8)

§16-71-20 Repealed. [R 6/3/95]

§16-71-21 Experience. (a) Except as otherwise provided in section 466-5(d), HRS, an applicant shall have met one of the following experience requirements for a license:

- (1) Completion of one thousand five hundred chargeable hours in the performance of audits involving the application of generally accepted accounting principles and auditing standards earned while in public accounting practice; or
- (2) Completion of two years of professional experience in:
 - (A) Public accountancy practice as defined in section 466-3, HRS; or
 - (B) Private or government accounting or auditing work deemed by the board to be equivalent to professional experience in public accountancy practice.
- (b) The professional experience described in subsection (a)(2) shall:
 - (1) Include:
 - (A) The issuance of reports on financial statements involving the use of accounting or auditing skills, or both, and the

- application of generally accepted accounting principles or another comprehensive basis of accounting of the United States;
 - (B) Management advisory or consulting services involving the use of accounting or auditing skills, or both; or
 - (C) The preparation of tax returns or furnishing of advice on tax matters in accordance with applicable tax laws of the United States; and
- (2) Be obtained in one of the following categories, or any combination thereof:
- (A) Public practice (i.e., working for a public accounting firm);
 - (B) Private sector or industry (i.e., working for a private business that is not a public accounting firm);
 - (C) Government (i.e., federal, state, county, etc.); or
 - (D) Education (i.e., working as an instructor teaching upper division or graduate level accounting or auditing subjects);

provided that the experience described in this subsection shall not be credited toward or apply to the thirty months of experience specified in section 466-5(b)(2), HRS. The thirty months of experience shall be gained in public practice and shall be applicable to the extent provided in section 466-5.5, HRS.

- (c) All experience required under this chapter and chapter 466, HRS, shall:
- (1) Be non-routine, non-clerical, and non-ministerial in nature;
 - (2) Continually require independent thought and judgment on accounting or auditing matters;
 - (3) Be gained under the supervision of an individual who holds or has held a [~~license~~] permit in this State, or the equivalent in another jurisdiction, during the period of supervision; provided that an applicant may be immediately supervised by a [~~non-licensee~~] non-permit holder as long as the applicant ultimately reports to, is instructed by, is reviewed by, and is evaluated directly by an individual who holds or has held a [~~license~~] permit in this State, or the equivalent in another jurisdiction, during the period of supervision; and
 - (A) The applicant's supervisor shall have supervised, reviewed, and evaluated the applicant's work on a routine and recurring basis.
 - (B) Supervision may be facilitated through telecommunications systems and devices, and computers; provided that this

shall not be the primary method of supervision. A majority of the supervision shall be of a personal nature.

(C) To be acceptable, the supervision shall have been provided while the applicant was an employee of the same public accounting firm, entity, or agency that employed the supervisor; and

(4) Have been of a full-time nature, measured in terms of weeks. Full-time employment shall constitute at least thirty-five hours per week.

(d) Each applicant shall submit a detailed statement or form prescribed by the board which fully describes the applicant's experience to the satisfaction of the board. The statement or form shall be signed and certified by the applicant's present or former supervisor who holds or has held a [~~license~~] permit in this State, or its equivalent in another jurisdiction, during the period of supervision. [Eff and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; am and comp 6/3/95; am and comp 1/22/01; am and comp 1/30/10; am and comp 2/13/12; am and comp] (Auth: §466-4) (Imp: HRS §466-5)

§16-71-22 Knowledge of laws and rules. On the application, each applicant for a license of certified public accountant shall attest that the applicant has read and shall abide by the provisions of chapter 466, HRS, and this chapter. [Eff and comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-5)

SUBCHAPTER 4

PERMIT TO PRACTICE

§16-71-24 Permit to practice. (a) Individual permit to practice. For a permit to practice public accountancy, a certified public accountant licensed under section 466-5, HRS, or public accountant licensed under section 466-6, HRS, shall file an application and include an attestation that the applicant has fulfilled the continuing professional education requirements specified in subchapter 5.

(b) Firm permit to practice.

(1) For a permit to practice public accountancy, a firm engaged in public accounting in this State shall file an application listing the

principals of the firm (i.e., sole proprietor, partners in a partnership, shareholders of a professional accounting corporation, or members of a limited liability company).

(A) As of the date of the application, a foreign or multi-state firm shall list only those principals who are residents of Hawaii or who are engaged in public accounting practice in this State.

(B) If the firm has no permanent office in this State, and no principals who are residents of this State or principals who are engaged in public accounting practice in this State, the firm shall list a principal with a current Hawaii individual permit to practice.

(C) The Hawaii business operations of a foreign or multi-state firm shall constitute a "firm" for purposes of the firm permit to practice under 466-7, HRS.

(2) For a permit to practice public accountancy, a firm shall also provide its Hawaii general excise tax license number pursuant to section 237-9, HRS, on its application. Failure to provide a Hawaii general excise tax license number shall result in a denial of the firm permit to practice unless the firm attests that it does not and shall not have any gross income for engaging in the practice of public accounting in this State.

(3) All principals of a firm physically located in the State or that has a permanent office in the State shall be licensed as certified public accountants or public accountants with individual permits to practice under section 466-7, HRS.

(4) All foreign or multi-state firms engaged in public accounting practice in this State shall have at least one licensed certified public accountant or public accountant principal (i.e., sole proprietor, partner in a partnership, shareholder of a professional accounting corporation, or member of a limited liability company) with a permit to practice under section 466-7, HRS.

(5) The firm permit to practice shall be automatically terminated upon the death or loss of the permit to practice of all principals of a firm. The permit to practice for the firm may be reinstated upon the transfer of shares or membership interests to an individual who holds a permit to practice under section 466-7, HRS, or upon the reinstatement of the permit to practice of the sole proprietor, sole shareholder, or sole member of a limited liability company, as the case may be. [Eff 1/1/74; am and ren §16-71-24, 6/25/81; am and

comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95;
comp 1/22/01; am and comp 1/30/10; comp 2/13/12;
comp] (Auth: HRS §466-4) (Imp: HRS
§466-7)

§16-71-25 Repealed. [R 6/8/84]

§16-71-26 Control and reporting. (a) For the purpose of this section, a permit shall be obtained whether or not the public accounting practice is:

- (1) One of continuation from the prior year;
- (2) One to be entered into for the first time; or
- (3) One to be resumed after the permit to practice for the prior year or prior years has lapsed.

(b) For a 1974 permit, an applicant shall file an application prior to the commencement date of the applicant's public practice. For a permit to practice public accountancy for the year 1975 and each year thereafter, the applicant shall file an application, on a form prescribed by the board, at least thirty days prior to the date on which the permit shall become effective. [Eff 1/1/74; am and ren §16-71-26, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §§466-4, 466-7)

§16-71-27 Temporary permit to practice. An application for a temporary permit to practice, pursuant to section 466-7(c), HRS, shall be filed on a form prescribed by the board not later than sixty days prior to the commencement of the period covered by the application and shall be accompanied by a statement signed by an official of the jurisdiction which issued the certificate or registration, attesting that the same is currently valid, and unrevoked. The board may waive the filing deadline requirement for good cause. [Eff 1/1/74; am and ren §16-71-27, 6/25/81; am and comp 6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

SUBCHAPTER 5

CONTINUING PROFESSIONAL EDUCATION

§16-71-31 Basic concept. The overriding consideration in determining whether or not a specific program qualifies as acceptable continuing professional education is whether the program is a formal program of learning which will contribute directly to the professional competence of a licensee in public practice. Each licensee shall determine the course of study to be pursued by the licensee within the guidelines established by this chapter. [Eff 1/1/74; am and ren §16-71-31, 6/25/81; am and comp 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-32 Persons covered. Any person in public accounting practice, regardless of the extent or degree of the practice, shall be covered by this chapter. [Eff 1/1/74; am and ren §16-71-32, 6/25/81; am and comp 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12]; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-33 Basic requirements of study hours. (a) For a permit to practice public accountancy covering each biennium, an individual applicant shall file, together with the application and payment of a fee for a permit to practice, an attestation as to the completion of at least eighty hours in continuing professional education programs. The eighty hours shall have been earned by the applicant within a twenty-four month period, and within twenty-four months prior to the date of the application for a permit to practice [-] with a minimum of 20 hours earned within each calendar year.

(b) The applicant shall include within the eighty hours of continuing professional education programs, at least four hours of continuing professional education in the subject area of ethics or professional conduct; provided that these hours may also be used to simultaneously fulfill the requirements to renew the license of a certified public accountant or public accountant under section 16-71-2.

(c) The continuing professional education requirement of eighty hours may be prorated only for the permit obtained for the biennium period immediately following an individual's first permit to practice. The proration schedule shall be ten hours for each three month period of the biennium. The number of hours required shall be determined by the date on which the individual's first permit to practice was approved.

(d) An applicant whose first permit was approved in the first three months of the biennium shall earn eighty hours to obtain the subsequent permit; an applicant whose first permit was approved in the second three months of the biennium shall earn seventy hours to obtain the subsequent permit; and the total hours required shall decrease by ten hours for each three month period to a minimum of ten hours for an applicant whose first permit was approved in the last three months of the biennium period. [Eff 1/1/74; am and ren §16-71-33, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12]; am and comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-34 Hours which qualify. A minimum of fifty minutes shall constitute one continuing professional education hour. No credit for continuing professional education hours shall be allowed for time expended for study outside of the classroom nor shall additional credits be allowed for programs or courses repeated in any single year. The hours spent in continuing professional education programs shall be measured, as follows:

- (1) A one-day program, other than a university or college course, of not less than six hours shall equal eight continuing professional education hours;
- (2) One hour of attendance in a group program, other than a university or college course, shall equal one continuing professional education hour;
- (3) Each hour certified by the sponsor of an individual self-study program shall equal one continuing professional education hour;
- (4) An academic credit hour for a semester earned from an accredited university or college as specified in section 16-71-17(a)(1) shall equal fifteen continuing professional education hours, provided the credits were not counted toward certification;
- (5) An academic credit hour for a quarter earned from an accredited university or college as specified in section 16-71-17(a)(1) shall equal

ten continuing professional education hours, provided the credits were not counted toward certification;

- (6) Each university or college classroom hour in noncredit study shall equal one continuing professional education hour;
- (7) Each hour of university or college classroom work as a teacher, instructor, or lecturer shall equal one continuing professional education hour; however, the total cumulative continuing professional education hours earned by this method shall not exceed forty credit hours towards continuing professional education in any biennium; credit for the same course shall be awarded only once during a three year period;
- (8) Each hour spent at a group program, other than a university or college course, as a lecturer, discussion leader, or speaker shall equal one continuing professional education hour if the attendees of the group program shall be able to earn continuing professional education credit as a result of the attendance; and provided that the total cumulative hours earned by this method shall not exceed forty credit hours toward continuing professional education in any biennium; credit for the same course shall be awarded only once during a three-year period;
- (9) Fifty per cent of each hour spent as a reviewer at a formally sponsored inter-office or inter-firm quality review program; and provided that the credit shall not exceed twenty continuing professional education hours in any biennium;
- (10) Credit may be allowed for authoring articles and books published in any one year, provided that they contribute to the professional competence of the licensee. Credit for the publications may be given on a self-declaration basis; provided the credit shall not exceed twenty continuing professional education hours in any biennium; and
- (11) An applicant for a permit to practice shall be allowed eighty hours of continuing professional education credit for passing the AICPA examination for the two years following the date the applicant is notified of passing the examination. If an applicant has not taken credit in the two years following notification, the applicant shall be allowed to take credit for forty hours of continuing professional education during the third year following notification. Credit for passing the AICPA examination shall not be taken more than once. [Eff 1/1/74; am 11/21/74; am and ren §16-71-34, 6/25/81; am and comp 6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12;

comp
§466-7)

] (Auth: HRS §466-4) (Imp: HRS

§16-71-35 Deficiency in hours and carryover hours. (a) In the event an applicant, except as provided in section 16-71-46, is found to be lacking in the eighty required continuing professional education hours as of December 31 of any odd-numbered year, the applicant shall be required to make up the deficient hours before the board approves the permit to practice.

(b) In the event the total continuing professional education hours is found to be in excess of the minimum requirements in any biennium, the applicant may carryover the excess to the following biennium's requirements, provided that the carryover shall be limited to forty hours. It shall be the responsibility of the licensee to maintain a record of any carryover credits. [Eff 1/1/74; am and ren §16-71-35, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-36 Program classifications. (a) The continuing ~~professional~~ professional education programs shall be classified into two categories, as follows:

- (1) Group programs as prescribed in section 16-71-37; and
 - (2) Individual self-study programs as prescribed in section 16-71-38.
- (b) Continuing professional education programs may include but are not limited to the following subjects:
- (1) Accounting (public, private, and governmental);
 - (2) Auditing (public, private, and governmental);
 - (3) Administrative practice;
 - (4) Social environment of business;
 - (5) Ethics or professional conduct;
 - (6) Business law;
 - (7) Business management and organization;
 - (8) Finance;
 - (9) Business valuation;
 - (10) Insurance;
 - (11) Management advisory services;
 - (12) Marketing;
 - (13) Behavioral ethics;
 - (14) Communications;

- (15) Personal development;
- (16) Personnel/human relations;
- (17) Computer science;
- (18) Economics;
- (19) Mathematics;
- (20) Production;
- (21) Financial planning;
- (22) Statistics; and
- (23) Taxes. [Eff 1/1/74; am and ren §16-71-36, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; am and comp _____] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-37 Requirements for group programs. Each group program shall:

- (1) Require attendance;
- (2) Be at least fifty minutes in duration;
- (3) Be conducted by a qualified instructor or discussion leader;
- (4) Through its sponsor, maintain written records of its attendees and of the program outline for a period of two years immediately following the conclusion of the program;
- (5) Through its sponsor, issue to each attendee written evidence of attendance with the suggested continuing professional education credit hours shown thereon, exclusive of any study or preparation time; and
- (6) Have a board approved sponsor. [Eff 1/1/74; am and ren §16-71-37, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp _____] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-38 Requirements for individual self-study programs. Each individual self-study program shall:

- (1) Be conducted by a qualified board approved sponsor;

- (2) Through its sponsor, issue a certificate of completion, specifying subject matter and recommended continuing professional education credit hours; and
- (3) Through its sponsor, maintain written records of each student and of the program outline for a period of two years immediately following the conclusion of the program. [Eff 1/1/74; am and ren §16-71-38, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp _____] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-39 Sponsors whose programs automatically qualify. Subject to compliance with the requirements of sections 16-71-37 and 16-71-38, the program sponsors who automatically qualify shall include:

- (1) All non-profit nationally recognized accounting and auditing associations, such as the American Institute of Certified Public Accountants, the National Society of ~~[Public]~~ Accountants, the ~~[American Society of Women Accountants,]~~ Accounting and Financial Women's Alliance, the National Association of Accountants, the National Association of State Boards of Accountancy, and their respective state societies, state boards, chapters, or branches;
- (2) Universities and colleges, provided that the institutions are accredited as specified under section 16-71-17(a)(1); or
- (3) Sponsors approved by another state board or by the National Association of State Boards of Accountancy's National Registry. [Eff 1/1/74; am 5/12/78; am and ren §16-71-39, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; am and comp _____] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-40 Repealed. [R 2/22/94]

§16-71-41 Requirements for approval by the board. Sponsors who do not automatically qualify shall be required to apply to the board on a form prescribed by the board prior to the program event. The sponsor shall comply with all requirements, policies, and standards set forth by the board. [Eff 1/1/74; am 11/21/74; am and ren §16-71-41, 6/25/81; am and comp 6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-42 Repealed. [R 2/22/94]

§16-71-43 Duration of approval. The approval by the board of each group program sponsor and each individual self-study program sponsor shall expire on December 31 of every odd-numbered year. [Eff 1/1/74; am and ren §16-71-43, 6/25/81; am and comp 6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-44 Repealed. [R 2/22/94]

§16-71-45 Information requirements. (a) Accompanying an application for a permit to practice, each certified public accountant and public accountant shall also file, on a form prescribed by the board, an attestation relating to the applicant's continuing professional education, setting forth the following:

- (1) Name of the course sponsor;
 - (2) Identification number of the course sponsor as issued by the National Association of State Boards of Accountancy's National Registry, the board, or any other board of accountancy in a state or jurisdiction of the United States;
 - (3) Title of the course;
 - (4) Date attended; and
 - (5) Hours claimed.
- (b) The board may randomly audit continuing professional education

hours and require an applicant to submit written evidence satisfactory to the board demonstrating compliance with the continuing professional education requirements provided in this chapter. [Eff 1/1/74; am and ren §16-71-45, 6/25/81; am and comp

6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4)
(Imp: HRS §466-7)

§16-71-46 Exceptions. The board may issue a permit to practice to any applicant who has not fully complied with the continuing professional education requirement in cases where failure by the applicant to fulfill the requirement has been caused by reason of:

- (1) Health, as certified by a medical doctor;
- (2) Military service on extended active duty with the armed forces of the United States; or
- (3) Other good and valid causes, as determined and approved by the board. [Eff 1/1/74; am and ren §16-71-46, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-47 Certification to other jurisdiction. The board shall certify, upon request, to any state as to the compliance with continuing professional education requirements under the laws of the State by any of its licensees. [Eff 1/1/74; am and ren §16-71-47, 6/25/81; comp 6/8/84; comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

§16-71-48 Exception for temporary permits. This subchapter governing continuing professional education shall not apply to any applicant for a temporary permit to be issued under section 466-7(c), HRS. [Eff 1/1/74; am and ren §16-71-48, 6/25/81; am and comp 6/8/84; comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; am and comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-7)

SUBCHAPTER 6 - REPEALED

§16-71-52 Repealed. [R 2/22/94]

§16-71-53 Repealed. [R 2/22/94]

§16-71-54 Repealed. [R 2/22/94]

§16-71-55 Repealed. [R 2/22/94]

§16-71-56 Repealed. [R 2/22/94]

§16-71-57 Repealed. [R 8/25/88]

SUBCHAPTER 7

RULES OF CONDUCT

§16-71-61 Independence, integrity, and objectivity. (a) A licensee shall not express an opinion on financial statements of an enterprise in a manner as to imply that the licensee is acting as an independent public accountant with respect thereto unless the licensee is independent with respect to the enterprise.

Independence shall be considered to be impaired if, for example:

- (1) During the period of the licensee's professional engagement, or at the time of expressing an opinion, the licensee:
 - (A) Had acquired or was committed to acquire any direct or material indirect financial interest in the enterprise;

- (B) Was a trustee, executor, or administrator of any trust or estate which had acquired or was committed to acquire any direct or material indirect financial interest in the enterprise;
 - (C) Had any joint closely-held business investment with the enterprise or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the licensee or the enterprise; or
 - (D) Had any loan to or from the enterprise or any officer, director, or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:
 - (i) Loans obtained by the licensee which are not material in relation to the net worth of the borrower;
 - (ii) Home mortgages; and
 - (iii) Other secured loans, except those secured solely by a guarantee of the licensee;
- (2) During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:
- (A) Was connected with the enterprise as a promoter, underwriter, voting trustee, director, or officer, or in any capacity equivalent to a member of management or of an employee; or
 - (B) Was a trustee of any pension or profit-sharing trust of the enterprise.

Paragraphs (1) and (2) are not intended to be all-inclusive examples.

(b) A licensee, in the performance of professional services shall not knowingly misrepresent facts, and shall not subordinate the licensee's judgment to others. In tax practice, however, a licensee may resolve doubt in favor of a client as long as there is reasonable support for the position.

(c) A licensee shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This subsection shall not prohibit payments for the purpose of all, or a material part, of an accounting practice or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of those persons.

(d) A licensee shall not offer or perform professional services for a fee which is contingent upon the findings or results of those services; provided this subsection shall not apply to professional services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor shall it apply to professional services for which the fees are to be fixed

by courts or other public authorities, and which are, therefore, indeterminate in amount at the time the professional services are undertaken.

(e) A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence or objectivity in rendering professional services. [Eff 3/6/80; am and ren §16-71-61, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-4)

§16-71-62 Competence and technical standards. (a) A licensee shall not undertake any engagement for the performance of professional services which the licensee cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with subsections (b) and (c).

(b) A licensee's name shall not be permitted to be associated with financial statements in a manner as to imply that the licensee is acting as an independent public accountant with respect to the financial statements unless the licensee is in compliance with applicable generally accepted auditing standards. Statement on Auditing Standards issued by the American Institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom shall be justified by those who do not follow them.

(c) A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if the financial statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless the licensee can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In that case, the licensee's report shall describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principles would result in a misleading statement.

(d) A licensee, in the performance of professional services, shall not permit the licensee's name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the forecast. [Eff 3/6/80; am and ren §16-71-62, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §466-4)

§16-71-63 Responsibilities to clients. (a) A licensee, without the consent of the client, shall not disclose any confidential information pertaining to the client obtained in the course of performing professional services.

(b) Subsection (a) shall not:

- (1) Relieve a licensee of any obligations under section 16-71-62(b) and (c);
- (2) Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court;
- (3) Prohibit disclosures in the course of a quality review of a licensee's professional services; or
- (4) Preclude a licensee from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board.

(c) Members of the board and professional practice reviewers shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish the information to an investigative or disciplinary body of the kind referred to in subsection (b).

(d) When an engagement is completed, a licensee shall furnish to a client or former client, upon request made within a reasonable time after original issuance or preparation of the document in question:

- (1) A copy of a tax return of the client;
- (2) A copy of any report, or other document, issued by the licensee to or for the client;
- (3) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of the documents when they form the basis of work done; and
- (4) A copy of the licensee's working papers, to the extent that the working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, provided that a licensee may require that any fees due and owing from the client to the licensee for the licensee's services, where the client has agreed in advance to pay such fees, be paid before a copy of the licensee's working papers is provided to the client. [Eff 1/1/74; am and ren §16-71-63, 6/25/81; am and comp

6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95;
comp 1/22/01; comp 1/30/10; comp 2/13/12;
comp] (Auth: HRS §466-4) (Imp: HRS
§466-4)

§16-71-64 Other responsibilities and practices. (a) A licensee shall not commit any act which reflects adversely on the licensee's fitness to engage in the practice of public accountancy.

(b) A licensee shall not permit others to carry out on the licensee's behalf, either with or without compensation, acts which, if carried out by the licensee, would place the licensee in violation of the rules of conduct.

(c) A licensee shall not use or participate in the use of any form of public communication having reference to the licensee's professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

- (1) Contains a misrepresentation of fact;
- (2) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- (3) Contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality;
- (4) Is intended or likely to create false or unjustified expectations of favorable results;
- (5) Implies educational or professional attainments or licensing recognition not supported in fact;
- (6) States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case;
- (7) Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will be charged; or
- (8) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(d) A licensee shall not by any direct personal communication solicit an engagement to perform professional services:

- (1) If the communication would violate subsection (c) and it is a public communication; or
- (2) By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.
- (e) A licensee shall not practice public accountancy under a firm name which is misleading in any way, as to the legal form of the firm, or as to the persons who are sole practitioners, partners, officers, managers of a manager managed limited liability company or shareholders of the firm, or as to any matter with respect to which public communications are restricted by subsection (c). A firm name shall not be used by a licensee in the practice of public accountancy unless the name has been registered with and approved by the board and the registration of the firm has been approved by the business registration division of the department of commerce and consumer affairs. However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.
- (f) A licensee, when requested, shall respond to communications from the board within thirty days of the mailing of the communications by registered or certified mail. [Eff 1/1/74; am and ren §16-71-64, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; am and comp] (Auth: HRS §466-4)
(Imp: HRS §466-4)

SUBCHAPTER 8

PRACTICE AND PROCEDURE

§16-71-66 Administrative practice and procedure. The rules of practice and procedure for certified public accountants and public accountants shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §§91-2, 466-4) (Imp: HRS §§91-2, 466-4)

SUBCHAPTER 9

ORAL TESTIMONY

§16-71-69 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purposes of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding, subject to the declaratory relief or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda." [Eff and comp 10/23/87; comp 2/22/94; comp 6/3/95; comp 1/22/01; comp 1/30/10; comp 2/13/12; comp] (Auth: HRS §466-4) (Imp: HRS §92-3)

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

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

4. These amendments to and compilation of chapter 16-71, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

GREGG M. TAKETA, Chairperson
Board of Public Accountancy

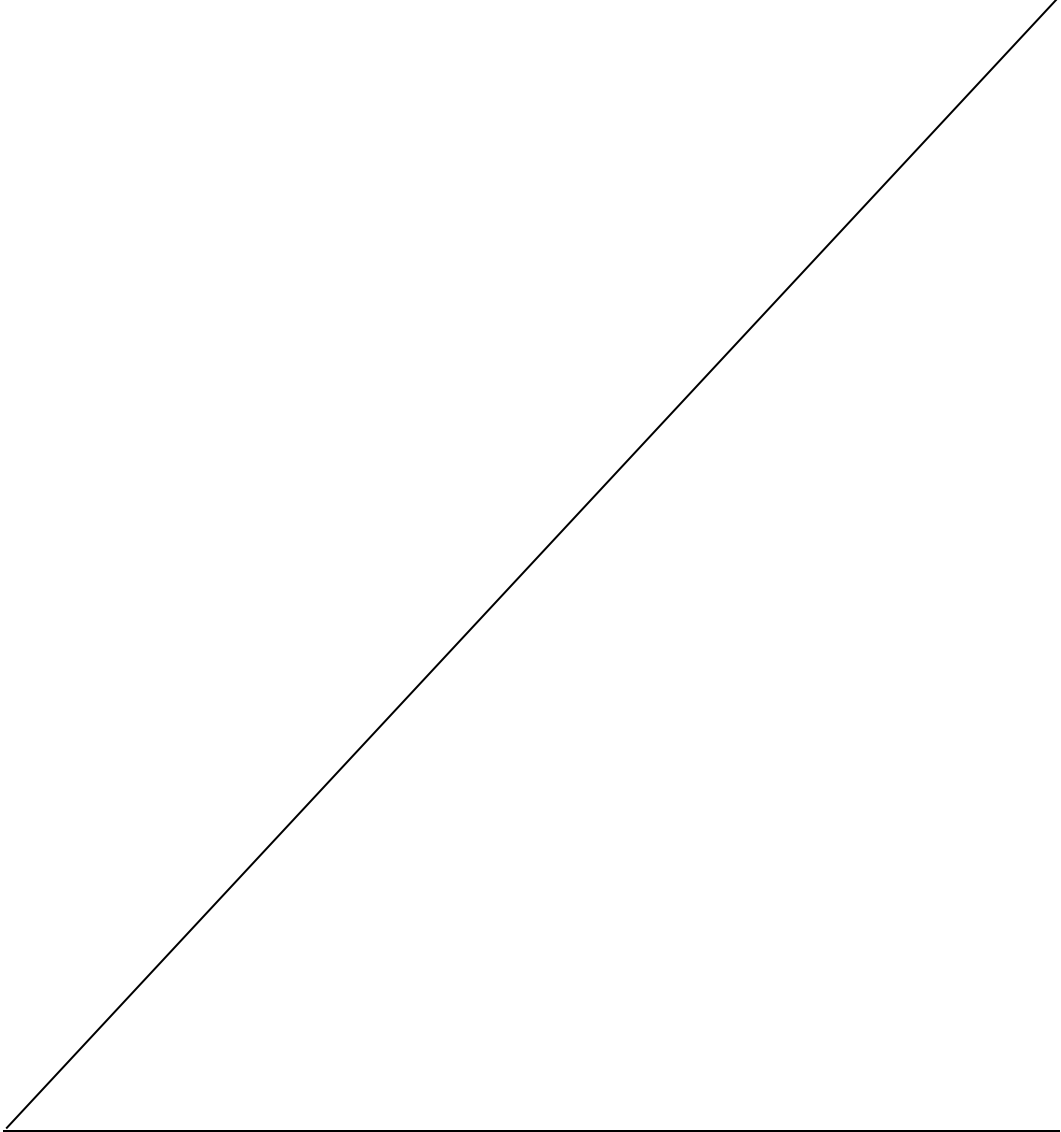
APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-71
Hawaii Administrative Rules

1. Chapter 16-71, Hawaii Administrative Rules, entitled "Certified Public Accountants and Public Accountants", is amended and compiled to read as follows: _____



IV. Legislative Matters

- A. Discussion and Action on the following Legislative Matters:**
 - a. Update on Senate Bill 2078 Relating to the Small Business Regulatory Flexibility Act – Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism**
 - b. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Nancy Atmospera-Walch to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023**
 - c. Upcoming Governor’s Message, Submitting for Consideration for the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 30, 2024**
 - d. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Robert Cundiff to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023**
 - e. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024**
 - f. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Taryn Rodighiero to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023**

HB2078

Measure Title: RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.
Report Title: Small Business Regulatory Review Board
Description: Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.
Companion:
Package: House Small Business Caucus
Current Referral: EDB, FIN
Introducer(s): WARD

<u>Sort by</u> <u>Date</u>	Status Text
1/17/2020	H Pending introduction.
1/21/2020	H Introduced and Pass First Reading.
1/27/2020	H Referred to EDB, FIN, referral sheet 5
1/28/2020	H Bill scheduled to be heard by EDB on Friday, 01-31-20 8:30AM in House conference room 309.
1/28/2020	H Bill re-scheduled to be heard by EDB on Friday, 01-31-20 9:30AM in conference room 309.
1/31/2020	H The committee(s) on EDB recommend(s) that the measure be deferred.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

HB2078

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the small business
2 regulatory review board lacks sufficient financial and
3 administrative support from the department of business, economic
4 development, and tourism. Without this support, the small
5 business regulatory review board is unable to accomplish its
6 mission.

7 Accordingly, the purpose of this Act is to support the
8 small business regulatory review board by establishing a line
9 item for the small business regulatory review board within the
10 budget of the department of business, economic development, and
11 tourism.

12 SECTION 2. Section 201M-5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) There shall be established within the department of
15 business, economic development, and tourism, for administrative
16 purposes, a small business regulatory review board [tø]. The



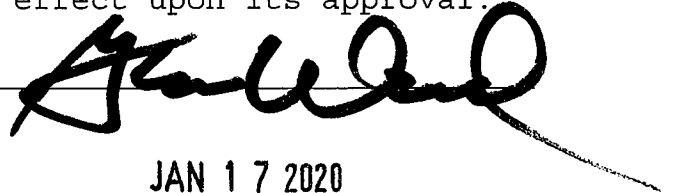
H.B. NO. 2078

1 board shall review any proposed new or amended rule [~~er-te~~],
2 consider any request from small business owners for review of
3 any rule adopted by a state agency, and [~~te~~] make
4 recommendations to the agency or the legislature regarding the
5 need for a rule change or legislation. The board shall be
6 entitled to a separate line item in the budget of the department
7 of business, economic development, and tourism. For requests
8 regarding county ordinances, the board may make recommendations
9 to the county council or the mayor for appropriate action."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:



JAN 17 2020



H.B. NO. 2078

Report Title:

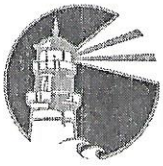
Small Business Regulatory Review Board

Description:

Entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Angus L.K. McKelvey, Chair

Rep. Lisa Kitagawa, Vice Chair

Rep. Stacelynn K.M. Eli

Rep. Sean Quinlan

Rep. Linda Ichiyama

Rep. Kyle T. Yamashita

Rep. Aaron Ling Johanson

Rep. Lauren Matsumoto

DATE: Friday, January 31, 2020

TIME: 9:30AM

PLACE: Conference Room 309

**TESTIMONY OF THE OCEAN TOURISM COALITION IN SUPPORT OF HB2078
RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

Chair McKelvey, Vice Chair Kitagawa and Members of the EDB Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
**speaking in SUPPORT OF HB 2078 RELATING THE SMALL BUSINESS REGULATORY
FLEXIBILITY ACT.**

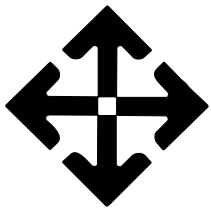
The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. The Small Business Regulatory Review Board (SBRRB) is very important to every small business in the State. It must have adequate funding to be effective. All members of this important board serve without compensation for their time. Funding provides administrative support as well as reimbursement for travel expense. Please pass this important legislation to provide the mechanism to fund the SBRRB

Please pass HB2078 to help all small businesses in Hawaii.

Sincerely,

James E. Coon, President

Ocean Tourism Coalition



The Hawaii Business League

1188 Bishop St., Ste. 1003, Honolulu, Hawaii 96813

Phone: (808) 533-6819 Facsimile: (808) 533-2739

January 31, 2020

Testimony To: House Committee on Economic Development & Business
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons
President

Subject: H.B. 2078 - RELATING TO SMALL BUSINESS REGULATORY
FLEXIBILITY ACT.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization and we support this bill.

SBRB has struggled with a financial footing since its very day of inception. Although this bill doesn't guarantee that any money will be put on its line item, it at least establishes that there is to be a line item and hopefully somebody can fill in the blank with an amount that can help justify the existences of small business in our state which is afterall, the backbone of the business community.

Based on the above, we can highly recommend passage of this bill.

Thank you.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Economic Development and Business
Friday, January 31, 2020 at 9:30 A.M.
Conference Room 309, State Capitol**

**RE: HB 2078, RELATING TO THE SMALL BUSINESS REGULATORY
FLEXIBILITY ACT**

Chair McKelvey, Vice Chair Kitagawa, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2078, which would entitle the small business regulatory review board to a separate line item within the budget of the Department of Business, Economic Development, and Tourism.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The small business regulatory review board plays a vital function in reviewing various agencies' rules and regulations and provides input on how those rules and regulations impact small businesses in Hawaii. As one of the most regulated states in the nation, the board oversight and input are essential to the well-being of businesses in Hawaii. Ensuring that the board has adequate funding will help to make sure that it can carry out its duties.

Thank you for the opportunity to provide testimony in support of HB 2078.

TO: Chair McKelvey, Vice Chair Kitagawa and Members of the House
Committee on Economic Development & Business

FROM: Garth Yamanaka

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078, Relating to the Small Business Regulatory Flexibility Act


As an individual who has been serving as a board member on the Small Business Regulatory Review Board (SBRRB) for the past five years, I am providing support of House Bill 2078. This measure entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

Without a set budget, I am greatly aware of the challenges the SBRRB volunteers have encountered to provide sufficient outreach to the small business community to enhance the growth of small business in Hawaii. While I am proud of the successes and accomplishments this hardworking group of gratis members has had, to date, I personally believe that the SBRRB could greatly improve upon its outreach to the small business community if a budget was granted.

Thank you for hearing my testimony in support of House Bill 2078.

TESTIMONY

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Business, Economic Development & Business

FROM: Nancy Atmospera-Walch 

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory
Flexibility Act

Please be advised that as a member of the Small Business Regulatory Review Board (SBRRB) for the past five years, I am providing comments in support of House Bill 2078 as an individual.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB consists of ten small business owners across the State, providing recommendations to State and County Agencies and to the Governor and Mayors on new and amended administrative rules that impact small business. As a small businessowner I am proud to be a member of this conscientious and pro-active Board that is dedicated to the regulatory success of the State's small businesses.

To continue with the board's efforts, a separate line item will provide the SBRRB with the stability to continue with to do the work of its statute that is essential to a strong regulatory environment.

Thank you for allowing me to provide testimony in support of House Bill 2078.

MEMORANDUM

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Business, Economic Development & Business

FROM: Mary Albitz

DATE: January 31, 2020 -- Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory Flexibility Act

As a board member of the Small Business Regulatory Review Board (SBRRB) for the past two years, I am providing comments as an **individual in support** of House Bill 2078.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB is comprised of eleven owners of small businesses across the State, of which I represent Maui County. We provide recommendations to State and County Agencies and to the Governor and Mayors on new and amended Hawaii Administrative Rules that directly impact small business.

To continue with the board members efforts, a separate line item will provide the SBRRB with the strength needed to do the work of its statute that is vital to a stable regulatory environment.

I thank you for hearing my testimony in support of House Bill 2078.

MEMORANDUM

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Business, Economic Development & Business

FROM: William Lydgate

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: House Bill 2078 Relating to the Small Business Regulatory Flexibility Act

I am currently serving as a board member of the Small Business Regulatory Review Board (SBRRB) however, I am providing comments as an **individual in support** of House Bill 2078.


This measure entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB has become a very instrumental voice within Hawaii's small business community. Having a budget will help assist the SBRRB volunteers with the stability needed to efficiently carry on the work that supports the regulatory activity of Hawaii's small business community.

As a proud member of this Board, thank you for hearing my testimony in support of House Bill 2078.

Handwritten signature of William Lydgate in black ink.

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House Committee on Business, Economic Development & Business

FROM: James (Kimo) Lee 

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: Support - House Bill 2078 - Relating to the Small Business Regulatory Flexibility Act

As a member of the Small Business Regulatory Review Board (SBRRB) for the past year, I support House Bill 2078 as an individual.

SB2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

The SBRRB is responsible for reviewing Hawaii Administrative Rules proposed by State and County agencies to determine the impact on Hawaii small businesses. It is an essential voice in determining business impact and seeking ways to work with the rule-drafting agencies to lessen the often very damaging effect this has on those businesses least able to hand the added burden.

Please strongly consider a separate budget line item for the SBRRB so it can continue in its quest to support Hawaii's regulatory environment more effectively and efficiently.

Thank you for allowing me to provide testimony in support of House Bill 2078.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT & BUSINESS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 309
FRIDAY, JANUARY 31, 2020 AT 9:30 A.M.**

To The Honorable Angus L.K. McKelvey, Chair;
The Honorable Lisa Kitagawa, Vice Chair; and
Members of the Committee on Economic Development & Business,

**TESTIMONY IN SUPPORT OF HB2078 RELATING TO THE
SMALL BUSINESS REGULATORY FLEXABILITY ACT**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of HB2078.

The Maui Chamber of Commerce supports HB2078 to entitle the Small Business Regulatory Review Board to a separate line item within the budget of DBEDT. The Small Business Regulatory Review Board was created to help share the voice of small businesses and give an opportunity to address business concerns on regulations and rules. They are a much needed body to inform both legislators and the government departments how regulations impact businesses. We wholeheartedly support the Small Business Regulatory Review Board having its own line item funding to ensure they are successful in their purpose, without being subject to cuts that have occurred in the past when they were part of the broader DBEDT funding.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

LATE

TESTIMONY

TO: Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Economic Development & Business

FROM: Robert Cundiff

DATE: January 31, 2020 – Room 309 at 9:30 a.m.

SUBJECT: Support - House Bill 2078 – Relating to the Small Business Regulatory
Flexibility Act

I submit this testimony in support of House Bill 2078 as an individual. I have been a member of the Small Business Regulatory Review Board (SBRRB) for the past 5 years and believe this measure will be extremely beneficial for SBRRB's outreach and operating expenses.

Specifically, House Bill 2078 entitles the SBRRB to a separate line item within the budget of the Department of Business, Economic Development and Tourism.

Without a budget, the SBRRB volunteers have been challenged to provide sufficient outreach to the small business community to provide a valuable, needed service to enable and enhance the growth of small business in Hawaii. Curtailing, and or minimizing the negative economic impact that existing and proposed rules/regulations have on the thousands of small businesses is not an option if we are to sustain positive economic growth within the State.

I am proud of the success and accomplishments this hardworking group of gratis members has had with no specific budget, but the SBRRB could greatly improve outreach to the small business community if a sufficient budget was granted.

Thank you for hearing my comments and support of House Bill 2078.

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, including:

- 1. "Business in Hawaii" on ThinkTech – Taping Scheduled January 23, 2020**
- 2. Discussion of Board's Potential Outreach Opportunities**