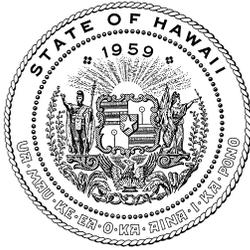


**Small Business Regulatory Review Board Meeting**

**July 29, 2021**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

### AGENDA

**Thursday, July 29, 2021 ★ 10:00 a.m.**

**David Y. Ige**  
*Governor*

**Mike McCartney**  
*DBEDT Director*

#### Members

Robert Cundiff  
*Chairperson*  
*O'ahu*

Mary Albitz  
*Vice Chairperson*  
*Mau*

Jonathan Shick  
*2nd Vice Chairperson*  
*O'ahu*

Dr. Nancy Atmospera-  
Walch  
*O'ahu*

William Lydgate  
*Kaua'i*

James (Kimo) Lee  
*Hawai'i*

Garth Yamanaka  
*Hawai'i*

Taryn Rodighiero  
*Kaua'i*

Mark Ritchie for  
Director, DBEDT  
*Voting Ex Officio*

As authorized under the Governor's June 7, 2021, Twenty-First Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/3082191379>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov). Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, July 28, 2021.

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

#### **I. Call to Order**

#### **II. Approval of June 17, 2021 Meeting Minutes**

#### **III. Old Business – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Hawaii Administrative Rules (HAR) Title 11 Chapter 53, **Section 401 Water Quality Certifications**, promulgated by Department of Health (DOH) – **Discussion Leader – Mary Albitz**
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 54, **Water Quality Standards**, promulgated by DOH – **Discussion Leader – Mary Albitz**

- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55 **Water Pollution Control**, promulgated by DOH – **Discussion Leader – Mary Albitz**

**IV. New Business** – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, **Miscellaneous Insurance Rules**, promulgated by Department of Commerce and Consumer Affairs – **Discussion Leader – Jonathan Shick**
- B. Discussion and Action on Proposed Amendments to HAR Title 3 Chapter 40, **Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data**, promulgated by Department of Accounting and General Services – **Discussion Leader – Mark Ritchie**
- C. Discussion and Action on Proposed Amendments to Section 5A-6.4 of the Kauai County Code, **Real Property Tax Classification Rules**, promulgated by the County of Kauai Department of Finance – **Discussion Leader – Chair Robert Cundiff**
- D. Discussion and Action on Proposed Amendments to HAR Title 5 Chapter 5-11, **Notaries Public**, promulgated by Department of the Attorney General – **Discussion Leader – Chair Robert Cundiff**

**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
  - 1. Board’s Fiscal Budgets
  - 2. Review and Update of Board Members “Discussion Leader Assignments” for State and County Agencies’ Hawaii Administrative Rule Review

**VI. Next Meeting:** Thursday, August 19, 2021 at 10:00 a.m.

**VII. Adjournment**

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

## **II. Approval of June 17, 2021 Meeting Minutes**

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT**

June 17, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Mary Albitz, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- William Lydgate

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Alison Kato

II. **APPROVAL OF May 20, 2021 MINUTES**

Mr. Lee motioned to accept the May 20, 2021 meeting minutes, as presented.  
Mr. Ritchie 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 the Proposed Adoption of HAR Title 17 Chapter 798.3, Child Care Payments, promulgated by Department of Human Services (DHS)

Discussion leader Mr. Ritchie stated that the DHS rules involve child care licensing with regards to requirements, background checks and payments. The rules reflect where a state agency has to update its Hawaii Administrative Rules due to receiving federal grant monies and updated federal rules; they have already gone to public hearing.

Ms. Dayna Luka, who is temporarily assigned as DHS’s Child Care Office Administrator, reminded the board members that before the public hearing the rules were presented to this Board in September 2020. They were created to support the requirements of the child care development block grant (CCDBG) of 2014; she noted that states utilize grant monies for financial assistance to low-income families to access various aspects of childcare.

Overall, the 2014 CCDBG was intended to strengthen the protection of child care nationwide for parents to make informative choices. It assists in child development, provides equal

access and stable child care for eligible children and it enhances the quality of childcare and early childhood workforce.

Ms. Loreen Okamura, Child Care Subsidy Lead Specialist, explained that Chapter 798.3 is moving from a six-month to a twelve-month eligibility period to provide more stable child care to families. The testimonies provided at the public hearing were in support of the proposed rules; several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 800, Requirements for Listing of Exempt Center-Based Providers, promulgated by DHS

Ms. Okamura stated that testimonies at the public hearing were in support of the proposed changes and several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Mr. Shick seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 801, Background Checks, promulgated by DHS

Ms. Luka indicated that no oral or written testimonies were received at the public hearing for these rule changes. The changes are based on the requirements set forth by the CCDBG Act, which requires all individuals who work with children or who have unsupervised access to children to undergo comprehensive background checks to be cleared to work with children.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

**IV. NEW BUSINESS – Before Public Hearing**

A. Discussion and Action on the Proposed Amendments of HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Ms. Rodighiero, explained that the proposed rules affect surfing schools in Kahalu'u Bay on the Big Island as it has been found that there is a need to regulate the number of entities in the water. The intent is to have eight limited permits on a shift basis, four permits allowed in the morning and four in the afternoon.

In response to Chair Cundiff's inquiry as to whether any conflicts or concerns may arise as a result of these rules, Mr. Todd Tashima, General Professional from DLNR's Division of Boating and Ocean Recreation (DOBOR), replied that some contention is anticipated due to the restriction of only eight possible permits going into effect versus sixteen businesses vying for the licenses.

Ms. Meghan Statts, DOBOR's Assistant Administrator, confirmed that there will definitely be some challenges ahead with the proposed rules as they only allow for four licensed operators. While it has been discussed with the County of Hawaii to allow for eight permits, (utilizing four in the morning and four in the afternoon), surfing companies are not at all happy with this arrangement.

Kahalu'u Bay is a heavily used area in the local community which is why DOBOR is working very hard with the County to determine amicable solutions for everyone involved. The options available for providing permits are first come, first served with two other options requiring statutory amendments.

Because Kahalu'u Bay is a culturally sensitive area, Second Vice Chair Yamanaka recommended that DOBOR reach out to the businesses and families for feedback to determine the fairest way to move forward with the proposed changes. Chair Cundiff suggested that DOBOR offer a temporary solution that is fair and equitable to both the permitted and non-permitted businesses currently operating in the area.

Over the members' concerns in regard to having a lottery process for permits, Mr. Tashima explained that this process was not DOBOR's first option. However, because the promulgation of these rules has been stagnant since 2016, DOBOR believed it was time to go ahead with this proposal. DOBOR would need to approach the legislature next year with alternatives to the lottery system process such as permits by auction.

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

## **V. ADMINISTRATIVE MATTERS**

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

Chair Cundiff explained that there is no updated news yet on the budget.

Chair Cundiff announced that Harris Nakamoto's term with this Board will end on June 30<sup>th</sup>. We appreciate all of Harris' participation and hard work over the years. He was a great mentor to Chair Cundiff when he began as a member of this Board. Because we want to thank Harris for all his hard work, DBEDT staff will be creating an electronic card that will be sent to all the board members to include any comments and thoughts to Harris in appreciation for his efforts.

## **VI. ELECTION OF BOARD OFFICERS**

### **A. Discussion and Action on the following:**

#### **a. Chairperson, pursuant to Section 201M-5(c), HRS**

In retrospect, Mr. Ritchie stated that this past year has been a very good year for the Board as the new website was completed and there is very good interaction with the agencies and the business community that come before this Board.

Chair Cundiff added that this year has been quite unusual due to meeting through electronic meetings due to the restrictions; this year members were limited in meeting with the agencies which will be important to do after restrictions have been lifted.

Also, the Board did not make much headway in the legislature but as we look to the legislative session next year, members will be encouraged to meet with the representatives to explain what the Board is about and why it deserves to have a budget.

Mr. Lee motioned to elect Mr. Robert Cundiff as Chair of the Board under Section 201M-5 (c), HRS; Mr. Yamanaka seconded the motion and the Board members unanimously agreed.

#### **b. Vice Chair**

Mr. Ritchie motioned to elect Ms. Mary Albitz as Vice Chair of the Board; Mr. Yamanaka seconded the motion and the Board members unanimously agreed.

#### **c. Second Vice Chair**

Mr. Yamanaka motioned to elect Mr. Jonathan Shick as Second Vice Chair of the Board; Ms. Rodighiero seconded the motion and the Board members unanimously agreed.

**VII. NEXT MEETING** - Thursday, July 15, 2021 at 10:00 a.m.

**VIII. ADJOURNMENT** – Mr. Lee motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:24 a.m.

### **III. Old Business – After Public Hearing**

#### **A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 53, Section 401 Water Quality Certifications, promulgated by DOH**

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

Department or Agency: Hawaii Department of Health, Clean Water Branch

Administrative Rule Title and Chapter: HAR 11-53

Chapter Name: Section 401 Water Quality Certification (WQC)

Contact Person/Title: Darryl Lum/Engineering Section Supervisor

Phone Number: (808) 586-4309

E-mail Address: darryl.lum@doh.hawaii.gov Date: 5/28/2021

- 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. **Please see paragraph 1 of the attached response to comments for HAR 11-53.**
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes  No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description:  New  Repeal  Amendment  Compilation

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

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

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

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

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

Yes  No

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

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

Yes  No

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

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

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. All comments received (including from any affected small businesses) were considered.

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

Please see the attached response to comments.

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

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

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. The Clean Water Branch also mentioned the upcoming rule amendment to participants at a monthly General Contractor's Association Environmental Committee meeting.

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

Please see the attached response to comments.

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

Please see the attached response to comments.

4. The number of persons who:  
(i) Attended the public hearing: 44  
(ii) Testified at the hearing: 1  
(iii) Submitted written comments: 3

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

Yes  No

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

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

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)  
This statement may be found on the SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

Comments made at the public hearing were as expected with no negative feedback. Thirteen testifiers attended and five testifiers submitted written testimonies, all of which approved the proposed fee increases. Mr. Cottrell confirmed that State Parks cannot egregiously increase the admittance fees to visitors at a sufficiently higher rate than to residents.

Chair Cundiff reminded the members that at the pre-public hearing meeting with this Board, State Parks provided a very detailed presentation. He expressed that this was a long process and due to the detailed information, as well as DLNR engaging stakeholders, the rule-making process went through quite seamless. Mr. Cottrell agreed but expressed the challenges currently being experienced from COVID-19; he appreciated this Board's review of the proposed rules.

Vice Chair Albitz made a motion to move the proposed amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

**IV. NEW BUSINESS** – Before Public Hearing July 2020 Meeting Minutes

**A. Discussion and Action on the following proposals to Title 11, promulgated by Department of Health (DOH)**

**1. New HAR Chapter 53, Section 401, Water Quality Certifications**

Chair Cundiff expressed that the information provided by DOH is excellently summarized, thoroughly laid out, informative, and easy to follow considering the extensive volume of information. Discussion leader Mr. Nakamoto affirmed that the DOH team did a great job with the presentation of the proposed rules, which are all pre-public hearing. He recently met with the DOH team members to discuss the proposals.

Mr. Alec Wong, Manager at DOH's Clean Water Branch, summarized the proposed new rule section by explaining that the proposal is not new as it is currently part of Chapter 54. The proposal reorganizes and streamlines the rules to be consistent with the minimum federal requirements. Overall, these rules are expected to be positive regarding the economic impact to the State as the rules will reduce the cost of preparing applications for certifications.

Mr. Nakamoto made a motion to move the proposed new rule section to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

**2. Amendments to HAR Chapter 54, Water Quality Standards**

Mr. Alec Wong summarized the proposal, which entails conforming the State's water quality standards to the minimum federal requirements by updating Hawaii's existing numeric human health water quality standards with the latest criteria recommended by EPA (Environmental Protection Agency). One of the main reasons for maintaining regular updates to the rules is to continue receiving federal grant funding from EPA.

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
HEARINGS OFFICE

REPORT OF THE HEARINGS OFFICER

Virtual Public hearing on proposed new HAR Chapters 11-53 (Water Quality Standards) and 11-56 (Nonpoint Source Pollution Control) and proposed amendments to HAR Chapter 11-54 (Water Quality Standards) and 11-55 (Water Pollution Control)

Pursuant to HRS § 91-3, and in accordance with other applicable laws and regulations, advance notice of a public hearing on the above-described matters was timely published statewide, advising that a virtual public hearing thereon would be held on Monday, February 1, 2021, at 9:00 a.m. HST via Zoom and telephone, inviting all persons interested in participating or observing to make the arrangements necessary to do so, and indicating how they could arrange to do so and how to advise the Hearings Officer if they wished to speak..

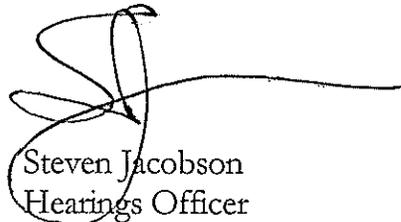
The undersigned Hearings Officer called the public hearing to order on that date at approximately 9:03 a.m., after checking to be sure that the Zoom and telephone equipment was working properly. Staff members of the Department of Health were present at the same location to provide support.

After a brief introduction by the Clean Water Branch, all persons who had indicated a desire to testify (and were present) were allowed an opportunity to do so. After all such persons had testified, the Hearings Officer asked if anyone else wanted to speak, including persons who hadn't indicated an interest in doing so. The hearing continued until all persons who wanted to speak had been able to testify.

After the testimony had concluded, the Hearings Officer reminded everyone present on Zoom and by telephone, as well as the DOH staff at his location, that written comments on the foregoing matters could still be offered until 4:30pm that day as indicated in the hearing notice, and reminded them of how to do so. The public hearing then ended.

The Hearings Officer hereby certifies that the public hearing was conducted in accordance with all applicable requirements established by law.

DATED: Honolulu, Hawaii, March 16, 2021.



Steven Jacobson  
Hearings Officer

**Fact Sheet, Hawaii Administrative Rules (HAR) Chapter 11-53 Section 401 Water Quality Certification (WQC)**

Current	Proposed	Rationale
<p>Section 401 WQC rules are in HAR 11-54-9.1.</p>	<p>DOH proposes to remove the Section 401 WQC rules in HAR 11-54-9.1 and incorporate the substance in a new chapter (HAR 11-53) for certifications.</p>	<p>HAR 11-54 is the body of State Water Quality Standards (WQS) approved by EPA that describe the desired condition of water bodies and certain means by which that condition will be protected or achieved. The certification is issued by the State for projects requiring a federal license or permit that may result in a water pollutant discharge into State waters. The certification does not require EPA approval and does not belong in the WQS. Therefore, DOH proposes to create a new chapter for the certification rules.</p> <p>DOH also proposes revisions to the certification rules, as described below, to streamline processing.</p>
<p>11-54-9.1 Definitions.</p>	<p>11-53-1 Definitions are imported from 11-54-9.1 with certain revisions.</p> <p>Adds definition of “activity”, “applicant”, “Best management practices”, “blanket Section 401 WQC”, “certifying person”, “department”, “director”, “existing uses”, “facility”, “pre-approved SOP”, “state waters”, and “water pollutant”.</p>	<p>New definitions were added as needed.</p>

Current	Proposed	Rationale
	<p>Updates CFR reference dates.</p> <p>Removes definitions of “agent”, “duly authorized representative”, “navigable waters”, “territorial seas”, and “Waters of the United States”.</p> <p>Revises definition of “owner” to include “operator”.</p> <p>Revises definitions of “water quality certification” and “water quality certification application” to “certification” and “application” respectively.</p>	<p>This change references the most current relevant federal regulations.</p> <p>These definitions are no longer referenced in the proposed rules. For example, a duly authorized representative is no longer needed with the streamlined certification process.</p> <p>This definition was revised because either the owner or operator of an activity or facility may apply for a WQC.</p> <p>These definitions were simplified because the proposed rule is specific to WQCs.</p>
None.	11-53-2 General Policy of Section 401 Water Quality Certifications.	Added Section 401 WQC background information to clarify its relationship with the federal license or permit.
11-54-9.1.02 Water quality certification; contents of water quality certification application.	11-53-3 Application.	The contents of the application are revised to match minimum federal requirements in 40 CFR 121.3.

Current	Proposed	Rationale
None.	Adds a requirement in the application to include a description of Best Management Practices (BMPs).	The description of BMPs that will be used to comply with proposed requirements in 11-53-7 are a tool to ensure protection of State waters. See also the rationale for 11-53-7.
11-54-9.1.02(e)	Eliminates the filing fee for applications based on DOH pre-approved Standard Operating Procedures (SOPs).	DOH has a streamlined Section 401 WQC process where applicants can develop SOPs for their different activities, get the SOPs pre-approved by DOH, then use the pre-approved SOPs in their applications. Since the pollution control measures in the SOPs would already have been reviewed and approved, DOH does not need to review the SOPs again with every application. Therefore, processing time is streamlined. DOH is proposing to eliminate filing fees for applications with pre-approved SOPs to incentivize SOP development.
11-54-9.1.02(c).	Establishes deadlines for informing applicants that their application is deficient or complete.	The current Section 401 WQC rules have a 1-year deadline to act on a complete application. Shortening this time frame ensures that DOH's processing does not delay important government projects requiring Section 401 WQCs.
11-54-9.1.01(c).	Proposes a simplified application for Hawaiian fishponds.	HRS 342D-6.5(a) requires DOH to prioritize and expedite processing of applications for the reconstruction, restoration, repair, or reuse of any loko i'a or Hawaiian fishpond (as defined in HRS 183B-1). Drawing from DOH experience to date, a simplified application will provide sufficient information. Coupled with BMP requirements in 11-53-7, DOH believes water quality can still be adequately protected while allowing DOH to comply with HRS 342D-6.5(a).

<b>Current</b>	<b>Proposed</b>	<b>Rationale</b>
None.	Clarifies that Hawaiian fishponds that have DLNR authorization to proceed do not require an application.	HRS 342D-6.5(b) provides that DOH waives the certification requirement. This provision makes it clear to qualifying persons that DOH will not require an application in a situation where DOH will not even be required to consider the content. See also 11-53-12(c) which clarifies that a certification is not required.
None.	11-53-4 Determination.	This section proposes deadlines for DOH to act on a complete application. As noted above, shortening this time frame ensures that DOH's processing does not delay important government projects requiring Section 401 WQCs.
11-54-9.1.03 Water quality certification; notice and hearing.	11-53-5 Public Notice and Hearing.	Proposed rules maintain public notice and hearing requirements substantially similar to existing requirements.
11-54-9.1.01 Water quality certification; contents of certification.	11-53-6 Certification.	Subsection (a) specifies the contents of the certification and matches minimum federal requirements set forth in 40 CFR 121.2. The maximum 5-year term of the certification parallels the term of NPDES permits under HRS 342D-6.
None.	11-53-7 General Conditions.	Proposed conditions and BMP requirements are based on control measures DOH believes to be protective of water quality and broad enough to address water pollutant issues from different types of projects/activities. BMP conditions are included in the proposed rule to reform the practice of allowing applicants to propose BMPs with no performance metrics or guidelines. This practice has resulted in long application processing times when DOH found the proposed BMPs to be deficient.

Current	Proposed	Rationale
11-54-9.1.06 Water quality certification; inspection of facility or activity before operation.	11-53-8 Right to Inspect.	Replaces current inspection language with a reference to HRS 342D-8, which allows DOH to enter and inspect any facility or activity.
None.	11-53-9 Modification.	Proposed rule outlines the circumstances when a certification can be modified. A filing fee is proposed for all modifications requested by the applicant.
11-54-9.1.08 Water quality certification; termination or suspension.	11-53-10 Revocation.	Proposed rule outlines the circumstances when a certification can be revoked.
11-54-9.1.09 Water quality certification; review and advice.	11-53-11 Review and Advice.	Proposed rule does not substantively revise requirements for review and advice to the federal licensing and permitting agency.
11-54-9.1.04 Water quality certification; waiver.	11-53-12 Activities That Do Not Require Certification.	Clarifies that DOH can waive or not require a Section 401 WQC, which is a discretionary action allowed under the Clean Water Act. The proposed rules also clarify that the State's WQS must still be complied with even if a person is issued a certification or if the certification is waived.
11-54-9.1.02(f)	11-53-13 After-The-Fact Activities. Added requirements to handle after-the-fact activities.	DOH does not condone after-the fact activities. The proposed rule now limits certifications to only be issued for portions of the activity that are not already initiated. Also, DOH is explicitly authorized to inform the federal agency that a Section 401 WQC is not required for after-the-fact activities so that the federal agency can move forward with their enforcement of the activity. In the past, the lack of this clarification to EPA resulted in delays in their enforcement.
None.	11-53-14 Severability.	Added severability clause.

<b>Current</b>	<b>Proposed</b>	<b>Rationale</b>
11-54-9.1.05 Water quality certification; adoption of new water quality standards.	Did not carry over to proposed rules.	Once a Section 401 WQC is issued or waived, it is not fair to the discharger to have to comply with new water quality standards for their activity. This treatment is similar to National Pollutant Discharge Elimination System (NPDES) permits in HAR 11-55 where, after the NPDES permit is issued, the discharger is not required to comply with new water quality standards until DOH issues a renewal or modification to the NPDES permit.
11-54-9.1.07 Water quality certification; notification to licensing or permitting agency.	Did not carry over to proposed rules.	Proposed 11-53-7 requires the owner and operator of an activity or facility for which a certification is issued to report to the federal licensing or permitting agency any non-compliance with the condition of the certification. DOH also has broad enforcement authority over the WQS. If DOH determines after an inspection is performed that the activity or facility will violate applicable WQS, DOH can exercise its enforcement powers.

**Response to Public Comments on Proposed  
Hawaii Administrative Rules (HAR),  
Chapter 11-53  
Docket No. CWB-1-21**

The Department of Health (DOH), Clean Water Branch (CWB) solicited public comments from December 16, 2020 through February 1, 2021, on proposed new HAR Chapter 11-53 (Section 401 Water Quality Certification). The proposed new HAR 11-53 contains the rules for issuance of Section 401 Water Quality Certifications (WQCs) within the State of Hawaii, that were previously contained in HAR 11-54.

A virtual public hearing was held at 9:00 a.m. on February 1, 2021. The DOH-CWB published notices of the comment period and public hearing on December 16, 2020 in the Honolulu Star Advertiser, The Garden Island, Maui News, West Hawaii Today, and Hawaii Tribune-Herald. Below is a summary of the comments received and the DOH-CWB responses.

**HAR 11-53 (SECTION 401 WATER QUALITY CERTIFICATION)**

**Comments from Hawaii Department of Transportation, Highways Division, Design Branch**

**Comment 1:** Note: WQC will be removed from HAR 11-54 and relocated into HAR 11-53. DOH notes that the certification does not require EPA approval

**Response 1:** This is correct.

**Comment 2:** If the Duly Authorized Representative was removed from the certification process, then does compliance submissions need to be submitted by the Certifying Person?

**Response 2:** This is correct.

**Comment 3:** HAR 11-53-4(a) The director shall act on an application within sixty days of acknowledging receipt of a complete application. How do you know if the application is complete? How is complete defined?

**Response 3:** Complete is defined as all required information from 40 CFR 121.5 and HAR 11-53-3 has been provided to DOH's satisfaction in the application.

**Comments from County of Hawaii, Planning Department**

**Comment 4:** Thank you for the opportunity to provide comments to amendments to Hawaii Administrative Rules. The Hawai'i Department of Health (DOH) is responsible for monitoring and protecting the quality of waters themselves under the authority of the

Federal Clean Water Act. To the degree designed by law, counties share this public trust responsibility with the State.

In addition to the Administrative Rule amendments proposed for water quality certifications, water quality standards, and water pollution control, we understand that DOH is proposing a new Administrative Rule that provides the regulatory framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution.

The 2005 County of Hawaii General Plan (GP) calls for "work with the appropriate agencies to adopt appropriate measures and provide incentives to control point and non-point sources of pollution". In furtherance of this, the GP also addresses:

- Policy 4.3(k) Implementation of the management measures contained in Hawaii's Coastal Nonpoint Pollution Control Program as a condition of land use permitting.
- Standard 4.4(a) Pollution prevention, abatement, and control at levels that will protect and preserve the public health and wellbeing, through the enforcement of appropriate Federal, State and County standards,
- Standard 4.4(b) Incorporate environmental quality controls either as standards in appropriate ordinances or as conditions of approval.

For similar reasons, improved environmental water quality, water quality monitoring and the human health considerations around the same are a recurring theme in the majority of our County's adopted Community Development Plans (CDPs):

- Complete a comprehensive water quality-monitoring program for the Planning Area's coastal waters
- "encourage growth management and environmental quality policies that use public infrastructure to influence the location and timing of growth; ensuring the same in a manner that reduces waste and pollution, conserves water, and generally minimizes environmental impacts;
- State law mandates that Class AA waters "remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions." For this reason, wastewater disposal in the coastal zone requires special precaution Encourage State legislation to prohibit the use of cesspools as a means for wastewater disposal in areas below 1,000 feet Mean Sea Level.
- Future development and uses need to take into consideration water quality and promote proper watershed management; including water quality monitoring on a district-wide basis.
- Whether intentionally or inadvertently, we degrade our resources by introducing sediments or chemicals to our water resources through non-point or point sources ... groundwater pollution from cesspools, septic systems, fertilizers and pesticides. Some of these same activities also threaten nearshore coastal waters.

We recommend ongoing collaboration with County Department of Water Supply (DWS), Dept of Environmental Management (DEM), Department of Public Works (DPW). Moreover, we also encourage increased engagement with our entire watershed and coastal partnerships and any projects to improve groundwater, stream and coastal water quality and encourage local communities to develop such projects.

**Response 5:** Thank you for your comments of support and continued collaboration.

**Comments from Mālama Pūpūkea-Waimea**

**Comment 6:** 11-53-3(a)(7) Application - Support the requirement that applicants better describe effective Best Management Plans (BMPs).

11-53-3(c)-(e) and 11-53-12 Loko I'a (Fishponds) – Support the streamlined or waived application.

11-53-5 Public Notice and Hearing – Support the maintenance of these requirements to ensure public participation in the process.

11-53-7 General Conditions – Support more protective conditions and BMP requirements.

11-53-8 Right To Inspect – Support strong inspection authority for DOH.

11-53-13 After the Fact – Support discouraging after-the-fact applications and encouraging enforcement against violators.

**Response 6:** Thank you for your comments of support.

### **III. Old Business – After Public Hearing**

#### **B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 54, Water Quality Standards, promulgated by DOH**

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

Department or Agency: State Department of Health / Clean Water Branch

Administrative Rule Title and Chapter: Water Quality Standards / HAR 11-54

Chapter Name: Water Quality Standards

Contact Person/Title: Alec Wong / Program Manager

Phone Number: (808) 586-4309

E-mail Address: cleanwaterbranch@doh.hawaii.gov Date: June 24, 2021

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

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

Yes  No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description:  New  Repeal  Amendment  Compilation

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

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

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

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

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

Yes  No

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

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

Yes  No

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

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

The department is required to review state water quality standards (WQS) at least once every three years, and to amend or to adopt appropriate WQS. The department held the last triennial review in 2019 when it was proposed to amend state WQS for the protection of human health and to allow site-specific flexibilities for the betterment of water quality in Hawaii. The SBRRB reviewed the proposed amendments. The department published public notices, established a public comment period, and held a public hearing to receive testimony from all interested parties.

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

Substantive changes were made. During the public comment period, written testimonies in-opposition to the proposed definition of class AA marine waters were submitted. Specifically, the department proposed to prohibit industrial point source discharges into class AA marine waters. After the public hearing, the department decided to defer the proposed prohibition to the next triennial review of state WQS which is scheduled for April 2022. This deferral will allow for the evaluation and consideration of alternate amendments to ensure class AA marine waters remain in their natural pristine state.

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

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

At the beginning of July 2020, the SBRRB reviewed the proposed amendments for any potential impacts to small businesses. The department published public notices on 16 December 2020, established a 45-day public comment period, and held a public hearing on 1 February 2021 to receive testimony from all interested parties, including small businesses, about the proposed amendments.

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

A total of ninety (90) written testimonies were submitted during the public comment period. Eighty-three (83) of these written testimonies (or more than 90%) were in opposition to the proposed amendment to prohibit industrial point source discharges into class AA marine waters. Most of the remaining written testimonies were in support of the proposed amendments to HAR 11-54. Some of the written testimonies addressed issues that were beyond the scope of the proposed amendments, and that may be considered in future triennial reviews. On 9 February 2021, the department posted a closed captioned video recording of the public hearing on the Clean Water Branch channel at: <https://www.youtube.com/watch?v=hxrvUWkOVyc>.

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

Please see the attached response to comments on HAR 11-54.

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

(i) Attended the public hearing: **44**

(ii) Testified at the hearing: **None**

(iii) Submitted written comments: **89**

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

**Yes**     **No**

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

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

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

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

Comments made at the public hearing were as expected with no negative feedback. Thirteen testifiers attended and five testifiers submitted written testimonies, all of which approved the proposed fee increases. Mr. Cottrell confirmed that State Parks cannot egregiously increase the admittance fees to visitors at a sufficiently higher rate than to residents.

Chair Cundiff reminded the members that at the pre-public hearing meeting with this Board, State Parks provided a very detailed presentation. He expressed that this was a long process and due to the detailed information, as well as DLNR engaging stakeholders, the rule-making process went through quite seamless. Mr. Cottrell agreed but expressed the challenges currently being experienced from COVID-19; he appreciated this Board's review of the proposed rules.

Vice Chair Albitz made a motion to move the proposed amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS** – Before Public Hearing

##### A. Discussion and Action on the following proposals to Title 11, promulgated by Department of Health (DOH)

##### 1. New HAR Chapter 53, Section 401, Water Quality Certifications

Chair Cundiff expressed that the information provided by DOH is excellently summarized, thoroughly laid out, informative, and easy to follow considering the extensive volume of information. Discussion leader Mr. Nakamoto affirmed that the DOH team did a great job with the presentation of the proposed rules, which are all pre-public hearing. He recently met with the DOH team members to discuss the proposals.

Mr. Alec Wong, Manager at DOH's Clean Water Branch, summarized the proposed new rule section by explaining that the proposal is not new as it is currently part of Chapter 54. The proposal reorganizes and streamlines the rules to be consistent with the minimum federal requirements. Overall, these rules are expected to be positive regarding the economic impact to the State as the rules will reduce the cost of preparing applications for certifications.

Mr. Nakamoto made a motion to move the proposed new rule section to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

##### 2. Amendments to HAR Chapter 54, Water Quality Standards July 2020 Meeting Minutes

Mr. Alec Wong summarized the proposal, which entails conforming the State's water quality standards to the minimum federal requirements by updating Hawaii's existing numeric human health water quality standards with the latest criteria recommended by EPA (Environmental Protection Agency). One of the main reasons for maintaining regular updates to the rules is to continue receiving federal grant funding from EPA.

Forty new toxic chemical pollutants will be added to the toxic chemical pollutants list per the current EPA Human Health Criteria Table. Mr. Darryl Lum, Clean Water Branch's Engineering Section Supervisor, acknowledged the new chemical pollutants and explained that when a new standard is incorporated into a permit, the rules allow for a period of time where the standards become the "back-drops" to the permits. Thus, the rules then provide for an opportunity, when businesses that have new requirements imposed upon them, to allow for time to adapt to and comply with the changes.

The proposed amendments will largely impact twenty major permittees/businesses; these are mostly the wastewater sewer plants but the militaries and municipalities are also included. There are no foreseeable impacts to the small business community. GCA (General Contractors Association) members and others were approached on these rules.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

### 3. Amendments to HAR Chapter 55, Water Pollution Control

Mr. Wong explained that the changes to this chapter incorporate provisions from Chapter 54. The rules are intended to improve upon and clarify the permitting procedures and are expected to be more transparent for small businesses. Many of the changes are based on stakeholders' comments and concerns which will help expedite the permitting process and procedures when a discharge occurs.

Mr. Lum stated that prior to the public hearings, there is a mailing list of businesses that are interested in receiving information on the rule changes. Recently, an email blast was sent out to all those on the list including permittees and the counties.

Regarding who the dischargers are, Mr. Lum explained that dischargers are described as those releasing pollutants into the State waters. They include wastewater treatment plants, Hawaiian Electric power generating stations, refineries and other industrial-type discharging businesses. However, most of the permittees are from construction-related businesses; two to four permit applications a day are received from these types of companies.

Mr. Lum further explained that pollution for regulatory purposes is broken out into industrial and non-industrial businesses. The permits given to these businesses are considered "pro-active" tools. This means that permits are given first and then subsequently a business may comply by either not polluting or polluting to a level where it would impact a community whereby it would be mandated by DOH to cease discharging.

When a permit is not complied with or the business is polluting without a permit, DOH will invoke enforcement and order corrections. If there is an immediate issue, but it is remediated by the company and subsequently discharge reoccurs, it still may be treated as an acceptable discharge. While this does not always occur, Mr. Lum noted that in the sixteen years he has been with DOH, there was only one time when a business was shut down by DOH. This was because the remediation required was no longer economically viable for that business' type of facility. He also noted that closing of a facility in Hawaii is very rare.

**Response to Public Comments on Proposed  
Hawaii Administrative Rules (HAR),  
Chapter 11-54  
Docket No. CWB-1-21**

The Department of Health (DOH), Clean Water Branch (CWB) solicited public comments from December 16, 2020 through February 1, 2021, on proposed amendments to HAR Chapter 11-54 (Water Quality Standards). HAR Chapter 11-54 contains the water quality standards established for the State of Hawaii.

A virtual public hearing was held at 9:00 a.m. on February 1, 2021. The DOH-CWB published notices of the comment period and public hearing on December 16, 2020 in the Honolulu Star Advertiser, The Garden Island, Maui News, West Hawaii Today, and Hawaii Tribune-Herald. Below is a summary of the comments received and the DOH-CWB responses.

**HAR 11-54 (WATER QUALITY STANDARDS)**

**Comments from eighty-four individuals about the amendment to class AA marine waters**

**Comments:** The Hawaii Department of Health (HDOH) proposed to amend section 11-54-3(c)(1) of chapter 54 of Hawaii Administrative Rules (HAR 11-54) to include prohibition language specifying that *“no new permit shall be issued for point source discharges of industrial wastewater, industrial stormwater, and those facilities designated by the department as pollutant sources, except for construction-related discharges. All permitted discharges in effect on or before (placeholder date); all future modifications of such discharges; and all future renewals of such discharges may be allowed and permitted with conditions specified in discharge permits to meet applicable and appropriate protection levels for class AA waters.”* If this proposed amendment will be adopted, the placeholder date will be substituted with the actual date of the next compilation of HAR 11-54.

During the public comment period, HDOH received one comment in-support of this proposed amendment and eighty-three comments in-opposition.

**Response:** HDOH extends its gratitude to all commenters. HDOH appreciates all of the comments that were submitted.

Considering all of the comments received, HDOH has decided to defer the proposed prohibition to the next triennial review of State Water Quality Standards (WQS). This deferral will allow for the evaluation and consideration of alternate amendments to protect class AA marine waters and to ensure these waters remain in their natural

pristine state with a minimum of pollution from industrial point source discharges. The next triennial review of State WQS is scheduled for April 2022.

HDOH will notify all commenters when a new proposed amendment to section 11-54-3(c)(1) of HAR 11-54 will be drafted.

**Comments from Hawaii Department of Transportation, Highways Division, Design Branch**

**Comment 1:** The proposal by HDOH to adopt the U.S. Environmental Protection Agency (EPA) recommended ambient water quality criteria and to update State Water Quality Standards (WQS) for the protection of human health is a reasonable move.

**Response 1:** Thank you for your comment. HDOH will continue to conduct triennial reviews of State WQS for the protection of human health and aquatic life. The next triennial review of State WQS is scheduled for 2022.

**Comment 2:** How does the recommended fish tissue water quality criterion for methylmercury, as specified in EPA-823-R-01-001, change State WQS? (“Human Health Criteria” section of HDOH Rationale for Proposed Amendments to HAR 11-54<sup>1</sup>, page 4)

**Response 2:** In HAR 11-54, the human health water quality standards for toxic pollutants are specified as micrograms per liter of water (µg/L). For methylmercury (Chemical Abstracts Service number 22967-92-6), the proposed human health water quality criterion is specified as milligrams per kilogram of fish tissue (mg/kg). Since the proposed human health water quality criterion for methylmercury is a fish tissue-based measurement rather than a water column-based measurement, the implementation of this water quality criterion will require a change in analytical methods. Specifically, additional analytical methods will need to be used to measure the concentrations of methylmercury in fish tissues.

In 1998, the EPA approved method 1630<sup>2</sup> for measuring the concentrations of methylmercury in water columns. In 2010, the EPA approved modifications to method 1630<sup>3</sup> for measuring the concentrations of methylmercury in fish tissues. These modifications allow for the measurement of methylmercury concentrations in fish tissue

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<sup>1</sup> [HDOH Rationale for Proposed Amendments to HAR 11-54 \(Compiled March 2021\)](#)

<sup>2</sup> [EPA Method 1630 - Methyl Mercury in Water by Distillation, Aqueous Ethylation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry \(August 1998\)](#)

<sup>3</sup> [EPA 823-R-10-001 - Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion \(April 2010\)](#)

as low as 0.002 mg/kg; this detection limit is less than 1/100 times the water quality criterion for methylmercury (0.3 mg/kg).

**Comment 3:** How were the proposed standards (for fish consumption) determined? (“Human Health Criteria” section of HDOH Rationale for Proposed Amendments to HAR 11-54, page 5)

**Response 3:** The EPA used the current methodology for deriving human health criteria and considered the latest scientific information about exposure factors, bioaccumulation factors, and toxicity factors of ninety-four toxic pollutants. In 2015, the EPA promulgated the final updated ambient water quality criteria for the protection of human health for these ninety-four toxic pollutants<sup>4</sup>.

For the last triennial review of State WQS which was conducted in 2019, HDOH proposed to update State WQS by adopting the EPA 2015 updated ambient water quality criteria for the protection of human health. At this time, HDOH is not proposing to revise any aquatic life standards that are specified in HAR 11-54 for the protection of freshwater and saltwater organisms from the effects of short-term and long-term exposure to toxic pollutants.

**Comment 4:** Why is “fish consumption” the human health water quality standard? (“Human Health Criteria” section of HDOH Rationale for Proposed Amendments to HAR 11-54, page 5)

**Response 4:** Human health water quality standards are specified to protect from activities that can increase the exposure to waterborne toxic pollutants. These activities include the direct and indirect ingestion of water, and the consumption of aquatic organisms. Hence, human health water quality standards can be specified to protect from both the ingestion of water and the consumption of aquatic organisms (i.e., “water & organism”) or from just the consumption of aquatic organisms (i.e., “organism only”). In HAR 11-54, the human health water quality standards are specified to only protect from the consumption of aquatic organisms, and they are labeled as “fish consumption” standards (i.e., “organism only” standards).

**Comment 5:** What is the rationale for removing certain toxic pollutants? (“Human Health Criteria” section of HDOH Rationale for Proposed Amendments to HAR 11-54, page 12)

**Response 5:** HDOH is proposing to remove the human health water quality standards (i.e., fish consumption standards) specified in HAR 11-54 for dichlorobenzenes,

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<sup>4</sup> [EPA 820-F-15-001 Human Health Ambient Water Quality Criteria: 2015 Update \(June 2015\)](#)

dinitrotoluenes, endosulfan, and Polynuclear Aromatic Hydrocarbons (PAHs). For the first three mixtures of isomers, the removal of human health water quality standards is justified by the proposed addition of human health water quality criteria for specific isomers of dichlorobenzene, dinitrotoluene, and endosulfan. For the last class of chemicals, the removal of human health water quality standard is justified by the proposed addition of human health water quality criteria for specific PAH chemicals. Also, there are currently no aquatic life water quality standards specified in HAR 11-54 for PAHs. With the proposed removal of human health water quality standard for PAHs, there will be no water quality standards specified for this class of chemicals. In other words, it is proposed to entirely remove PAHs from HAR 11-54.

The detailed rationale for removing the above four human health water quality standards is stated on page 11 and a summary table (Table 3) is listed on page 12 of the HDOH Rationale for Proposed Amendments to HAR 11-54. For clarity, this rationale is re-stated below.

1) There are three isomers of dichlorobenzene. Since HDOH is proposing to add fish consumption standards for all three isomers (1,2-, 1,3-, and 1,4-) of dichlorobenzene, the current fish consumption standard in HAR 11-54 for dichlorobenzenes (i.e., mixtures of dichlorobenzene isomers) is removed.

2) There are six isomers of dinitrotoluene. According to the EPA Technical Fact Sheet on Dinitrotoluene<sup>5</sup>, the (2,4- and 2,6-) isomers of this chemical are the two major forms. Moreover, 2,4-dinitrotoluene makes up about 76.5% (i.e., more than three-quarters) of technical grade dinitrotoluene which is a mixture of all six isomers. Since HDOH is proposing to add the fish consumption standard for 2,4-dinitrotoluene, the current fish consumption standard in HAR 11-54 for dinitrotoluenes (i.e., mixtures of dinitrotoluene isomers) is removed.

3) There are two isomers of endosulfan. By convention, the total endosulfan residue level in water samples is the sum of the (alpha- and beta-) isomers of endosulfan plus endosulfan sulfate (i.e., the major oxidation product of endosulfan). Since HDOH is proposing to add fish consumption standards for the (alpha- and beta-) isomers of endosulfan and also for endosulfan sulfate, the current fish consumption standard in HAR 11-54 for endosulfan (i.e., mixtures of endosulfan isomers) is removed.

4) There are over one-hundred PAH chemicals. Only three PAH chemicals (acenaphthene, fluoranthene, and naphthalene) are specified in HAR 11-54. There are fish consumption standards in HAR 11-54 for only one of these three PAH chemicals (fluoranthene) and also for PAHs (as a class of chemicals). Since HDOH is proposing to

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<sup>5</sup> [EPA 505-F-17-010 Technical Fact Sheet – Dinitrotoluene \(DNT\) \(November 2017\)](#)

add or update fish consumption standards for specific PAH chemicals, the current fish consumption standard in HAR 11-54 for PAHs (as a class of chemicals) is removed. Overall, HDOH is proposing to add fish consumption standards for anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)-anthracene, fluorene, indeno(1,2,3-cd)pyrene, and pyrene, to update fish consumption standards for acenaphthene and fluoranthene, and to remove the fish consumption standard for PAHs.

**Comment 6:** The Use Attainability Analysis (UAA) is a reasonable measure that rationalizes why certain metrics cannot be met due to current conditions.

**Response 6:** Thank you for your comment. Due to the diverse aquatic environments in Hawaii, HDOH prioritizes the specification of appropriate uses and applicable WQS for individual water systems. For a specific water system, the conduct of a UAA is required to assess physical, chemical, biological, or economic factors and to determine the attainable uses.

**Comment 7:** Appreciate HDOH's recognition that the Highest Attainable Use (HAU) may conflict with the current WQS and that the determination of the HAU will be data driven. ("Use Attainability Analyses" section of HDOH Rationale for Proposed Amendments to HAR 11-54, page 42)

**Response 7:** Thank you for your comment. HDOH recognizes that the determination of attainable uses must not only assess what can be attained right now but also what can be deemed as attainable in the future pending the implementation of measures such as effluent limits and best management practices. For a specific water system, the conduct of a UAA is required to scientifically demonstrate the non-attainment of a use and to properly determine the HAU.

### **Comments from Surfrider Foundation**

**Comment 8:** Suggests that HDOH updates chapter 342D of Hawaii Revised Statutes (HRS 342D) and therefore HAR 11-54 to explicitly include "plastic" to the definition of "Pollutant." The commenter notes that in a letter dated March 30, 2020, the EPA further rescinded its approval of the Hawaii 2018 Section 303(d) List of Impaired Waters, citing specifically that "*the State's submission does not demonstrate that it has satisfied its statutory and regulatory obligation to assemble and evaluate all existing and readily available data and information related to plastics.*"

**Response 8:** In its March 2020 letter to HDOH, the EPA requested the State to evaluate the existing and readily available water quality-related data and information related to plastics in Hawaii waterbodies for which the State received data and information and submit the results of the evaluation to the EPA.

In May 2020, HDOH submitted its evaluation and response to the EPA. Based on the analysis provided by HDOH, the EPA approved Hawaii's decision not to list 17 of 19 waterbodies on the 2018 List. The EPA did not agree with HDOH's reasoning for not listing 2 of the 19 waterbodies, Kamilo Beach and Tern Island. In its final decision in December 2020, the EPA affirmed the addition of the two waterbodies to the Hawaii 2018 List because "*those waterbodies indicate that they are impaired by trash...*"

The EPA recognizes that most of the trash polluting the nation's waterways is plastic trash, and that plastic trash threatens human health and aquatic ecosystems. However, the EPA does not differentiate plastic from other forms of trash, as indicated in their response to the Hawaii 2018 List. The definition of "pollutant" in both the federal Clean Water Act (CWA) and section 1 of HRS 342D (HRS §342D-1) are substantively the same.

Adding "plastic" to the definition of "water pollutant" in HRS 342D and therefore HAR 11-54 is redundant and unnecessary as plastics are a subset of garbage and solid refuse, both of which are currently included in the definition. Further, the addition of plastic to the definition will have little or no specific actionable effect in the HDOH's administration of the State's water pollution law.

Since HDOH interprets HRS §342D-1 at least as broadly as the EPA interprets the CWA, "plastics" as a category is interpreted to be subset of garbage and solid refuse, both of which are currently identified as water pollutants in HRS §342D-1.

**Comment 9:** Section 11-54-8(e) of HAR 11-54 states "*Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococci count.*" To maximize public health and safety, Surfrider Foundation requests this provision be modified to mandate warning signs be posted where pollutants of public health significance are present.

Enterococci, an indicator of fecal contamination from warm-blooded animals, is currently the accepted criteria for determining public health risks in recreational waters, regardless if HDOH is able to establish a definitive connection between enterococci counts and the discharge of human sewage. It is therefore reasonable to expect that public signage be posted when enterococci counts exceed the accepted human health standards for recreational waters. This revision would be appropriate and consistent with the EPA's 2012 Recreational Water Quality Criteria.

**Response 9:** Enterococci is currently the EPA-recommended indicator of fecal contamination; however, its use has been criticized by several researchers because the epidemiological studies leading to their selection mainly focused on beaches where point sources of sewage discharge were present and very little consideration was made

for environmental (non-fecal) sources<sup>6</sup>. Further, enterococci have been shown to grow in the environment in the absence of any known fecal source, animal or human<sup>7</sup>. Therefore, the use of enterococci as a surrogate for pathogens is problematic. Enterococci from the human gut is shed and passed in human feces, therefore, the greater numbers of human enterococci found in ambient waters indicate the presence of human feces which may also mean greater numbers of human pathogens and increased risk to human health. However, if there are no human or animal sources, then the health risk is negligible in the area<sup>8,9</sup>.

A microbial source tracking study was commissioned by HDOH on the island of Kauai in response to persistent elevated enterococci levels in an area where a prior HDOH sanitary survey was unable to identify any fecal sources. The study, conducted by researchers from the University of California, Berkeley, confirmed HDOH's sanitary survey results and concluded that the elevated levels of enterococci found were not caused by human or animal fecal contamination<sup>10</sup>.

The EPA is aware of the shortcomings of the current fecal indicator. DOH monitors beaches and issues health advisories and notification as required under the federal Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act) under the guidance of The National Beach Guidance and Required Performance Criteria for Grants, 2014 Edition (Guidance). Section 1.3 of the Guidance states: *"It is important to note that FIB (fecal indicator bacteria) are not exclusively of fecal origin, and they can be part of the natural microflora in the environment. FIB have also been shown to persist and even grow in sand, sediments, and soil; on plant surfaces; and within algal mats and biofilms...FIB from these nonfecal sources have not been demonstrated to be related to the potential for human illness."*

Because of the uncertainty associated with the sources of elevated enterococci levels, the Guidance specifies that *"If there is reason to doubt the accuracy, certainty, or representativeness of the first sample collected, based on QA/QC measures, resampling should be considered. This might be the case if sampling results at the beach have shown that, historically, water quality has consistently met acceptable*

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<sup>6</sup> Fujioka, R.S. (2001). Monitoring coastal marine waters for spore-forming bacteria of faecal and soil origin to determine point from non-point source pollution. *Water Science and Technology* 44, 181-188.

<sup>7</sup> Bayappanahalli, M.N., et al., Enterococci in the Environment, *Microbiology and Molecular Biology Reviews*. 2012, 76(4), 685-706.

<sup>8</sup> Soller, J.A., et al., Estimated human health risks from exposure to recreational waters impacted by human and non-human sources of faecal contamination, *Water Research* (2010), doi:10.1016/j.watres.2010.06.049.

<sup>9</sup> Viau, E.J.; Lee, D.; Boehm, A.B. Swimmer risk of gastrointestinal illness from exposure to tropical coastal waters impacted by terrestrial dry-weather runoff, *Environ. Sci. Technol.* 2011, 45 (17), 7158-7165.

<sup>10</sup> Dubinsky, E. and Anderson, G.; Mahaulepu and Waikomo Watersheds Phylochip Source Tracking Study, Hawaii. Final Report, May 22, 2019.

*beach water quality thresholds and no known or potential sources of fecal contamination affect beach water quality.”*

Given these factors, when elevated enterococci levels are encountered at beach monitoring sites that have historically shown that water quality has consistently met acceptable threshold levels, HDOH will issue Notifications to inform the public that the level of enterococci has exceeded the threshold level and that retesting of the beach is currently underway. If retesting results also exceed the threshold, DOH will post signs on the affected beaches and will issue an Advisory to inform beach users to remain out of the affected waters.

### **Comment from Mālama Pūpūkea-Waimea**

**Comment 10:** Mālama Pūpūkea-Waimea supports the overall effort “to adopt EPA recommended ambient water quality criteria and to update State WQS for the protection of human health.” (“Human Health Criteria” section of HDOH Rationale for Proposed Amendments to HAR 11-54, page 3)

The modernization of fish consumption standards appears to be much needed and support by best available science.

**Response 10:** Thank you for your comment. HDOD appreciates the support and agrees that the best available science should be considered when updating State WQS.

### **Comment from County of Hawaii, Planning Department**

**Comment 11:** We recommend ongoing collaboration with County Department of Water Supply (DWS), Dept of Environmental Management (DEM), Department of Public Works (DPW). Moreover, we encourage increased engagement with our entire watershed and coastal partnerships, and any projects to improve groundwater, stream and coastal water quality, and encourage local communities to develop such projects.

**Response 11:** HDOD appreciates the recommendation and looks forward to continued support and collaboration with the County of Hawaii and its stakeholders.

### **Comments from American Forest and Paper Association**

**Comment 12:** HDOH should develop human health water quality criteria revisions suited to the unique characteristics of State waters.

States are not required to adopt the EPA’s National Human Health Water Quality Criteria (HHWQC).

**Response 12:** Under the CWA, states are required to periodically review and, as appropriate, adopt, new or revised criteria for which the EPA has published new or

updated CWA section 304(a) criteria recommendations. If the State does not adopt new or revised criteria for which the EPA has published new or updated CWA section 304(a) criteria recommendations, the State must provide an explanation to the EPA. States may develop water quality standards that are more stringent than the criteria recommended by the EPA. If states develop standards that are less stringent than those recommended by the EPA, the state must demonstrate that the criteria being developed are as protective as those recommended by the EPA.

Numeric standards for human health ambient water quality (i.e., numeric standards for toxic pollutants) were first added to State WQS in 1990 and were based on the EPA's recommended criteria. Since then, there have been no significant changes to Hawaii's toxic pollutant standards. Although HDOH acknowledges that Hawaii should develop water quality criteria that are suited to the unique characteristics of State waters, and that individual states may develop site-specific standards based on scientifically defensible data, HDOH lacks the resources to develop such water quality criteria specific to Hawaii. The EPA's 2015 Final Updated Human Health Ambient Water Quality Criteria, on which the proposed changes are based, reflects current scientific health risk information that were obtained using resources that far exceed those available to the State.

HDOH reviewed the EPA's 2015 recommended criteria, which were developed using the most current peer-reviewed scientific information and has chosen to adopt the recommended criteria. HDOH's proposed changes include water quality standards that are both more stringent, and less stringent than existing standards, in addition to those that remain unchanged. If the recommended criteria were not adopted, many of the existing numeric criteria would remain unnecessarily stringent relative to the current level of risk as determined by current scientific information. New scientific information has determined that the level of risk due to exposure to some of these toxic pollutants are not as great as previous data has shown and that the new recommended levels provide the same level of public health protection at lower numeric concentrations.

HDOH acknowledges that the State has flexibility in adopting HHWQC and believes that the EPA's 2015 recommended water quality criteria provides an appropriate level of protection to State waters.

**Comment 13:** Hawaii has the discretion to consider the costs of meeting the criteria and other social costs and benefits of their adoption, as well as other relevant factors. As it undertakes the risk management inherent in establishing its HHWQC, HDOH also should recognize the uncertainties and conservative assumptions involved in risk estimates.

**Response 13:** As stated above, HDOH lacks the resources necessary to perform the risk analysis required to develop state-specific water quality standards that provide appropriate protection from toxic pollutants. HDOH believes State WQS should be based on the best available science that has been adequately peer-reviewed and subjected to public participation process.

The draft rules have been reviewed and approved by the State's Small Business Regulatory Review Board, which represents the interests of small businesses that may be impacted by the rule change. Small businesses and permitted dischargers did not express any major concerns and did not oppose the proposed revisions during the public comment period.

**Comment 14:** The National HHWQC are unnecessarily conservative and based on unrealistic default values.

**Response 14:** HDOH does not agree that the National HHWQC are unnecessarily conservative. Hawaii's revised standards for toxic pollutants include several instances where the existing criteria will be made less stringent due to advances in risk analysis and chemical toxicity characteristics. The aim of revising Hawaii's WQS is to update existing criteria to provide human health protection commensurate with currently available scientific information. In doing so, HDOH understands that some criteria will become more stringent while others will become less stringent.

**Comment 15:** The National HHWQC are not necessarily applicable to Hawaii's waters. The EPA 2015 HHWQC update includes a Fish Consumption Rate (FCR) of 22 grams per day (which is more fish and shellfish from inland and nearshore waters than is consumed by 90 percent of the U.S. adult population 21 years of age and older).

**Response 15:** HDOH does not agree that the National HHWQC are not applicable in Hawaii's waters. The FCR specified by the EPA is relevant to Hawaii and reflects Hawaii's somewhat higher consumption of nearshore fish relative to the majority of adult population in the U.S. The aim of revising State WQS is to update existing criteria to provide human health protection commensurate with currently available scientific information.

**Comment 16:** There is a more scientifically advanced way to calculate human health criteria: The Probabilistic Risk Assessment (PRA).

**Response 16:** HDOH appreciates the reference to PRA; however, HDOH believes that the criteria recommended by the EPA provide an appropriate level of human health protection in Hawaii. HDOH currently lacks the resources necessary to conduct the analyses required to implement PRA.

**RATIONALE FOR PROPOSED AMENDMENTS TO  
HAWAII ADMINISTRATIVE RULES  
TITLE 11  
DEPARTMENT OF HEALTH  
CHAPTER 11-54  
WATER QUALITY STANDARDS**

**DEPARTMENT OF HEALTH  
ENVIRONMENTAL MANAGEMENT DIVISION  
CLEAN WATER BRANCH  
PEARL CITY, HAWAII  
COMPILED MARCH 2021**

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## **I. BACKGROUND**

Water Quality Standards in Hawaii (State WQS) provide the regulatory basis for assessing, protecting and restoring water bodies in the State. The three key components of State WQS are designated uses, water quality criteria, and antidegradation requirements. Specifically, designated uses identify the beneficial values of all surface waters, water quality criteria define the necessary conditions for achieving designated uses, and antidegradation requirements provide the regulatory framework for protecting existing uses.

The regulations for State WQS are specified in Hawaii Administrative Rules at Title 11, Chapter 54 (HAR 11-54). The administrative rules for State WQS date to January 1968, when Chapter 37-A, Public Health Regulations, first became effective. These regulations were authorized under the Federal Water Pollution Control Act Amendments of 1965. Since the enactment of the Federal Water Pollution Control Act Amendments of 1972, commonly known as the Clean Water Act (CWA), many amendments have been made to State WQS regulations.

In 1979, amendments to State WQS were adopted to satisfy the CWA Section 208 Basin Plan requirements. In 1990, HDOH amended State WQS to include numeric standards for toxic chemicals for the protection of beneficial uses of State surface waters by preventing direct impacts from toxic pollutants to aquatic life, and indirect impacts to human health and wildlife from the bioaccumulation of toxic pollutants in edible aquatic organisms. Prior to this 1990 amendment, regulations were limited due in part to the lack of numeric criteria or any specific limitations for toxic pollutants. Besides amendments such as the inclusion of site-specific standards for the Kona Coast (on the west side of the island of Hawaii) in 2000 and the adoption of EPA recommended recreational water quality criteria in 2014, the core of State WQS has remained relatively unchanged since 1990.

In August 2015, the U.S. Environmental Protection Agency (EPA) published revisions to the federal WQS regulations found in the Code of Federal Regulations (CFR) at Title 40, Part 131 (40 CFR §131). Overall, these revisions clarified the requirements in six major areas of WQS<sup>1</sup>:

1. Administrator's Determinations,
2. Designated Uses,
3. Triennial Reviews,
4. Antidegradation,
5. WQS Variances, and
6. Provisions Authorizing the Use of Schedules of Compliance.

HDOH is required to review State WQS and EPA promulgated WQS at least once every three years, and to modify and adopt appropriate State WQS. Specifically, HDOH is required to evaluate and adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations. If HDOH does not adopt new or revised criteria for which EPA has published new or updated CWA section 304(a) criteria recommendations, then HDOH must provide, to the EPA Regional Administrator, an explanation when submitting the results of its triennial review. HDOH may modify the recommended criteria

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<sup>1</sup> <https://www.epa.gov/sites/production/files/2018-10/documents/wqs-regulatory-revisions-final-rule-factsheet.pdf>

to reflect site-specific conditions. All revisions to State WQS regulations must be subject to the public participation process, and they must be adopted by the State and approved by the EPA.

As part of the latest triennial review, HDOH solicited input, from the public and various stakeholders, about the intent to revise the following two areas of WQS regulations.

1. HDOH proposed to revise numeric standards of toxic chemicals for the protection of human health. HDOH did not propose to either revise or adopt in HAR 11-54 any aquatic life standards intended to protect freshwater and saltwater organisms from the effects of short-term and long-term exposure to toxic pollutants. HDOH required additional time to evaluate and to adopt any, new or revised, national acute and chronic criteria that were recommended by EPA in 2015.
2. HDOH proposed to amend HAR 11-54 with authorizing language consistent with federal statutes and regulations allowing the use of flexibilities including use attainability analyses, WQS variances, and site-specific criteria. These regulatory mechanisms would allow HDOH to modify State WQS on a site-specific basis, to designate uses that better reflect actual conditions, and to take measures that incrementally improve water quality in Hawaii.

HDOH provided a 45-day public comment period and held a public hearing, on 15 March 2019, about the intent to revise the above areas of State WQS. Six distinct commenters, including federal and municipal entities, a commercial business, a non-governmental organization, and interested individuals, submitted about forty comments to HDOH during this period. Some of the comments addressed issues that were beyond the scope of the proposed WQS revisions, and that may be considered by HDOH in future WQS revisions. A copy of the HDOH responses to these public comments can be viewed online at the HDOH Clean Water Branch (CWB) website<sup>2</sup> in the “Public Notices and Updates” section.

With the addition of new site-specific flexibilities, HDOH proposed to maintain the logical organization of sections in HAR 11-54 by removing certain current sections. First, HDOH proposed to remove sections HAR 11-54-9.1 and HAR 11-54-9.1.01 to HAR 11-54-9.1.09 about “Water Quality Certification,” and to include them in the new chapter 53, titled “Section 401 Water Quality Certification” (HAR 11-53). Next, HDOH also proposed to remove sections HAR 11-54-9 about “Zones of Mixing” and HAR 11-54-12 about “Intake Credits,” and to include them in the existing chapter 55, titled “Water Pollution Control” (HAR 11-55). Last, HDOH proposed to make various minor modifications to HAR 11-54 in order to correct inconsistency issues, fix typographical errors, update incorrect references, and clarify unclear terms.

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<sup>2</sup> <https://health.hawaii.gov/cwb/files/2019/06/WQS-Triennial-RTC-062119.pdf>

## II. RATIONALE FOR HUMAN HEALTH CRITERIA

HDOH has conducted the required triennial review of State WQS specified in the Hawaii Administrative Rules, Title 11, Chapter 54 (HAR 11-54), and reviewed new and updated CWA section 304(a) recommended water quality criteria that were published by EPA since May 30, 2000. During this triennial review, HDOH proposes to adopt EPA recommended human health criteria that are based on the latest adjusted national fish consumption rate. These recommended human health criteria for toxic pollutants are necessary to protect any designated uses related to the ingestion of water and aquatic organisms. These uses can include, but are not limited to, recreation in and on the water, consumption of fish or shellfish, and the protection of drinking water supplies.

In 2015, EPA updated its national recommended water quality criteria for human health for ninety-four toxic pollutants. The EPA 2015 Final Updated Human Health Ambient Water Quality Criteria<sup>3</sup> contains the latest scientific information to determine the risk associated with the consumption of these ninety-four pollutants, including updated body weight, drinking water consumption rate, fish consumption rate, bioaccumulation factors, toxicity values, and relative source contributions. The latest water quality criteria for these toxic pollutants are incorporated into the current EPA “National Recommended Water Quality Criteria Table for the protection of Human Health”<sup>4</sup> or “Human Health Criteria Table” (as it is commonly called).

Water quality criteria developed under the CWA section 304(a) are based on data and scientific judgments on the relationship between pollutant concentrations and human health effects. The criteria recommended by EPA represent specific levels of pollutants or conditions in a water body that are not expected to cause adverse effects to human health. Adopting the updated section 304(a) criteria ensures that the WQS of a State reflect current science and protect applicable designated uses. New scientific risk information obtained since EPA last published its recommended criteria may lead to updated recommended criteria that may be more stringent or less stringent than the existing WQS of a State. HDOH proposes **to adopt EPA recommended ambient water quality criteria and to update State WQS for the protection of human health.**

First, HDOH proposes to adopt the recommended numeric criteria of the ninety-four pollutants that are listed in the 2015 Final Updated Human Health Ambient Water Quality Criteria. Of these ninety-four pollutants, fifty-six are already included in HAR 11-54 and thirty-eight are not. Second, HDOH proposes to adopt the recommended numeric criteria of sixteen additional pollutants that were updated by EPA prior to 2015. Of these sixteen additional pollutants, fourteen are already included in HAR 11-54 and two are not. Overall, HDOH proposes **to update existing standards for a total of seventy pollutants (i.e., fifty-six from 2015 plus fourteen before 2015), and to add recommended criteria for a total of forty pollutants (i.e., thirty-eight from 2015 plus two before 2015); all updated and added pollutants are listed in the current EPA Human Health Criteria Table.**

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<sup>3</sup> <https://www.epa.gov/wqc/2015-epa-updated-ambient-water-quality-criteria-protection-human-health>

<sup>4</sup> <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>

All criteria listed in the EPA current Human Health Criteria Table are single numeric values except for benzene. Specifically, the water quality criterion, recommended for benzene, is expressed as a numeric range of 16-58 micrograms per liter. This range reflects the use of two toxicity values in the equations for deriving the criteria values.<sup>5</sup> These toxicity values are expressed as Cancer Slope Factors (CSF) for carcinogenic compounds and reflect the information obtained from EPA Integrated Risk Information System (IRIS). The CSF is used to assess the risk associated with exposure to a carcinogen and is represented by the 95% confidence limit on the increased risk of cancer from a lifetime of exposure to a carcinogenic chemical by ingestion.

For benzene, the CSF used to determine the recommended criteria is based on EPA 2000 IRIS assessment and is represented by a CSF range from 0.015 per mg/kg-day to 0.055 per mg/kg-day. Using the lower CSF in the calculation, the ambient water quality criteria for benzene is 58 micrograms per liter. Using the upper CSF, the criteria is calculated to be 16 micrograms per liter. HDOH proposes to use the more conservative calculation in which the upper CSF is used to provide a higher level of public health protection and proposes a numeric standard of 16 micrograms per liter for benzene in the protection of human health.

In addition to the above water quality criteria, HDOH proposes **to adopt the recommended fish tissue residue water quality criterion for methylmercury** as specified in EPA-823-R-01-001, *Water Quality Criterion for the Protection of Human Health: Methylmercury*, Final, January 2001. The methylmercury criterion specified by EPA is a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion. As such, HDOH proposes to adopt the fish tissue residue water quality standard that is expressed as milligrams of methylmercury per kilogram of fish rather than micrograms per liter of water. The proposed standard of 0.3 mg of methylmercury per kilogram of fish or shellfish is the first EPA-recommended criterion that specifies a tissue value rather than a water column value. The reasons for proposing a fish tissue-based criterion for methylmercury are:

1. Representation of the dominant human exposure route.
2. Integration of the spatial and temporal complexities, that occur in aquatic systems and that affect bioaccumulation.

In summary, there are seventy proposed updates to current fish consumption numeric standards of toxic pollutants in HAR 11-54. There are forty proposed chemicals to be added: thirty-nine new chemicals and their respective water column criteria from the current EPA Human Health Criteria Table, plus methylmercury and the fish tissue criterion from EPA 2001 Recommended Water Quality Criterion for the Protection of Human Health from Methylmercury. As mentioned earlier, no revisions to aquatic life toxicity standards are proposed at this time.

For seventy chemicals currently specified in HAR 11-54, Table 1 shows the proposed revisions to the toxic chemical list in HAR 11-54-4(c)(3). Thirty-one of these seventy chemicals have names that need updating to be consistent with the ones listed in the current EPA Human Health Criteria Table. All chemical names and standards currently specified in HAR 11-54 are listed in

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<sup>5</sup> <https://www.regulations.gov/document?D=EPA-HQ-OW-2014-0135-0165>

italics. The abbreviation “*ns*” (shown in italics) means “no standards” in the current version of HAR 11-54. All proposed standards reflect the fish consumption criteria in the current EPA Human Health Criteria Table; all fish consumption standards are expressed in micrograms per liter ( $\mu\text{g/L}$ ).

Table 1. Proposed Revisions to List of Toxic Chemicals

<i>Current chemical name</i> [Proposed new chemical name]	<b>(Fish Consumption)</b> <i>Current standard</i> ( $\mu\text{g/L}$ )	<b>(Fish Consumption)</b> <b>Proposed standard</b> ( $\mu\text{g/L}$ )
<i>Acenaphthene</i>	<i>ns</i>	90
<i>Acrolein</i>	250	400
<i>Acrylonitrile</i>	0.21	7.0
<i>Aldrin</i>	0.000026	0.00000077
<i>Antimony</i>	15,000	640 *
<i>Arsenic</i>	<i>ns</i>	0.14 *
<i>Benzene</i>	13	16
<i>Benzidine</i>	0.00017	0.011
<i>Carbon Tetrachloride</i>	2.3	5
<i>Chlordane</i>	0.00016	0.00032
<i>Chloroethers-ethyl(bis-2)</i> [Bis(2-Chloroethyl) Ether]	0.44	2.2
<i>Chloroethers-isopropyl)</i> [Bis(2-Chloro-1-Methylethyl) Ether]	1,400	4,000
<i>Chloroethers-methyl(bis)</i> [Bis(Chloromethyl) Ether]	0.00060	0.017
<i>Chloroform</i>	5.1	2,000
<i>Chlorophenol(2)</i> [2-Chlorophenol]	<i>ns</i>	800
<i>Cyanide</i>	<i>ns</i>	400

\* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Table 1. Proposed Revisions to List of Toxic Chemicals, Continued

<i>Current chemical name</i> [Proposed new chemical name]	(Fish Consumption) <i>Current standard</i> (µg/L)	(Fish Consumption) <i>Proposed standard</i> (µg/L)
<i>DDT</i> [p,p'-Dichlorodiphenyltrichloroethane (DDT)]	0.000008	0.000030
<i>DDT metabolite TDE</i> [p,p'-Dichlorodiphenyldichloroethane (DDD)]	ns	0.00012
<i>Dichloro-benzidine</i> [3,3'-Dichlorobenzidine]	0.007	0.15
<i>Dichloro-ethane(1,2)</i> [1,2-Dichloroethane]	79	650
<i>Dichloro-phenol(2,4)</i> [2,4-Dichlorophenol]	ns	60
<i>Dichloro-propene(1,3)</i> [1,3-Dichloropropene]	4.6	12
<i>Dieldrin</i>	0.000025	0.0000012
<i>Dinitro-o-cresol(4,6)</i> [2-Methyl-4,6-Dinitrophenol]	250	30
<i>Dioxin</i> [2,3,7,8-TCDD (Dioxin)]	5.0x10 <sup>-9</sup>	5.1x10 <sup>-9</sup> *
<i>Diphenyl-hydrazine(1,2)</i> [1,2-Diphenylhydrazine]	0.018	0.2
<i>Endrin</i>	ns	0.03
<i>Ethylbenzene</i>	1,070	130
<i>Fluoranthene</i>	18	20
<i>Heptachlor</i>	0.00009	0.0000059
<i>Hexachlorobenzene</i>	0.00024	0.000079
<i>Hexachlorobutadiene</i>	16	0.01

\* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Table 1. Proposed Revisions to List of Toxic Chemicals, Continued

<i>Current chemical name</i> [Proposed new chemical name]	(Fish Consumption) <i>Current standard</i> (µg/L)	(Fish Consumption) <i>Proposed standard</i> (µg/L)
<i>Hexachloro-cyclohexane-alpha</i> [alpha-Hexachlorocyclohexane (HCH)]	0.010	0.00039
<i>Hexachloro-cyclohexane-beta</i> [beta-Hexachlorocyclohexane (HCH)]	0.018	0.014
<i>Hexachlorocyclohexane (HCH)-Technical</i>	0.014	0.010
<i>Hexachlorocyclopentadiene</i>	ns	4
<i>Hexachloroethane</i>	2.9	0.1
<i>Isophorone</i>	170,000	1,800
<i>Lindane</i> [gamma-Hexachlorocyclohexane (HCH)]	0.020	4.4
<i>Methoxychlor</i>	ns	0.02
<i>Nickel</i>	33	4,600 *
<i>Nitrobenzene</i>	ns	600
<i>Nitrosamines</i>	0.41	1.24 *
<i>Nitrosodibutylamine-N</i> [Nitrosodibutylamine]	0.19	0.22 *
<i>Nitrosodiethylamine-N</i> [Nitrosodiethylamine]	0.41	1.24 *
<i>Nitrosodimethylamine-N</i> [N-Nitrosodimethylamine]	5.3	3.0 *
<i>Nitrosodiphenylamine-N</i> [N-Nitrosodiphenylamine]	5.3	6.0 *
<i>Nitrosopyrrolidine-N</i> [Nitrosopyrrolidine]	30	34 *
<i>Pentachlorobenzene</i>	28	0.1
<i>Pentachlorophenol</i>	ns	0.04
<i>Phenol</i>	ns	300,000
<i>Phenol 2,4-dimethyl</i> [2,4-Dimethylphenol]	ns	3,000

\* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

Table 1. Proposed Revisions to List of Toxic Chemicals, Continued

<i>Current chemical name</i> [Proposed new chemical name]	(Fish Consumption) <i>Current standard</i> (µg/L)	(Fish Consumption) <i>Proposed standard</i> (µg/L)
<i>Phthalate esters dibutyl</i> [Di-n-Butyl Phthalate]	50,000	30
<i>Phthalate esters diethyl</i> [Diethyl Phthalate]	590,000	600
<i>Phthalate esters di-2-ethylhexyl</i> [Bis(2-Ethylhexyl) Phthalate]	16,000	0.37
<i>Phthalate esters dimethyl</i> [Dimethyl Phthalate]	950,000	2,000
<i>Polychlorinated Biphenyls (PCBs)</i>	0.000079	0.000064 *
<i>Selenium</i>	ns	4,200 *
<i>Tetrachloro-benzene(1,2,4,5)</i> [1,2,4,5-Tetrachlorobenzene]	16	0.03
<i>Tetrachloro-ethane(1,1,2,2)</i> [1,1,2,2-Tetrachloroethane]	3.5	3
<i>Tetrachloroethylene</i>	2.9	29
<i>Thallium</i>	16	0.47 *
<i>Toluene</i>	140,000	520
<i>Toxaphene</i>	0.00024	0.00071
<i>Trichloro-ethane(1,1,1)</i> [1,1,1-Trichloroethane]	340,000	200,000
<i>Trichloro-ethane(1,1,2)</i> [1,1,2-Trichloroethane]	14	8.9
<i>Trichloroethylene</i>	26	7
<i>Trichloro-phenol(2,4,6)</i> [2,4,6-Trichlorophenol]	1.2	2.8
<i>Vinyl Chloride</i>	170	1.6
<i>Zinc</i>	ns	26,000 *

\* Proposed standards are recommended criteria that were updated by EPA prior to 2015.

As shown in Table 1, HDOH proposes to update the names of thirty-one toxic chemicals to reflect the names as listed in the current EPA Human Health Criteria Table. The updated names

are synonyms of the same toxic chemicals. By adopting the naming convention used by EPA, HDOH hopes to reduce ambiguity and potential confusion in the application of State WQS. HDOH also proposes to update the name of two chemicals, Pentachloroethanes and Tetrachlorophenol(2,3,5,6), which are not included in the current EPA Human Health Criteria Table. First, Pentachloroethane is incorrectly listed in the plural (i.e., Pentachloroethanes) to represent all isomers of this chemical when there is a single isomer. The name of this chemical in HAR 11-54 is updated to Pentachloroethane. Second, the chemical Tetrachlorophenol(2,3,5,6) does not follow the naming convention that the EPA uses for isomers. The name of this chemical in HAR 11-54 is updated to 2,3,5,6-Tetrachlorophenol.

For forty chemicals not currently specified in HAR 11-54, Table 2 shows the proposed additions to the toxic chemical list in HAR 11-54-4(c)(3). All proposed additions have no current fish consumption standards in HAR 11-54. The proposed new chemical names and standards reflect the pollutant names and fish consumption criteria in the current EPA Human Health Criteria Table. All proposed fish consumption standards are expressed in micrograms per liter ( $\mu\text{g/L}$ ) except for methylmercury which is expressed in milligrams of methylmercury per kilogram of fish ( $\text{mg/kg}$ ). As mentioned earlier, no aquatic life standards are updated for these proposed new chemicals at this time.

Table 2. Proposed Additions to List of Toxic Chemicals

<b>Proposed new chemical name</b>	<b>(Fish Consumption) <i>No current standard</i> (<math>\mu\text{g/L}</math>)</b>	<b>(Fish Consumption) Proposed new standard (<math>\mu\text{g/L}</math> except Methylmercury +)</b>
1,1-Dichloroethylene	<i>blank</i>	20,000
1,2,4-Trichlorobenzene	<i>blank</i>	0.076
1,2-Dichlorobenzene	<i>blank</i>	3,000
1,2-Dichloropropane	<i>blank</i>	31
1,3-Dichlorobenzene	<i>blank</i>	10
1,4-Dichlorobenzene	<i>blank</i>	900
2,4,5-Trichlorophenol	<i>blank</i>	600
2,4-Dinitrophenol	<i>blank</i>	300
2,4-Dinitrotoluene	<i>blank</i>	1.7
2-Chloronaphthalene	<i>blank</i>	1,000
3-Methyl-4-Chlorophenol	<i>blank</i>	2,000
alpha-Endosulfan	<i>blank</i>	30
Anthracene	<i>blank</i>	400
Benzo(a)anthracene	<i>blank</i>	0.0013
Benzo(a)pyrene	<i>blank</i>	0.00013
Benzo(b)fluoranthene	<i>blank</i>	0.0013

Table 2. Proposed Additions to List of Toxic Chemicals, Continued

<b>Proposed new chemical name</b>	<b>(Fish Consumption) No current standard (µg/L)</b>	<b>(Fish Consumption) Proposed new standard (µg/L except Methylmercury +)</b>
Benzo(k)fluoranthene	<i>blank</i>	0.013
beta-Endosulfan	<i>blank</i>	40
Bromoform	<i>blank</i>	120
Butylbenzyl Phthalate	<i>blank</i>	0.10
Chlorobenzene	<i>blank</i>	800
Chlorodibromomethane	<i>blank</i>	21
Chlorophenoxy Herbicide (2,4-D)	<i>blank</i>	12,000
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	<i>blank</i>	400
Chrysene	<i>blank</i>	0.13
Dibenzo(a,h)anthracene	<i>blank</i>	0.00013
Dichlorobromomethane	<i>blank</i>	27
Dinitrophenols	<i>blank</i>	1,000
Endosulfan Sulfate	<i>blank</i>	40
Endrin Aldehyde	<i>blank</i>	1
Fluorene	<i>blank</i>	70
Heptachlor Epoxide	<i>blank</i>	0.000032
Indeno(1,2,3-cd)pyrene	<i>blank</i>	0.0013
Methyl Bromide	<i>blank</i>	10,000
Methylene Chloride	<i>blank</i>	1,000
Methylmercury	<i>blank</i>	0.3 mg/kg fish (+) *
N-Nitrosodi-n-Propylamine	<i>blank</i>	0.51 *
p,p'-Dichlorodiphenyldichloroethylene (DDE)	<i>blank</i>	0.000018
Pyrene	<i>blank</i>	30
Trans-1,2-Dichloroethylene	<i>blank</i>	4,000

(+) As recommended by EPA, the standard for methylmercury is expressed as a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion.<sup>6</sup>

\* Proposed new standards are recommended criteria that were updated by EPA prior to 2015.

<sup>6</sup> <https://www.epa.gov/sites/production/files/2019-02/documents/wqc-final-methylmercury-factsheet-2001.pdf>

The current version of HAR 11-54 includes numeric standards for chemicals that are mixtures of isomers, and for chemicals that belong to the same class. Specifically, there are fish consumption standards in HAR 11-54 for the following four chemicals; the first three are mixtures of isomers and the fourth is a class of chemicals:

1. Dichlorobenzenes,
2. Dinitrotoluenes,
3. Endosulfan, and
4. Polynuclear Aromatic Hydrocarbons (PAHs).

As listed in Table 2, the proposed additions to the toxic chemical list of HAR 11-54-4(c)(3) include fish consumption standards for isomers of dichlorobenzene, dinitrotoluene, and endosulfan, and specific PAH chemicals. Due to the addition of fish consumption standards for isomers of specific compounds or for chemicals from the PAH class of compounds, HDOH proposes **to remove the current fish consumption standards in HAR 11-54 for dichlorobenzenes, dinitrotoluenes, endosulfan, and PAHs.**

1. There are three isomers of dichlorobenzene. Since HDOH is proposing to add fish consumption standards for all three isomers (1,2-, 1,3-, and 1,4-) of dichlorobenzene, the current fish consumption standard in HAR 11-54 for dichlorobenzenes (i.e., mixtures of dichlorobenzene isomers) is removed.
2. There are six isomers of dinitrotoluene. According to the EPA Technical Fact Sheet on Dinitrotoluene (EPA 505-F-17-010 dated September 2017), the (2,4- and 2,6-) isomers of this chemical are the two major forms. Moreover, 2,4-dinitrotoluene makes up about 76.5% (i.e., more than three-quarters) of technical grade dinitrotoluene which is a mixture of all six isomers. Since HDOH is proposing to add the fish consumption standard for 2,4-dinitrotoluene, the current fish consumption standard in HAR 11-54 for dinitrotoluenes (i.e., mixtures of dinitrotoluene isomers) is removed.
3. There are two isomers of endosulfan. By convention, the total endosulfan residue level in samples is the sum of the (alpha- and beta-) isomers of endosulfan plus endosulfan sulfate (i.e., the major oxidation product of endosulfan). Since HDOH is proposing to add fish consumption standards for the (alpha- and beta-) isomers of endosulfan and also for endosulfan sulfate, the current fish consumption standard in HAR 11-54 for endosulfan (i.e., mixtures of endosulfan isomers) is removed.
4. There are over one-hundred PAH chemicals. Only three PAH chemicals (acenaphthene, fluoranthene, and naphthalene) are specified in HAR 11-54. There are fish consumption standards in HAR 11-54 for only one of these three PAH chemicals (fluoranthene) and also for PAHs (as a class of chemicals). Since HDOH is proposing to add or update fish consumption standards for specific PAH chemicals, the current fish consumption standard in HAR 11-54 for PAHs (as a class of chemicals) is removed. Overall, HDOH is proposing to add fish consumption standards for anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)-anthracene, fluorene, indeno(1,2,3-cd)pyrene, and pyrene, to update fish consumption standards for acenaphthene and fluoranthene, and to remove the fish consumption standard for PAHs. There is no fish consumption standard in HAR 11-54 for naphthalene. However, this PAH chemical remains specified in the proposed version of HAR 11-54

since there are existing aquatic life standards in the current version of HAR 11-54. As mentioned earlier, aquatic life standards are not updated at this time.

Table 3 summarizes the proposed removal of four current fish consumption standards specified in HAR 11-54. The abbreviation “ns” means “no standards.” For PAHs, there are no aquatic life standards specified in HAR 11-54. ~~Strikethrough text~~ is used to denote that PAHs (as a class of chemicals) are removed entirely from HAR 11-54.

Table 3. Proposed Removal of Current Fish Consumption Standards

<i>Current chemical name</i>	<b>(Fish Consumption) Current standard (µg/L)</b>	<b>(Fish Consumption) Proposed standard (µg/L)</b>
<i>Dichlorobenzenes</i>	<i>850</i>	ns
<i>Dinitrotoluenes</i>	<i>3.0</i>	ns
<i>Endosulfan</i>	<i>52</i>	ns
<del><i>Polynuclear Aromatic Hydrocarbons (PAHs)</i></del>	<del><i>0.01</i></del>	ns

Current standards in HAR 11-54 include carcinogen indicators which are represented by an asterisk next to each applicable chemical. HDOH proposes to remove all \* symbols next to applicable chemicals and to transfer these carcinogen indicators to a new “Carcinogen” data column. In this new data column, the X symbol is used to indicate a carcinogen. For each of the following seven chemicals, currently specified in HAR 11-54, the carcinogen indicator is added based on the carcinogenicity of  $10^{-6}$  risk specified in the current EPA Human Health Criteria Table:

1. 1,2-Diphenylhydrazine, currently listed in HAR 11-54 as *Diphenyl-hydrazine(1,2)*,
2. 1,3-Dichloropropene, currently listed in HAR 11-54 as *Dichloro-propene(1,3)*,
3. Arsenic,
4. Bis(2-Ethylhexyl) Phthalate, currently listed in HAR 11-54 as *Phthalate esters di-2-ethylhexyl*,
5. Copper,
6. Isophorone, and
7. Pentachlorophenol.

For each of the following four chemicals, currently specified in HAR 11-54, the carcinogen indicator is removed based on no carcinogenicity risk specified in the current EPA Human Health Criteria Table:

1. Beryllium,
2. Chloroform,
3. Dichlorobenzenes, and
4. gamma-Hexachlorocyclohexane (HCH), currently listed in HAR 11-54 as *Lindane*.

Since each of the three isomers (1,2-, 1,3-, and 1,4-) of dichlorobenzene has no carcinogenicity risk specified in the current EPA Human Health Criteria Table, the carcinogen indicator is removed for Dichlorobenzenes.

Current standards in HAR 11-54 do not include Chemical Abstracts Service (CAS) numbers whereas recommended criteria from EPA include CAS numbers. A CAS number is a unique numerical identifier assigned, by the CAS organization, to a chemical substance described in the open scientific literature. There are clear advantages to the use of CAS numbers:

1. Easy identification of chemicals by reducing any possible confusion due to the various synonyms and isomers that chemical compounds may have.
2. Convenient search of databases for specific chemical information, including analytical detection methods.

For most chemicals, the corresponding CAS numbers are obtained from the current EPA National Recommended Water Quality Criteria Tables for the protection of Human Health<sup>7</sup> and Aquatic Life.<sup>8</sup> For naphthalene, the CAS number is obtained from EPA 2002 National Recommended Water Quality Criteria.<sup>9</sup> For applicable chemicals, HDOH proposes to include CAS numbers in HAR 11-54. CAS numbers are not assigned to the following eleven chemicals:

1. 2,3,5,6-Tetrachlorophenol (updated name in proposed rule revisions to HAR 11-54),
2. Dichlorobenzenes,
3. Dichloropropanes,
4. Dinitrotoluenes,
5. Endosulfan,
6. Nitrophenols,
7. Nitrosamines (specified in the current EPA Human Health Criteria Table),
8. Pentachloroethane (updated name in proposed rule revisions to HAR 11-54),
9. Polychlorinated Biphenyls (specified in the current EPA Human Health Criteria Table),
10. Tetrachloroethanes, and
11. Tributyltin (specified in the current EPA Aquatic Life Criteria Table).

Nitrosamines, polychlorinated biphenyls, and tributyltin are currently listed in either the EPA Human Health Criteria Table or the EPA Aquatic Life Criteria Table without CAS numbers. The remaining eight chemicals (i.e., 2,3,5,6-tetrachlorophenol, dichlorobenzenes, dichloropropanes, dinitrotoluenes, endosulfan, nitrophenols, pentachloroethane, and tetrachloroethanes) are not currently listed in these two EPA Criteria Tables. However, these eight chemicals remain specified in the proposed version of HAR 11-54 since there are aquatic life standards in the current version of HAR 11-54. As mentioned earlier, aquatic life standards are not updated at this time, and they will be evaluated in subsequent triennial reviews.

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<sup>7</sup> <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>

<sup>8</sup> <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-aquatic-life-criteria-table>

<sup>9</sup> <https://www.epa.gov/sites/production/files/2018-12/documents/national-recommended-hh-criteria-2002.pdf>

Table 4 shows the proposed addition of carcinogen indicators and CAS numbers to the toxic chemical list in HAR 11-54-4(c)(3). The following algorithm is used to list the chemicals in Table 4:

- ❖ Chemicals are sorted alphabetically.
- ❖ Chemicals are sorted alphabetically by their actual names. For example, Chlorophenoxy Herbicide (2,4,5-TP), where TP is an acronym of trichlorophenoxy, is listed after the (2,4,6-) isomer of trichlorophenol.
- ❖ Chemicals with isomers are listed together. For example, Dichlorobenzenes (i.e., mixtures of isomers of dichlorobenzene) and the (1,2-, 1,3-, and 1,4-) isomers of dichlorobenzene are sequentially listed as a group.
- ❖ Isomers of a chemical, which is not specified in HAR 11-54, are listed “as if” this chemical is specified. For example, Trichlorophenols (i.e., mixtures of isomers of trichlorophenol) are not specified in HAR 11-54, and the (2,4,5- and 2,4,6-) isomers of trichlorophenol are sequentially listed after trichloroethylene.
- ❖ Chemicals, which are formed by adding or bonding atoms (such as carbon, hydrogen, oxygen, or methyl group) to a parent chemical, are listed together. For example, benzo(a)anthracene, which is formed by adding four carbon atoms to anthracene, and dibenzo(a,h)anthracene by adding eight carbon atoms are sequentially listed after anthracene.
- ❖ Chemicals formed by adding or bonding atoms to a parent chemical, which is not specified in HAR 11-54, are listed “as if” this chemical is specified. For example, chloromethyl is not specified in HAR 11-54, and Bis(Chloromethyl) Ether, which is formed from the bonding of an oxygen atom and two compounds of chloromethyl, is listed after chloroform.

A total of one hundred thirty-five chemicals are specified in Table 4. Of this total, thirty-one chemicals have proposed new names and forty chemicals are proposed additions. In Table 4, the proposed new names are listed in upright script and the current names are listed in italics.

Table 4. Proposed Addition of Carcinogen and CAS Data

<b>Current chemical name or Proposed new chemical name</b>	<b>Carcinogen</b>	<b>Chemical Abstracts Service (CAS) #</b>
<i>Acenaphthene</i>	-	83-32-9
<i>Acrolein</i>	-	107-02-8
<i>Acrylonitrile</i>	X	107-13-1
<i>Aldrin</i>	X	309-00-2
<i>Aluminum</i>	-	7429-90-5
Anthracene	-	120-12-7
Benzo(a)anthracene	X	56-55-3
Dibenzo(a,h)anthracene	X	53-70-3
<i>Antimony</i>	-	7440-36-0
<i>Arsenic</i>	X	7440-38-2
<i>Benzene</i>	X	71-43-2
<i>Benzidine</i>	X	92-87-5
<i>Beryllium</i>	-	7440-41-7
Bromoform	X	75-25-2
Butylbenzyl Phthalate	X	85-68-7
<i>Cadmium</i>	-	7440-43-9
<i>Carbon Tetrachloride</i>	X	56-23-5
<i>Chlordane</i>	X	57-74-9
<i>Chlorine</i>	-	7782-50-5
Chlorobenzene	-	108-90-7
Chlorodibromomethane	X	124-48-1
Bis(2-Chloroethyl) Ether	X	111-44-4
<i>Chloroform</i>	-	67-66-3
Bis(Chloromethyl) Ether	X	542-88-1
2-Chloronaphthalene	-	91-58-7
2-Chlorophenol	-	95-57-8
3-Methyl-4-Chlorophenol	-	59-50-7
<i>Chlorpyrifos</i>	-	2921-88-2
<i>Chromium (VI)</i>	-	18540-29-9
Chrysene	X	218-01-9
<i>Copper</i>	X	7440-50-8

Table 4. Proposed Addition of Carcinogen and CAS Data, Continued

<b>Current chemical name or Proposed new chemical name</b>	<b>Carcinogen</b>	<b>Chemical Abstracts Service (CAS) #</b>
<i>Cyanide</i>	-	57-12-5
<i>Demeton</i>	-	8065-48-3
Di-n-Butyl Phthalate	-	84-74-2
<i>Dichlorobenzenes</i> *	-	-
1,2-Dichlorobenzene	-	95-50-1
1,3-Dichlorobenzene	-	541-73-1
1,4-Dichlorobenzene	-	106-46-7
3,3'-Dichlorobenzidine	X	91-94-1
Dichlorobromomethane	X	75-27-4
p,p'-Dichlorodiphenyldichloroethane (DDD)	X	72-54-8
p,p'-Dichlorodiphenyldichloroethylene (DDE)	X	72-55-9
p,p'-Dichlorodiphenyltrichloroethane (DDT)	X	50-29-3
1,2-Dichloroethane	X	107-06-2
1,1-Dichloroethylene	-	75-35-4
Trans-1,2-Dichloroethylene	-	156-60-5
2,4-Dichlorophenol	-	120-83-2
Chlorophenoxy Herbicide (2,4-D)	-	94-75-7
<i>Dichloropropanes</i> *	-	-
1,2-Dichloropropane	X	78-87-5
1,3-Dichloropropene	X	542-75-6
<i>Dieldrin</i>	X	60-57-1
Diethyl Phthalate	-	84-66-2
Dimethyl Phthalate	-	131-11-3
2,4-Dimethylphenol	-	105-67-9
Dinitrophenols	-	25550-58-7
2,4-Dinitrophenol	-	51-28-5
2-Methyl-4,6-Dinitrophenol	-	534-52-1
<i>Dinitrotoluenes</i> *	X	-
2,4-Dinitrotoluene	X	121-14-2
1,2-Diphenylhydrazine	X	122-66-7

\* Chemicals are not listed in current EPA Human Health and Aquatic Life Criteria Tables.

Table 4. Proposed Addition of Carcinogen and CAS Data, Continued

<i>Current chemical name or Proposed new chemical name</i>	<b>Carcinogen</b>	<b>Chemical Abstracts Service (CAS) #</b>
<i>Endosulfan</i> *	-	-
alpha-Endosulfan	-	959-98-8
beta-Endosulfan	-	33213-65-9
Endosulfan Sulfate	-	1031-07-8
<i>Endrin</i>	-	72-20-8
Endrin Aldehyde	-	7421-93-4
<i>Ethylbenzene</i>	-	100-41-4
Bis(2-Ethylhexyl) Phthalate	X	117-81-7
<i>Fluoranthene</i>	-	206-44-0
Benzo(b)fluoranthene	X	205-99-2
Benzo(k)fluoranthene	X	207-08-9
Fluorene	-	86-73-7
<i>Guthion</i>	-	86-50-0
<i>Heptachlor</i>	X	76-44-8
Heptachlor Epoxide	X	1024-57-3
<i>Hexachlorobenzene</i>	X	118-74-1
<i>Hexachlorobutadiene</i>	X	87-68-3
<i>Hexachlorocyclohexane (HCH)- Technical</i>	X	608-73-1
alpha-Hexachlorocyclohexane (HCH)	X	319-84-6
beta-Hexachlorocyclohexane (HCH)	X	319-85-7
gamma-Hexachlorocyclohexane (HCH) [Lindane]	-	58-89-9
<i>Hexachlorocyclopentadiene</i>	-	77-47-4
<i>Hexachloroethane</i>	X	67-72-1
<i>Isophorone</i>	X	78-59-1
<i>Lead</i>	-	7439-92-1

\* Chemicals are not listed in current EPA Human Health and Aquatic Life Criteria Tables.

Table 4. Proposed Addition of Carcinogen and CAS Data, Continued

<b>Current chemical name or Proposed new chemical name</b>	<b>Carcinogen</b>	<b>Chemical Abstracts Service (CAS) #</b>
<i>Malathion</i>	-	121-75-5
<i>Mercury</i>	-	7439-97-6
<i>Methoxychlor</i>	-	72-43-5
Methyl Bromide	-	74-83-9
Methylene Chloride	X	75-09-2
Bis(2-Chloro-1-Methylethyl) Ether	-	108-60-1
Methylmercury	-	22967-92-6
<i>Mirex</i>	-	2385-85-5
<i>Naphthalene</i> *	-	91-20-3
<i>Nickel</i>	-	7440-02-0
<i>Nitrobenzene</i>	-	98-95-3
<i>Nitrophenols</i> *	X	-
<i>Nitrosamines</i>	X	-
Nitrosodibutylamine	X	924-16-3
Nitrosodiethylamine	X	55-18-5
N-Nitrosodimethylamine	X	62-75-9
N-Nitrosodiphenylamine	X	86-30-6
N-Nitrosodi-n-Propylamine	X	621-64-7
Nitrosopyrrolidine	X	930-55-2
<i>Parathion</i>	-	56-38-2
<i>Pentachlorobenzene</i>	-	608-93-5
Pentachloroethane *	-	-
<i>Pentachlorophenol</i>	X	87-86-5
<i>Phenol</i>	-	108-95-2
<i>Polychlorinated Biphenyls (PCBs)</i>	X	-
Pyrene	-	129-00-0
Benzo(a)pyrene	X	50-32-8
Indeno(1,2,3-cd)pyrene	X	193-39-5
<i>Selenium</i>	-	7782-49-2
<i>Silver</i>	-	7440-22-4

\* Chemicals are not listed in the current EPA Human Health and Aquatic Life Criteria Tables.

Table 4. Proposed Addition of Carcinogen and CAS Data, Continued

<i>Current chemical name or Proposed new chemical name</i>	<b>Carcinogen</b>	<b>Chemical Abstracts Service (CAS) #</b>
1,2,4,5-Tetrachlorobenzene	-	95-94-3
2,3,7,8-TCDD (Dioxin)	X	1746-01-6
<i>Tetrachloroethanes</i> *	-	-
1,1,2,2-Tetrachloroethane	X	79-34-5
<i>Tetrachloroethylene</i>	X	127-18-4
2,3,5,6-Tetrachlorophenol *	-	-
<i>Thallium</i>	-	7440-28-0
<i>Toluene</i>	-	108-88-3
<i>Toxaphene</i>	X	8001-35-2
<i>Tributyltin (TBT)</i>	-	-
1,2,4-Trichlorobenzene	X	120-82-1
1,1,1-Trichloroethane	-	71-55-6
1,1,2-Trichloroethane	X	79-00-5
<i>Trichloroethylene</i>	X	79-01-6
2,4,5-Trichlorophenol	-	95-95-4
2,4,6-Trichlorophenol	X	88-06-2
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	-	93-72-1
<i>Vinyl Chloride</i>	X	75-01-4
<i>Zinc</i>	-	7440-66-6

\* Chemicals are not listed in the current EPA Human Health and Aquatic Life Criteria Tables.

Finally, HDOH proposes to move the amended toxicity table from sub-section HAR 11-54-4(c) to a newly created Appendix E of HAR 11-54 in order to accommodate the landscape format of this amended table. This new toxicity table includes both current standards from HAR 11-54 and new criteria recommended by EPA. A total of one hundred thirty-five chemicals are listed in Appendix E dated Month DD, 2021, entitled “Numeric Standards for Toxic Pollutants Applicable to All Waters.” This placeholder (i.e., Month DD, 2021) for the actual date will be appropriately modified to reflect the next compilation date of all proposed amendments to the current version of HAR 11-54.

The following major amendments are proposed for section HAR 11-54-4. Along with these major amendments, minor amendments are also proposed to add missing punctuation marks, to correct miscellaneous formatting and typographical errors, to spell out numbers, to convert “State” in “State waters” to lower case, to replace “U.S. Environmental Agency” with the acronym “EPA”, “state agency” with “state department”, “U.S.C.” with “United States Code”, and “micro-organism” with “microorganism” for consistency, to clarify unclear definitions, to update incorrect references, and to hyphenate two or more words that are used together as compound adjectives.

**§11-54-4 Basic water quality criteria applicable to all waters.**

- (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:
- (1) Materials that will settle to form objectionable sludge or bottom deposits;
  - (2) Floating debris, oil, grease, scum, or other floating materials;
  - (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity, or other conditions in the receiving waters;
  - (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
  - (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
  - (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or

industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter [~~State~~]state waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to [~~chapters~~]chapter 342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

(c) To ensure compliance with [~~paragraph (a)(4),~~]section 11-54-4(a)(4), all [~~State~~]state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean

Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred per cent effluent is the IWC when dilution is not authorized by the director.

"No Observed Effect Concentration" (NOEC), means the highest per cent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, ~~[an]~~a NOEC of ~~[100]~~one hundred per cent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, EPA 833-R-10-003 (June 2010), and National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, EPA 833-R-10-004 (June 2010).

- (2) Narrative toxicity and human health standards.

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- (A) Acute Toxicity Standards: All [State]state waters shall be free from pollutants in concentrations which exceed the acute standards listed in [~~paragraph (3).~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (B) Chronic Toxicity Standards: All [State]state waters shall be free from pollutants in concentrations which on average during any twenty-four-hour period exceed the chronic standards listed in [~~paragraph (3).~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (C) Human Health Standards: All [State]state waters shall be free from pollutants in concentrations which, on average during any thirty-day period, exceed the "fish consumption" standards for non-carcinogens in [~~paragraph (3).~~Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. All [State]state waters shall also be free from pollutants in concentrations, which on average during any [~~12-~~]

twelve-month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in ~~[paragraph (3).]~~ Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

~~[(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.]~~

<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Consumption</u>
Acenaphthene	570	ns	320	ns	ns
Acrolein	23	ns	18	ns	250
Acrylonitrile*	2,500	ns	ns	ns	0.21
Aldrin*	3.0	ns	1.3	ns	0.000026
Aluminum	750	260	ns	ns	ns
Antimony	3,000	ns	ns	ns	15,000
Arsenic	360	190	69	36	ns
Benzene*	1,800	ns	1,700	ns	13
Benzidine*	800	ns	ns	ns	0.00017
Beryllium*	43	ns	ns	ns	0.038

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Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
Cadmium	3+	3+	43	9.3	ns
Carbon tetra- chloride*	12,000	ns	16,000	ns	2.3
Chlordane*	2.4	0.0043	0.09	0.004	0.00016
Chlorine	19	11	13	7.5	ns
Chloroethers- ethyl(bis-2)*	ns	ns	ns	ns	0.44
isopropyl	ns	ns	ns	ns	1,400
methyl(bis)*	ns	ns	ns	ns	0.00060
Chloroform*	9,600	ns	ns	ns	5.1
Chlorophenol(2)	1,400	ns	ns	ns	ns
Chlorpyrifos	0.083	0.041	0.011	0.0056	ns
Chromium (VI)	16	11	1,100	50	ns
Copper	6+	6+	2.9	2.9	ns
Cyanide	22	5.2	1	1	ns
DDT*	1.1	0.001	0.013	0.001	0.000008
metabolite TDE*	0.03	ns	1.2	ns	ns
Demeton	ns	0.1	ns	0.1	ns
Dichloro-					
benzenes*	370	ns	660	ns	850
benzidine*	ns	ns	ns	ns	0.007
ethane(1,2)*	39,000	ns	38,000	ns	79
phenol(2,4)	670	ns	ns	ns	ns
propanes	7,700	ns	3,400	ns	ns
propene(1,3)	2,000	ns	260	ns	4.6

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<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish Consumption</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
Dieldrin*	2.5	0.0019	0.71	0.0019	0.000025
Dinitro					
o-cresol(4,6)	ns	ns	ns	ns	250
toluenes*	110	ns	200	ns	3.0
Dioxin*	0.003	ns	ns	ns	5.0x10 <sup>-9</sup>
Diphenyl- hydrazine(1,2)	ns	ns	ns	ns	0.018
Endosulfan	0.22	0.056	0.034	0.0087	52
Endrin	0.18	0.0023	0.037	0.0023	ns
Ethylbenzene	11,000	ns	140	ns	1,070
Fluoranthene	1,300	ns	13	ns	18
Guthion	ns	0.01	ns	0.01	ns
Heptachlor*	0.52	0.0038	0.053	0.0036	0.00009
Hexachloro- benzene*	ns	ns	ns	ns	0.00024
butadiene*	30	ns	11	ns	16
cyclohexane-					
alpha*	ns	ns	ns	ns	0.010
beta*	ns	ns	ns	ns	0.018
technical*	ns	ns	ns	ns	0.014
cyclopentadiene	2	ns	2	ns	ns
ethane*	330	ns	310	ns	2.9
Isophorone	39,000	ns	4,300	ns	170,000
Lead	29+	29+	140	5.6	ns
Lindane*	2.0	0.08	0.16	ns	0.020

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<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish Consumption</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
Malathion	ns	0.1	ns	0.1	ns
Mercury	2.4	0.55	2.1	0.025	0.047
Methoxychlor	ns	0.03	ns	0.03	ns
Mirex	ns	0.001	ns	0.001	ns
Naphthalene	770	ns	780	ns	ns
Nickel	5+	5+	75	8.3	33
Nitrobenzene	9,000	ns	2,200	ns	ns
Nitrophenols*	77	ns	1,600	ns	ns
Nitrosamines*	1,950	ns	ns	ns	0.41
<del>Nitroso</del>					
<del>dibutylamine-N*</del>	ns	ns	ns	ns	0.19
<del>diethylamine-N*</del>	ns	ns	ns	ns	0.41
<del>dimethylamine-N*</del>	ns	ns	ns	ns	5.3
<del>diphenylamine-N*</del>	ns	ns	ns	ns	5.3
<del>pyrrolidine-N*</del>	ns	ns	ns	ns	30
Parathion	0.065	0.013	ns	ns	ns
<del>Pentachloro-</del>					
<del>ethanes</del>	2,400	ns	130	ns	ns
<del>benzene</del>	ns	ns	ns	ns	28
<del>phenol</del>	20	13	13	ns	ns
<del>Phenol</del>	3,400	ns	170	ns	ns
<del>2,4-dimethyl</del>	700	ns	ns	ns	ns
<del>Phthalate esters</del>					
<del>dibutyl</del>	ns	ns	ns	ns	50,000
<del>diethyl</del>	ns	ns	ns	ns	590,000

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Pollutant	Freshwater		Saltwater		Fish Consumption
	Acute	Chronic	Acute	Chronic	
di-2-ethylhexyl	ns	ns	ns	ns	16,000
dimethyl	ns	ns	ns	ns	950,000
Polychlorinated biphenyls*	2.0	0.014	10	0.03	0.000079
Polynuclear aromatic hydrocarbons*	ns	ns	ns	ns	0.01
Selenium	20	5	300	71	ns
Silver	1+	1+	2.3	ns	ns
Tetrachloroethanes	3,100	ns	ns	ns	ns
benzene (1,2,4,5)	ns	ns	ns	ns	16
ethane (1,1,2,2)*	ns	ns	3,000	ns	3.5
ethylene*	1,800	ns	3,400	145	2.9
phenol (2,3,5,6)	ns	ns	ns	440	ns
Thallium	470	ns	710	ns	16
Toluene	5,800	ns	2,100	ns	140,000
Toxaphene*	0.73	0.0002	0.21	0.0002	0.00024
Tributyltin	ns	0.026	ns	0.01	ns
Trichloroethane (1,1,1)	6,000	ns	10,400	ns	340,000
ethane (1,1,2)*	6,000	ns	ns	ns	14
ethylene*	15,000	ns	700	ns	26
phenol (2,4,6)*	ns	ns	ns	ns	1.2
Vinyl chloride*	ns	ns	ns	ns	170
Zinc	22+	22+	95	86	ns

ns - No standard has been developed.

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- ~~\* - Carcinogen.~~
- ~~+ - The value listed is the minimum standard. Depending upon the receiving water CaCO<sub>3</sub> hardness, higher standards may be calculated using the respective formula in the U.S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).~~
- ~~Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.]~~

- ~~[(4)]~~ (3) The following are basic requirements applicable to discharges to [State]state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in [paragraph (2)]. Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.
- (A) Continuous discharges through submerged outfalls.
- (i) The No Observed Effect Concentration (NOEC), expressed as per cent effluent, of continuous discharges through submerged outfalls shall not be less than [100]one hundred divided by the minimum dilution; or [7]
- (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a

- regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.
- (B) Continuous discharges through submerged outfalls shall not contain:
- (i) Pollutants in twenty-four-hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards ~~[in paragraph (3) for the prevention of chronic toxicity.]~~for the prevention of chronic toxicity in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter;
  - (ii) Non-carcinogenic pollutants in thirty-day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards ~~[in paragraph (3) for fish consumption.]~~for fish consumption in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter; and
  - (iii) Carcinogenic pollutants in twelve-month average concentrations greater than the values obtained by multiplying the average dilution by the standards ~~[in paragraph (3) for fish consumption.]~~for fish consumption in Appendix E dated Month DD,

2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter.

- (C) Discharges without submerged outfalls.
- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent;
  - (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (b value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or[7]
  - (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater

than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards ~~[in paragraph (3) for the prevention of acute toxicity to aquatic life.]~~ for the prevention of acute toxicity to aquatic life in Appendix E dated Month DD, 2021, entitled "Numeric Standards for Toxic Pollutants Applicable to All Waters", located at the end of this chapter. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than ~~[3]~~ three meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(d) The requirements of ~~[paragraph (a) (6)]~~ section 11-54-4(a) (6) shall be deemed met upon a showing that:

- (1) ~~[the]~~ The land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and ~~[that]~~ a comprehensive conservation program is being actively pursued~~[7]~~; or ~~[that]~~
- (2) ~~[the]~~ The discharge has received the best degree of treatment or control, and ~~[that]~~ the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

(e) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any ~~[State]~~ state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to

post or order posting in any other appropriate case or to take any enforcement action.

(f) Pesticide Application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means~~[-any]~~:

(A) Any insect, rodent, nematode, fungus, weed~~[τ]~~; or

~~[(A)]~~ (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other ~~[micro-organism]~~ microorganism (except viruses, bacteria, or other ~~[micro-organisms]~~ microorganisms on or in living man or other living animals) which the Administrator of the EPA declares to be a pest under [7 U.S.C. §136w(c)(1)]. title 7 United States Code section 136w(c)(1).

"Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(C) Any nitrogen stabilizer~~[τ]~~.

~~[except]~~ Except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of ~~[21 U.S.C. 321(w)τ]~~ title 21 United States Code section 321(v), that has been determined by the Secretary of Health and Human Services

not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of [~~21 U.S.C. 321(x)~~] title 21 United States Code section 321(w) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical [~~or~~] device or a semi-critical device, as defined in [~~section 201 of 21 U.S.C. §321.~~] title 21 United States Code section 321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) including uses authorized under title 7 United States Code sections [~~3 (registration)~~], 136a (Registration of pesticides), [~~5 (experimental)~~], 136c (Experimental use permits), [~~18 (emergency exemptions)~~], 136p (Exemption of federal and state agencies), [~~24(e) (special local needs registrations)~~], 136v(c) (Additional uses), and [~~25(b) (exemptions from FIFRA)~~]. 136w(b) (Exemption of pesticides).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

- (2) Pesticide applications may be made to ~~[State]~~state waters if the pesticide applications are:
- (A) Registered by the ~~[U.S. Environmental Protection Agency]~~EPA and licensed by the state department of agriculture or other state ~~[agency]~~department regulating pesticides;
  - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
  - (C) Applied in a manner consistent with the labeling of the pesticide under FIFRA;
  - (D) Applied under permits required by the director and issued pursuant to [HRS] chapter 342D, ~~[if the director requires such permits under chapter 342D,]~~ HRS; and
  - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter

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11-54 are met. [Eff 11/12/82; am and  
comp 10/6/84; am and comp 04/14/88; am  
and comp 01/18/90; am and comp  
10/29/92; am and comp 04/17/00; am and  
comp 10/2/04; am and comp 06/15/09; am  
and comp 10/21/12; am and comp 12/6/13;  
am and comp 11/15/14; am and comp  
] (Auth: HRS §§342D-1,  
342D-4, 342D-5, Ch. 342E) (Imp: HRS  
§§342D-4, 342D-5, Ch. 342E)

The following Appendix E is proposed for HAR 11-54 and it represents the amended toxicity table from sub-section HAR 11-54-4(c). Note that the proposed Appendix E is in landscape format and it is nine-page long.

**Appendix E**Numeric Standards for Toxic Pollutants Applicable to All Waters

The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand.

Values for metals refer to the dissolved fraction.

Except for Methylmercury, all values are expressed in micrograms per liter (µg/L).

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater (µg/L)</u>		<u>Saltwater (µg/L)</u>		<u>Fish Consumption (µg/L except Methylmercury *)</u>
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Acenaphthene</u>	-	<u>83-32-9</u>	<u>570</u>	<u>ns</u>	<u>320</u>	<u>ns</u>	<u>90</u>
<u>Acrolein</u>	-	<u>107-02-8</u>	<u>23</u>	<u>ns</u>	<u>18</u>	<u>ns</u>	<u>400</u>
<u>Acrylonitrile</u>	<u>X</u>	<u>107-13-1</u>	<u>2,500</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>7.0</u>
<u>Aldrin</u>	<u>X</u>	<u>309-00-2</u>	<u>3.0</u>	<u>ns</u>	<u>1.3</u>	<u>ns</u>	<u>0.00000077</u>
<u>Aluminum</u>	-	<u>7429-90-5</u>	<u>750</u>	<u>260</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>
<u>Anthracene</u>	-	<u>120-12-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>400</u>
<u>Benzo (a) anthracene</u>	<u>X</u>	<u>56-55-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.0013</u>
<u>Dibenzo (a,h) anthracene</u>	<u>X</u>	<u>53-70-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.00013</u>
<u>Antimony</u>	-	<u>7440-36-0</u>	<u>3,000</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>640</u>
<u>Arsenic</u>	<u>X</u>	<u>7440-38-2</u>	<u>360</u>	<u>190</u>	<u>69</u>	<u>36</u>	<u>0.14</u>
<u>Benzene</u>	<u>X</u>	<u>71-43-2</u>	<u>1,800</u>	<u>ns</u>	<u>1,700</u>	<u>ns</u>	<u>16</u>
<u>Benzidine</u>	<u>X</u>	<u>92-87-5</u>	<u>800</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.011</u>
<u>Beryllium</u>	-	<u>7440-41-7</u>	<u>43</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.038</u>

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<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> ( <u>µg/L</u> )		<u>Saltwater</u> ( <u>µg/L</u> )		<u>Fish Consumption</u> ( <u>µg/L</u> <u>except</u> <u>Methylmercury *</u> )
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Bromoform</u>	<u>X</u>	<u>75-25-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>120</u>
<u>Butylbenzyl Phthalate</u>	<u>X</u>	<u>85-68-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.10</u>
<u>Cadmium</u>	<u>-</u>	<u>7440-43-9</u>	<u>3+</u>	<u>3+</u>	<u>43</u>	<u>9.3</u>	<u>ns</u>
<u>Carbon Tetrachloride</u>	<u>X</u>	<u>56-23-5</u>	<u>12,000</u>	<u>ns</u>	<u>16,000</u>	<u>ns</u>	<u>5</u>
<u>Chlordane</u>	<u>X</u>	<u>57-74-9</u>	<u>2.4</u>	<u>0.0043</u>	<u>0.09</u>	<u>0.004</u>	<u>0.00032</u>
<u>Chlorine</u>	<u>-</u>	<u>7782-50-5</u>	<u>19</u>	<u>11</u>	<u>13</u>	<u>7.5</u>	<u>ns</u>
<u>Chlorobenzene</u>	<u>-</u>	<u>108-90-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>800</u>
<u>Chlorodibromomethane</u>	<u>X</u>	<u>124-48-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>21</u>
<u>Bis (2-Chloroethyl) Ether</u>	<u>X</u>	<u>111-44-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>2.2</u>
<u>Chloroform</u>	<u>-</u>	<u>67-66-3</u>	<u>9,600</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>2,000</u>
<u>Bis (Chloromethyl) Ether</u>	<u>X</u>	<u>542-88-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.017</u>
<u>2-Chloronaphthalene</u>	<u>-</u>	<u>91-58-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1,000</u>
<u>2-Chlorophenol</u>	<u>-</u>	<u>95-57-8</u>	<u>1,400</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>800</u>
<u>3-Methyl-4-Chlorophenol</u>	<u>-</u>	<u>59-50-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>2,000</u>
<u>Chlorpyrifos</u>	<u>-</u>	<u>2921-88-2</u>	<u>0.083</u>	<u>0.041</u>	<u>0.011</u>	<u>0.0056</u>	<u>ns</u>
<u>Chromium (VI)</u>	<u>-</u>	<u>18540-29-9</u>	<u>16</u>	<u>11</u>	<u>1,100</u>	<u>50</u>	<u>ns</u>
<u>Chrysene</u>	<u>X</u>	<u>218-01-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.13</u>
<u>Copper</u>	<u>X</u>	<u>7440-50-8</u>	<u>6+</u>	<u>6+</u>	<u>2.9</u>	<u>2.9</u>	<u>ns</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> <u>(µg/L)</u>		<u>Saltwater</u> <u>(µg/L)</u>		<u>Fish Consumption</u> <u>(µg/L</u> <u>except</u> <u>Methylmercury *)</u>
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Cyanide</u>	-	<u>57-12-5</u>	<u>22</u>	<u>5.2</u>	<u>1</u>	<u>1</u>	<u>400</u>
<u>Demeton</u>	-	<u>8065-48-3</u>	<u>ns</u>	<u>0.1</u>	<u>ns</u>	<u>0.1</u>	<u>ns</u>
<u>Di-n-Butyl Phthalate</u>	-	<u>84-74-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>30</u>
<u>Dichlorobenzenes</u>	-	-	<u>370</u>	<u>ns</u>	<u>660</u>	<u>ns</u>	<u>ns</u>
<u>1,2-Dichlorobenzene</u>	-	<u>95-50-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>3,000</u>
<u>1,3-Dichlorobenzene</u>	-	<u>541-73-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>10</u>
<u>1,4-Dichlorobenzene</u>	-	<u>106-46-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>900</u>
<u>3,3'-Dichlorobenzidine</u>	X	<u>91-94-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.15</u>
<u>Dichlorobromomethane</u>	X	<u>75-27-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>27</u>
<u>p,p'-Dichlorodiphenyl-dichloroethane (DDD)</u>	X	<u>72-54-8</u>	<u>0.03</u>	<u>ns</u>	<u>1.2</u>	<u>ns</u>	<u>0.00012</u>
<u>p,p'-Dichlorodiphenyl-dichloroethylene (DDE)</u>	X	<u>72-55-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.000018</u>
<u>p,p'-Dichlorodiphenyl-trichloroethane (DDT)</u>	X	<u>50-29-3</u>	<u>1.1</u>	<u>0.001</u>	<u>0.013</u>	<u>0.001</u>	<u>0.000030</u>
<u>1,2-Dichloroethane</u>	X	<u>107-06-2</u>	<u>39,000</u>	<u>ns</u>	<u>38,000</u>	<u>ns</u>	<u>650</u>
<u>1,1-Dichloroethylene</u>	-	<u>75-35-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>20,000</u>
<u>Trans-1,2-Dichloroethylene</u>	-	<u>156-60-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>4,000</u>
<u>2,4-Dichlorophenol</u>	-	<u>120-83-2</u>	<u>670</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>60</u>
<u>Chlorophenoxy Herbicide (2,4-D)</u>	-	<u>94-75-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>12,000</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> ( <u>µg/L</u> )		<u>Saltwater</u> ( <u>µg/L</u> )		<u>Fish Consumption</u> ( <u>µg/L</u> <u>except</u> <u>Methylmercury *</u> )
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Dichloropropanes</u>	-	-	<u>7,700</u>	<u>ns</u>	<u>3,400</u>	<u>ns</u>	<u>ns</u>
<u>1,2-Dichloropropane</u>	<u>X</u>	<u>78-87-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>31</u>
<u>1,3-Dichloropropene</u>	<u>X</u>	<u>542-75-6</u>	<u>2,000</u>	<u>ns</u>	<u>260</u>	<u>ns</u>	<u>12</u>
<u>Dieldrin</u>	<u>X</u>	<u>60-57-1</u>	<u>2.5</u>	<u>0.0019</u>	<u>0.71</u>	<u>0.0019</u>	<u>0.0000012</u>
<u>Diethyl Phthalate</u>	-	<u>84-66-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>600</u>
<u>Dimethyl Phthalate</u>	-	<u>131-11-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>2,000</u>
<u>2,4-Dimethylphenol</u>	-	<u>105-67-9</u>	<u>700</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>3,000</u>
<u>Dinitrophenols</u>	-	<u>25550-58-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1,000</u>
<u>2,4-Dinitrophenol</u>	-	<u>51-28-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>300</u>
<u>2-Methyl-4,6-Dinitrophenol</u>	-	<u>534-52-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>30</u>
<u>Dinitrotoluenes</u>	<u>X</u>	-	<u>110</u>	<u>ns</u>	<u>200</u>	<u>ns</u>	<u>ns</u>
<u>2,4-Dinitrotoluene</u>	<u>X</u>	<u>121-14-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1.7</u>
<u>1,2-Diphenylhydrazine</u>	<u>X</u>	<u>122-66-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.2</u>
<u>Endosulfan</u>	-	-	<u>0.22</u>	<u>0.056</u>	<u>0.034</u>	<u>0.0087</u>	<u>ns</u>
<u>alpha-Endosulfan</u>	-	<u>959-98-8</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>30</u>
<u>beta-Endosulfan</u>	-	<u>33213-65-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>40</u>
<u>Endosulfan Sulfate</u>	-	<u>1031-07-8</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>40</u>
<u>Endrin</u>	-	<u>72-20-8</u>	<u>0.18</u>	<u>0.0023</u>	<u>0.037</u>	<u>0.0023</u>	<u>0.03</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> <u>(µg/L)</u>		<u>Saltwater</u> <u>(µg/L)</u>		<u>Fish Consumption</u> <u>(µg/L</u> <u>except</u> <u>Methylmercury *)</u>
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Endrin Aldehyde</u>	-	<u>7421-93-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1</u>
<u>Ethylbenzene</u>	-	<u>100-41-4</u>	<u>11,000</u>	<u>ns</u>	<u>140</u>	<u>ns</u>	<u>130</u>
<u>Bis (2-Ethylhexyl) Phthalate</u>	<u>X</u>	<u>117-81-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.37</u>
<u>Fluoranthene</u>	-	<u>206-44-0</u>	<u>1,300</u>	<u>ns</u>	<u>13</u>	<u>ns</u>	<u>20</u>
<u>Benzo (b) fluoranthene</u>	<u>X</u>	<u>205-99-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.0013</u>
<u>Benzo (k) fluoranthene</u>	<u>X</u>	<u>207-08-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.013</u>
<u>Fluorene</u>	-	<u>86-73-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>70</u>
<u>Guthion</u>	-	<u>86-50-0</u>	<u>ns</u>	<u>0.01</u>	<u>ns</u>	<u>0.01</u>	<u>ns</u>
<u>Heptachlor</u>	<u>X</u>	<u>76-44-8</u>	<u>0.52</u>	<u>0.0038</u>	<u>0.053</u>	<u>0.0036</u>	<u>0.0000059</u>
<u>Heptachlor Epoxide</u>	<u>X</u>	<u>1024-57-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.000032</u>
<u>Hexachlorobenzene</u>	<u>X</u>	<u>118-74-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.000079</u>
<u>Hexachlorobutadiene</u>	<u>X</u>	<u>87-68-3</u>	<u>30</u>	<u>ns</u>	<u>11</u>	<u>ns</u>	<u>0.01</u>
<u>Hexachloro-cyclohexane (HCH) - Technical</u>	<u>X</u>	<u>608-73-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.010</u>
<u>alpha-Hexachloro-cyclohexane (HCH)</u>	<u>X</u>	<u>319-84-6</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.00039</u>
<u>beta-Hexachloro-cyclohexane (HCH)</u>	<u>X</u>	<u>319-85-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.014</u>
<u>gamma-Hexachloro-cyclohexane (HCH) [Lindane]</u>	-	<u>58-89-9</u>	<u>2.0</u>	<u>0.08</u>	<u>0.16</u>	<u>ns</u>	<u>4.4</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> ( <u>µg/L</u> )		<u>Saltwater</u> ( <u>µg/L</u> )		<u>Fish Consumption</u> ( <u>µg/L</u> <u>except</u> <u>Methylmercury *</u> )
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Hexachloro-cyclopentadiene</u>	-	<u>77-47-4</u>	<u>2</u>	<u>ns</u>	<u>2</u>	<u>ns</u>	<u>4</u>
<u>Hexachloroethane</u>	<u>X</u>	<u>67-72-1</u>	<u>330</u>	<u>ns</u>	<u>310</u>	<u>ns</u>	<u>0.1</u>
<u>Isophorone</u>	<u>X</u>	<u>78-59-1</u>	<u>39,000</u>	<u>ns</u>	<u>4,300</u>	<u>ns</u>	<u>1,800</u>
<u>Lead</u>	-	<u>7439-92-1</u>	<u>29+</u>	<u>29+</u>	<u>140</u>	<u>5.6</u>	<u>ns</u>
<u>Malathion</u>	-	<u>121-75-5</u>	<u>ns</u>	<u>0.1</u>	<u>ns</u>	<u>0.1</u>	<u>ns</u>
<u>Mercury</u>	-	<u>7439-97-6</u>	<u>2.4</u>	<u>0.55</u>	<u>2.1</u>	<u>0.025</u>	<u>0.047</u>
<u>Methoxychlor</u>	-	<u>72-43-5</u>	<u>ns</u>	<u>0.03</u>	<u>ns</u>	<u>0.03</u>	<u>0.02</u>
<u>Methyl Bromide</u>	-	<u>74-83-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>10,000</u>
<u>Methylene Chloride</u>	<u>X</u>	<u>75-09-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1,000</u>
<u>Bis (2-Chloro-1-Methylethyl) Ether</u>	-	<u>108-60-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>4,000</u>
<u>Methylmercury</u>	-	<u>22967-92-6</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.3 mg/kg *</u>
<u>Mirex</u>	-	<u>2385-85-5</u>	<u>ns</u>	<u>0.001</u>	<u>ns</u>	<u>0.001</u>	<u>ns</u>
<u>Naphthalene</u>	-	<u>91-20-3</u>	<u>770</u>	<u>ns</u>	<u>780</u>	<u>ns</u>	<u>ns</u>
<u>Nickel</u>	-	<u>7440-02-0</u>	<u>5+</u>	<u>5+</u>	<u>75</u>	<u>8.3</u>	<u>4,600</u>
<u>Nitrobenzene</u>	-	<u>98-95-3</u>	<u>9,000</u>	<u>ns</u>	<u>2,200</u>	<u>ns</u>	<u>600</u>
<u>Nitrophenols</u>	-	-	<u>77</u>	<u>ns</u>	<u>1,600</u>	<u>ns</u>	<u>ns</u>
<u>Nitrosamines</u>	<u>X</u>	-	<u>1,950</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1.24</u>
<u>Nitrosodibutylamine</u>	<u>X</u>	<u>924-16-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.22</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> ( <u>µg/L</u> )		<u>Saltwater</u> ( <u>µg/L</u> )		<u>Fish Consumption</u> ( <u>µg/L</u> <u>except</u> <u>Methylmercury *</u> )
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Nitrosodiethylamine</u>	<u>X</u>	<u>55-18-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1.24</u>
<u>N-Nitrosodimethylamine</u>	<u>X</u>	<u>62-75-9</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>3.0</u>
<u>N-Nitrosodiphenylamine</u>	<u>X</u>	<u>86-30-6</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>6.0</u>
<u>N-Nitrosodi-n-Propylamine</u>	<u>X</u>	<u>621-64-7</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.51</u>
<u>Nitrosopyrrolidine</u>	<u>X</u>	<u>930-55-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>34</u>
<u>Parathion</u>	<u>-</u>	<u>56-38-2</u>	<u>0.065</u>	<u>0.013</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>
<u>Pentachlorobenzene</u>	<u>-</u>	<u>608-93-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.1</u>
<u>Pentachloroethane</u>	<u>-</u>	<u>-</u>	<u>2,400</u>	<u>ns</u>	<u>130</u>	<u>ns</u>	<u>ns</u>
<u>Pentachlorophenol</u>	<u>X</u>	<u>87-86-5</u>	<u>20</u>	<u>13</u>	<u>13</u>	<u>ns</u>	<u>0.04</u>
<u>Phenol</u>	<u>-</u>	<u>108-95-2</u>	<u>3,400</u>	<u>ns</u>	<u>170</u>	<u>ns</u>	<u>300,000</u>
<u>Polychlorinated Biphenyls (PCBs)</u>	<u>X</u>	<u>-</u>	<u>2.0</u>	<u>0.014</u>	<u>10</u>	<u>0.03</u>	<u>0.000064</u>
<u>Pyrene</u>	<u>-</u>	<u>129-00-0</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>30</u>
<u>Benzo (a) pyrene</u>	<u>X</u>	<u>50-32-8</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.00013</u>
<u>Indeno (1,2,3-cd) pyrene</u>	<u>X</u>	<u>193-39-5</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.0013</u>
<u>Selenium</u>	<u>-</u>	<u>7782-49-2</u>	<u>20</u>	<u>5</u>	<u>300</u>	<u>71</u>	<u>4,200</u>
<u>Silver</u>	<u>-</u>	<u>7440-22-4</u>	<u>1+</u>	<u>1+</u>	<u>2.3</u>	<u>ns</u>	<u>ns</u>
<u>1,2,4,5-Tetrachlorobenzene</u>	<u>-</u>	<u>95-94-3</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.03</u>
<u>2,3,7,8-TCDD (Dioxin)</u>	<u>X</u>	<u>1746-01-6</u>	<u>0.003</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>5.1 x 10<sup>-9</sup></u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Pollutant Name</u>	<u>Carcinogen</u>	<u>CAS #</u>	<u>Freshwater</u> ( <u>µg/L</u> )		<u>Saltwater</u> ( <u>µg/L</u> )		<u>Fish Consumption</u> ( <u>µg/L</u> <u>except</u> <u>Methylmercury *</u> )
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
<u>Tetrachloroethanes</u>	-	-	<u>3,100</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>
<u>1,1,2,2-Tetrachloroethane</u>	<u>X</u>	<u>79-34-5</u>	<u>ns</u>	<u>ns</u>	<u>3,000</u>	<u>ns</u>	<u>3</u>
<u>Tetrachloroethylene</u>	<u>X</u>	<u>127-18-4</u>	<u>1,800</u>	<u>ns</u>	<u>3,400</u>	<u>145</u>	<u>29</u>
<u>2,3,5,6-Tetrachlorophenol</u>	-	-	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>440</u>	<u>ns</u>
<u>Thallium</u>	-	<u>7440-28-0</u>	<u>470</u>	<u>ns</u>	<u>710</u>	<u>ns</u>	<u>0.47</u>
<u>Toluene</u>	-	<u>108-88-3</u>	<u>5,800</u>	<u>ns</u>	<u>2,100</u>	<u>ns</u>	<u>520</u>
<u>Toxaphene</u>	<u>X</u>	<u>8001-35-2</u>	<u>0.73</u>	<u>0.0002</u>	<u>0.21</u>	<u>0.0002</u>	<u>0.00071</u>
<u>Tributyltin (TBT)</u>	-	-	<u>ns</u>	<u>0.026</u>	<u>ns</u>	<u>0.01</u>	<u>ns</u>
<u>1,2,4-Trichlorobenzene</u>	<u>X</u>	<u>120-82-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>0.076</u>
<u>1,1,1-Trichloroethane</u>	-	<u>71-55-6</u>	<u>6,000</u>	<u>ns</u>	<u>10,400</u>	<u>ns</u>	<u>200,000</u>
<u>1,1,2-Trichloroethane</u>	<u>X</u>	<u>79-00-5</u>	<u>6,000</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>8.9</u>
<u>Trichloroethylene</u>	<u>X</u>	<u>79-01-6</u>	<u>15,000</u>	<u>ns</u>	<u>700</u>	<u>ns</u>	<u>7</u>
<u>2,4,5-Trichlorophenol</u>	-	<u>95-95-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>600</u>
<u>2,4,6-Trichlorophenol</u>	<u>X</u>	<u>88-06-2</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>2.8</u>
<u>Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]</u>	-	<u>93-72-1</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>400</u>
<u>Vinyl Chloride</u>	<u>X</u>	<u>75-01-4</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>ns</u>	<u>1.6</u>
<u>Zinc</u>	-	<u>7440-66-6</u>	<u>22+</u>	<u>22+</u>	<u>95</u>	<u>86</u>	<u>26,000</u>

CAS # - Chemical Abstracts Service Number

\* - As recommended by the EPA, the standard for Methylmercury is expressed as a fish (or shellfish) tissue residue water quality criterion rather than a water column-based water quality criterion. (<https://www.epa.gov/sites/production/files/2019-02/documents/wqc-final-methylmercury-factsheet-2001.pdf>)

ns - No standard has been developed.

+ - The value listed is the minimum standard. Depending upon the receiving water calcium carbonate hardness, higher standards may be calculated using the respective formula in EPA 440/5-86-001, Quality Criteria for Water, 1986 (published May 1, 1986).

Note - Compounds listed in the plural in the "Pollutant Name" column (except for Nitrosamines and PCBs) represent mixtures of isomers. Values listed refer to the total allowable concentration of any combination of isomers of these compounds.

### III. RATIONALE FOR USE ATTAINABILITY ANALYSES

The CWA mandates a comprehensive program whose ultimate objective is to restore and to maintain the chemical, physical, and biological integrity of all waters. The goal of the CWA is to attain water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on all waters. All designated uses, that reflect the “fishable/swimmable” goal stated in section 101(a)(2) of the CWA, are presumed attainable unless demonstrated otherwise.

The CWA also mandates States to establish and adopt (subject to EPA approval) WQS regulations to protect public health or welfare, and the quality of all surface waters. States must establish WQS by taking into consideration the use and value of water bodies for propagation of fish and wildlife, recreation, and other uses such as public water supply, agriculture, industry, and navigation. These beneficial uses are stated in section 303(c)(2)(A) of the CWA and they are to be protected or achieved through State WQS regulations. Per 40 CFR §131.3(q), the “other uses” are referred to as non-101(a)(2) uses (i.e., uses that are unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in and on the water).

Since the enactment of the CWA, many States, including Hawaii, have established water body classification systems whereby all similar types of water bodies were assigned uniform WQS. Most States do not generally revise assigned uses. However, some State have recognized the uniqueness of different water bodies, and as a result, they have revised WQS of individual water systems, and assigned to them appropriate uses and applicable WQS. HDOH is interested in **adopting regulatory language that allows the specification of appropriate uses and applicable WQS for individual water systems.**

Per 40 CFR §131.3(g), a Use Attainability Analysis (UAA) is defined as a structured scientific assessment of physical, chemical, biological, or economic factors to determine the attainable uses for a water body. Specifically, a UAA can be conducted to demonstrate that attaining a use is not feasible because of one of the six factors listed in 40 CFR §131.10(g):

1. Naturally occurring pollutant concentrations prevent the attainment of the use.
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.
3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.
4. Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude the attainment of aquatic life protection uses.
6. Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

The latest revisions to the federal WQS regulations clarify when a UAA is and is not required for 101(a)(2) and non-101(a)(2) uses. Per 40 CFR §131.10(j), a UAA is required in the following situations:

1. when designating a non-101(a)(2) use.
2. when designating a sub-category of a 101(a)(2) use to specify criteria less stringent than previously applicable.
3. when removing a 101(a)(2) use.
4. when removing a sub-category of a 101(a)(2) use.

Per 40 CFR §131.10(k), a UAA is not required in the following situations:

1. when designating a 101(a)(2) use.
2. when designating a sub-category of a 101(a)(2) use to specify criteria as stringent as previously applicable.
3. when removing a non-101(a)(2) use.
4. when revising a non-101(a)(2) use.

Per 40 CFR §131.10(h), it is important to stress that a State may not remove a designated use if it is an existing one or an attainable one. The CWA provides various tools, including limitations in NPDES permits for point sources and best management practices for non-point sources, to control or to reduce discharges of pollutants, and hence, to attain water quality goals.

The adoption of a use based on a UAA is a WQS revision that is subject to both the public participation and EPA approval processes. A State must provide both public notice and public hearing for a UAA. If a State adopts a new or revised WQS based on a UAA then it shall also adopt a Highest Attainable Use (HAU). Per 40 CFR §131.3(m), a HAU is defined as a modified 101(a)(2) use that can be attained based on a UAA, and any other information or analyses. There are no requirements for a HAU if it can be demonstrated that a relevant 101(a)(2) use, and sub-categories of this use, are not attainable. Although such situations are rare, it is conceivable for a State to completely remove a 101(a)(2) use and to concurrently adopt another designated use.

Since the adoption of a use less than a HAU could lower WQS and also affect public health, a scientific assessment (i.e., a UAA) of factors affecting the attainment of a use must include analyses of both the current and prospective conditions of a water body. Specifically, a UAA must not only determine a use that is attainable right now but also one that is deemed attainable in the future (i.e., HAU) pending the implementation of effluent limits and best management practices. To ensure the determination of a HAU, HDOH intends **to require that a UAA or a scientifically defensible analysis be conducted to demonstrate the non-attainment of a use.**

The following additional section is proposed for HAR 11-54:

**§11-54-9.3 Use attainability analysis.** (a) As used in this section:

"Highest attainable use" or "HAU" means the modified use that is both closest to the uses specified in section 303(c)(2)(A) of the Act and attainable based on a UAA or other scientifically defensible analyses that were used to evaluate attainability.

"Use attainability analysis" or "UAA" means a structured scientific assessment of the factors affecting the attainment of the use, which may include factors as described in title 40, Code of Federal Regulations, section 131.10(g).

(b) A UAA or other scientifically defensible analyses may be conducted to demonstrate the non-attainment of a use, as described in this chapter.

(c) A UAA shall not be inconsistent with federal regulations on protecting and designating uses as described in title 40, Code of Federal Regulations, section 131.10.

(d) A HAU shall be adopted whenever a use, as described in this chapter, is demonstrated to be non-attainable based on a UAA or other scientifically defensible analyses.

(e) The decision to adopt the results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment of a use, shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting the results of a UAA or other scientifically defensible analyses in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The results of a UAA or other scientifically defensible analyses, and supporting information shall be made available to the public prior to the hearing.

(f) The results of a UAA or other scientifically defensible analyses, demonstrating the non-attainment

of a use, shall not be effective until they are  
adopted by the department and approved by the EPA.  
[Eff and comp ] (Auth: HRS §§342D-4,  
342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5,  
131.10; 33 U.S.C. §1313(303))

#### IV. RATIONALE FOR WQS VARIANCES

Per Hawaii Revised Statutes (HRS) at Title 19, Health, Chapter 342D, Water Pollution, Section 7, Variances (HRS 342D-7), HDOH has the authority to grant variances that allow for the discharge of water pollutants in excess of applicable standards when there are no substantial risks to human health or safety. Specifically, HRS 342D-7 allows for a variance when it can be shown that:

1. full compliance with the standards would produce serious hardship without equal or greater benefits to the public, and
2. practicable means for the adequate prevention, control, or abatement of the water pollution involved are not available.

The length of a variance is a period not exceeding five years, and only until the necessary means for prevention, control, or abatement become practicable. As described, the statutes provide HDOH the authority to grant water quality variances (i.e., WQS variances), and they leave regulatory requirements for the protection of water quality to the discretion of HDOH. Therefore, HDOH now intends **to adopt regulations for administering WQS variances, only applicable to dischargers and not to water bodies, in order to promote the incremental attainment of water quality goals, and to allow, as necessary, the temporary and conditional downgrading of water quality criteria that are applicable to specific dischargers.**

In August 2015, the EPA promulgated new WQS regulations at 40 CFR §131 to clarify the use of WQS variances when a designated use is not attainable in the near-term but is deemed attainable in the future. Specifically, the EPA amended federal WQS regulations to allow the temporary and conditional downgrading of the WQS applicable to a segment of a water body, an entire water body, a permittee, or a group of permittees. The EPA has stressed the utility of multiple permittee WQS variances when addressing situations where various dischargers (i.e., a group of permittees) are all experiencing similar challenges in meeting the limit for a specific pollutant, regardless of whether they are located on the same water body. Depending on the parameters being considered, a State could streamline its WQS variance process by adopting a single rule that applies to all affected permittees. As a pre-requisite to the adoption of multiple permittee WQS variances, a State can list group characteristics and establish eligibility requirements for each permittee in the group. Group characteristics may include the type of permittee (public or private), the size of a permittee (small or large), the source of revenue (tax or service), or the type of effluent (sanitary or industrial). Eligibility requirements may include same designated use and applicable criterion, same water body, or similar treatment technology.

A temporary and modified WQS becomes applicable through the adoption of a “variance” to WQS<sup>10</sup>, and it is subject to both the public participation and EPA approval processes. Per 40 CFR §131.3(o), a WQS variance is defined to be a time-limited designated use and criterion, for specific pollutant(s) or water quality parameter(s), that reflect the Highest Attainable Condition (HAC) throughout the term of this WQS variance. This HAC must not lower the water quality that is currently attained. A State has the flexibility to express the HAC as a numeric pollutant concentration, a numeric effluent condition, or any other quantitative expression of pollutant reduction that is achievable with the installation of pollutant control technologies, and if

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<sup>10</sup> <https://www.govinfo.gov/content/pkg/FR-2013-09-04/pdf/2013-21140.pdf>

applicable, the adoption and implementation of a Pollutant Minimization Program (PMP). Per 40 CFR §131.3(p), a PMP is defined to be a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings. Specifically, a PMP is a plan that is tailored to address the circumstances of a discharger, and it includes activities ranging from control to offset strategies. The aim of these strategies is to reduce the loadings of an applicable water pollutant from upstream and other sources.

Per 40 CFR §131.14(b)(1)(iv), the term of a WQS variance must only be as long as necessary to achieve the HAC. Per 40 CFR §131.14(b)(1)(v), if a WQS variance has a term greater than five years then a re-evaluation, using all existing and readily available information, of the HAC must occur no less frequently than every five years. A State has the flexibility to determine how it intends to obtain public input on the re-evaluation of a HAC, and it must submit the results of this re-evaluation to the EPA within thirty days of its completion.

Per 40 CFR §131.14(b)(2)(i), the documents required to demonstrate the need for a WQS variance depend on the type of use: either 101(a)(2) or non-101(a)(2). For a 101(a)(2) use, a State must demonstrate that attaining the designated use and criterion, for the term of a WQS variance, is not feasible because of one of the six factors listed in 40 CFR §131.10(g). Besides these six factors, actions, which are necessary to facilitate lake, wetland, or stream restoration, through dam removal or other significant reconfiguration activities can also be used as a factor to preclude attainment of the designated use and criterion for the term of a WQS variance. For a non-101(a)(2) use, a State must submit documentation justifying how its consideration of the use and value of a water body supports the WQS variance and term.

Per 40 CFR §131.14(a)(4), a State may not adopt a WQS variance if the designated use and criterion, that are addressed, can be achieved by implementing technology-based effluent limits as required in sections 301(b) and 306 of the Act. Once adopted by a State and approved by the EPA, a State may use a WQS variance, including the applicable HAC, for the purpose of developing and incorporating effluent limitations in NDPEs permits. For the term of a WQS variance, a State must retain, in its standards, the underlying designated use and original specified criterion that are addressed. All other standards, which are not specifically addressed by a WQS variance, remain applicable.

As described above, the requirements for a WQS variance can be broken into six distinct areas. They are:

1. Non-attainment
2. Applicability
3. Interim condition and HAC
4. Term
5. Re-evaluation
6. Renewal

For each area, there are differences between federal regulations and Hawaii statutes for administering WQS variances. HDOH intends **to administer requirements like those specified in the federal regulations at 40 CFR §131.14, and to include, in HAR 11-54, the following three requirements:**

1. **Demonstration of non-attainment based on one of seven factors**
2. **Determination of a HAC**
3. **Re-evaluation of interim conditions**

First, Hawaii statutes only allow for a discharge of water pollutant in excess of applicable standards (i.e., a WQS variance) when compliance with the standards would produce serious hardship without equal or greater benefits to the public. For a 101(a)(2) use, the federal regulations allow the adoption of a WQS variance when the attainment of a designated use and criterion is not feasible because of one of the six factors, listed in 40 CFR §131.10(g), or the restoration-related factor. For the 40 CFR §131.10(g)(6) factor, there is guidance, especially from the EPA, on the methodologies for estimating the financial cost of pollution controls, and for demonstrating the economic burden of these controls. In order to conform with federal regulations and in a manner similar to its proposed process for conducting UAAs, HDOH intends **to require for all uses, including both 101(a)(2) and non-101(a)(2) uses, an assessment of one of the 40 CFR §131.10(g) factors or the utilization of the restoration-related factor to demonstrate the non-attainment of a criterion throughout the term of a WQS variance.**

Second, Hawaii statutes only allow WQS variances for dischargers while federal regulations allow WQS variances for dischargers, as well as for water bodies. For a WQS variance applicable to a discharger or dischargers, federal regulations require a State to specify the highest attainable interim condition (i.e., the HAC) as a quantifiable expression or a narrative requirement. Hawaii statutes do not currently have requirements for a highest attainable interim condition throughout the term of a WQS variance. HDOH intends **to require the specification of a HAC, as either the highest attainable criterion or the interim effluent condition reflecting the greatest pollutant reduction achievable, which is applicable to a discharger or dischargers for the term of a WQS variance.** In order to monitor the interim condition, each discharger shall be required to sample effluent and/or receiving waters, and to report these sampling results to HDOH.

Third, Hawaii statutes only allow the issuance of a WQS variance with a period not exceeding five years, or until the necessary means for the adequate prevention, control, or abatement of the water pollution involved will become practicable. These statutes are different from federal regulations that allow for a term longer than five years, or as long as necessary to achieve the HAC with the implementation of pollutant control activities, and, if applicable, other activities identified through a PMP. For a WQS variance with a term greater than five years, federal regulations also require a re-evaluation of the HAC to occur no less frequently than every five years. A WQS variance granted by HDOH has a maximum period of five years; however, the statutes allow for the renewal of a WQS variance for periods not exceeding five years provided that all requirements of the immediately preceding WQS variance are met. **For situations when the term required to achieve a HAC exceeds a period of five years, HDOH intends to allow the issuance of a WQS variance administered by a series of NPDES permits, with each NPDES permit having a duration not exceeding five years. HDOH also intends to require the re-evaluation of the HAC, at a frequency no less frequently than every five years, with the aim of determining the water quality progress achieved.**

The following additional section is proposed for HAR 11-54:

**§11-54-9.4 Water quality standards variance.**

(a) As used in this section:

"Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements specified in chapter 11-55. Permit does not include any permit which has not yet been the subject of final department action, such as a draft permit.

"Pollutant Minimization Program" or "PMP" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

"WQS variance" or "variance" means a time-limited criterion, for a specific pollutant or a water quality parameter, which reflects the highest attainable condition (HAC) during the term of the variance.

(b) A time-limited change to a criterion, as described in this chapter, shall be consistent with the provisions of section 342D-7, HRS. The following requirements shall apply when considering the application for a variance:

(1) A variance may be considered if a criterion can be demonstrated as not feasibly attainable throughout the term of the variance. Complete assessments, detailed descriptions, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to demonstrate that the attainment of a criterion is not feasible throughout the term based on any of the factors listed in title 40, Code of Federal Regulations, section 131.10(g);

(2) A variance may be considered if a criterion cannot be attained while restoration or other significant reconfiguration activities are being implemented; and

(3) A variance shall not be considered if a criterion addressed by the variance can be achieved by implementing technology-based effluent limits required under chapter 11-55.

(c) A variance shall identify a discharger or dischargers subject to the variance. A variance shall also identify the criterion and the water body to which the variance applies. All other criteria not specifically addressed by a variance shall remain applicable.

(d) A highest attainable condition (HAC) shall be quantifiably specified as either the highest attainable interim condition or the interim effluent condition that reflects the greatest pollutant reduction achievable throughout the term of a variance. The following requirements shall apply when specifying a HAC:

- (1) A HAC shall not result in any lowering of the currently attained ambient water quality unless restoration activities are necessary, as described in section 11-54-9.4(b)(2);
- (2) A HAC shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP; and
- (3) If the length of time required to achieve a HAC exceeds five years, the HAC of each succeeding permit, in a series of permits, shall be at least as stringent as the HAC of the preceding permit.

(e) The term of a variance shall be only as long as necessary to achieve the HAC; provided no permit shall have a term exceeding five years. The following requirements shall apply when specifying the term of a variance:

- (1) A term may start from the date EPA approves the variance or from a date specified by the department; and
- (2) If the length of time required to achieve a HAC exceeds five years, the department may

consider issuing a series of permits;  
provided no permit, in a series of permits,  
shall have a term exceeding five years.

(f) The decision to approve the application for a variance shall be subject to public participation requirements. The department shall hold one or more public hearings when approving the application for a variance in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The application for a variance and supporting information shall be made available to the public prior to the hearing.

(g) A variance shall not be effective until it is adopted by the department and approved by the EPA.

(h) Re-evaluation of a variance or a permit in a series of permits shall be conducted no less frequently than every five years, and at least one hundred eighty days prior to the end of such a variance or such a permit to review the HAC using all existing and readily available information. The following requirements shall apply when conducting a re-evaluation:

- (1) A re-evaluation shall determine the water quality progress achieved. Available documents, supporting analyses, water quality data, and any additional information requested by the department shall be submitted to determine the water quality progress achieved;
- (2) The results of a re-evaluation may modify the HAC of a variance or the HAC(s) of succeeding permits in a series of permits;
- (3) The department shall obtain, in accordance with chapter 91, HRS, public comment on a re-evaluation;
- (4) The department shall submit, in accordance with title 40, Code of Federal Regulations, section §131.14(b)(1)(v), the results of a re-evaluation to the EPA; and
- (5) If the department does not conduct a re-evaluation as specified or does not submit the results of a re-evaluation as required,

then a variance shall no longer be applicable.

(i) All specified conditions of an expiring variance must have been met in order for a discharger to request a renewal. The following requirements shall apply when requesting a renewal of a variance:

- (1) A renewal shall provide for a HAC at least as stringent as the expiring HAC; and
- (2) A renewal shall take into consideration the installation of pollutant control technologies and, if applicable, the adoption and implementation of a PMP. [Eff and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-7, Ch. 342E) (Imp: §§342D-4, 342D-5, 342D-6, 342D-7, Ch. 342E; 40 §§131.10, 131.14)

## V. RATIONALE FOR SITE-SPECIFIC AQUATIC LIFE CRITERIA

The CWA mandates the development and implementation of WQS that may include numerical or narrative criteria. Numerical criteria for specific chemicals, especially toxic pollutants, are crucial for the protection against potential impacts to human health and aquatic ecosystems. For aquatic life numerical criteria, the EPA uses the results from tests conducted in controlled laboratory environments. Specifically, data about acute (i.e., short-term) and chronic (i.e., long-term) toxicities are determined for various freshwater and saltwater aquatic species. These toxicology tests are conducted on the premise that data for the species selected to derive the national criteria (i.e., those recommended by the EPA) are representative of the sensitivities of untested species.

There are inherent differences in species between laboratory environments, where aquatic life WQS criteria are derived, and aquatic ecosystems, where these criteria are implemented. Moreover, there are actual differences in water characteristics that can affect the toxicity of pollutants. Per 40 CFR §131.11(b)(1)(ii), a State has the flexibility to adopt, based on scientifically defensible rationale and methods, numeric WQS that are modified to reflect site-specific conditions. Overall, a site-specific (i.e., “modified”) WQS criterion must be as stringent as necessary to protect the applicable designated use.

A site-specific aquatic life WQS criterion is derived by considering the physical, chemical, and biological conditions that characterize a water body. Typically, chemical conditions include water characteristics such as hardness and temperature, while biological conditions include species compositions for fishes and plants. In order to address the differences in physical, chemical and biological conditions between laboratory environments and aquatic ecosystems, a State may adopt site-specific criteria under one or more of the following situations:

1. Species sensitivity. The main species present at a specific water body are either more or less sensitive than those utilized in the national criteria dataset. For example, the national criteria dataset contains data for various aquatic species that are very sensitive to a specific toxic pollutant. However, if none of these species are found at a specific water body where traces of this toxic pollutant have been detected in water samples, then the applicable criteria may be modified.
2. Toxicity variation. The toxicity of a water pollutant is significantly altered by the physico-chemical characteristics of a specific water body. In freshwater environments, the acute and chronic toxicity criteria for metals decrease as hardness increases. For copper, the EPA recommends using the freshwater Biotic Ligand Model (BLM) to derive the acute and chronic toxicity criteria in fresh waters.<sup>11</sup> In July 2016, the EPA issued a peer-reviewed draft to update its recommendation for using the saltwater BLM to estimate the toxicities of copper in marine and estuarine waters.<sup>12</sup> The BLM requires the input of physical and chemical parameters that characterize a specific water body.
3. Natural background. The aquatic life criteria, recommended by the EPA, may require adjustments to reflect the natural background conditions of a specific water body. By

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<sup>11</sup> <https://www.epa.gov/sites/production/files/2019-02/documents/al-freshwater-copper-2007-revision.pdf>

<sup>12</sup> <https://www.epa.gov/sites/production/files/2016-08/documents/copper-estuarine-marine-draft-factsheet.pdf>

definition, natural background is a background concentration that is only due to non-anthropogenic (i.e., non-manmade) sources. The EPA has recognized that certain pollutants may naturally occur in concentrations greater than the applicable criteria.<sup>13</sup> Accordingly, the EPA has provided States with guidance on setting certain site-specific aquatic life criteria, for a specific water body, equal to background concentrations.

As described in the above situations, the EPA has developed scientific procedures and frameworks to derive site-specific aquatic life criteria. Depending on the applicable circumstances, the following processes can be used:

1. Recalculation Procedure. This process takes into account the differences in sensitivities of the aquatic species tested for the national criteria dataset and those found at a specific site. For a specific site, the basic concept is to retain tested species which are closely related to locally occurring species, and if possible, to replace tested species with other common species which are better substitutes. Special care should be exercised when removing any species from the national criteria dataset since some tested species are needed to represent untested species.
2. Water-Effect Ratio (WER) and Streamlined WER Procedures for metals. These processes take into account the differences in toxicity of a metal in site-specific water and in laboratory dilution water. By definition, the WER is the ratio of the toxicity of a metal in site water to the toxicity of the same metal in laboratory water. This ratio is, by default, assumed to be equal to one (i.e., unity). When using the WER procedure, collected samples and simulated samples must be representative of the actual conditions at a specific site to ensure the validity of the WER-derived toxicity criterion.
3. Biotic Ligand Model (BLM) for copper and potentially other metals. This process takes into account water parameters that directly influence the toxicity of copper at a specific site. These parameters may include temperature, pH, alkalinity, salinity, or concentrations of dissolved organic carbon. A very extensive dataset of input parameters is therefore required to estimate the water toxicity of copper. It is possible to use default values, which are developed by the EPA, in place of missing water input parameters.
4. Natural Conditions Framework for temperature, pH, and dissolved oxygen criteria. This process aims to standardize the methodologies, which are adopted by States, to characterize the natural conditions used in developing the site-specific aquatic life criteria for temperature, pH, and dissolved oxygen. Since manmade disturbances may be widespread or pervasive at a specific site, the task of accurately characterizing natural conditions is inherently tied to the challenge of successfully identifying anthropogenic conditions.

Properly derived site-specific aquatic life criteria protect the designated uses of a specific water body. The adoption of site-specific procedures (i.e., equations to derive site-specific criteria for general or narrow applicability) is a revision to WQS regulations, and therefore, it is subject to the public participation and EPA approval processes. HDOH intends **to introduce authorizing language that references scientific procedures, promulgated by the EPA, for the proper derivation of site-specific aquatic life criteria.**

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<sup>13</sup> <https://www.epa.gov/sites/production/files/2014-08/documents/naturalbackground-memo.pdf>

The following additional section is proposed for HAR 11-54:

**§11-54-9.5 Site-specific aquatic life criterion.**

(a) As used in this section:

"Criterion" means an element of WQS, as described in this chapter, that is expressed as a constituent concentration, a numeric level, or a narrative statement, and that represents a quality of water supporting a particular use. When criteria are met, water quality shall generally protect the designated use.

"EPA PB85-227049" means "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses," December 2010 unless otherwise noted.

"EPA 823-B-17-001" means "Water Quality Standards Handbook," Chapter 3, Water Quality Criteria, Section 3.5.2, Site-Specific Aquatic Life Water Quality Criteria, November 2017 unless otherwise noted.

(b) A site-specific aquatic life criterion shall be consistent with federal regulations on adopting criteria that protect designated uses as described in title 40, Code of Federal Regulations, section 131.11.

(c) A site-specific aquatic life criterion may be derived to address species sensitivity, toxicity variation, natural background, or any combination of these situations.

(d) A site-specific aquatic life criterion may be based on scientific guidelines described in EPA PB85-227049.

(e) A site-specific aquatic life criterion may be derived with scientific processes described in EPA 823-B-17-001 or other scientifically defensible methods.

(f) The decision to adopt a site-specific aquatic life criterion shall be based on a scientific demonstration that the derived criterion protects the designated use, as described in this chapter.

(g) The decision to adopt a site-specific aquatic life criterion shall be subject to public participation requirements. The department shall hold one or more public hearings when adopting a site-specific aquatic life criterion in accordance with applicable provisions of chapter 91, HRS, and 40 C.F.R. §25. The site-specific aquatic life criterion and supporting information shall be made available to the public prior to the hearing.

(h) A site-specific aquatic life criterion shall not be effective until it is adopted by the department and approved by the EPA. [Eff and comp

] (Auth: HRS §187A-1, §§342D-4, 342D-5) (Imp: §§342D-4, 342D-5; 40 C.F.R. §§25.5, 131.11)

## **VI. RATIONALE FOR ORGANIZATION OF NEW SECTIONS**

HDOH intends to amend HAR 11-54 with authorizing language that allows the use of other regulatory mechanisms, including UAAs, WQS variances, and site-specific aquatic life criteria, to address site-specific conditions. In order to achieve this, HDOH intends to remove the requirements for “Water Quality Certification” from the existing sections HAR 11-54-9.1, and HAR 11-54-9.1.01 to HAR 11-54-9.1.09, and to include them in the new chapter 53, titled “Section 401 Water Quality Certification,” of the Hawaii Administrative Rules (HAR 11-53). HDOH also intends to transfer the discharge requirements for zones of mixing and intake credits, which are respectively specified in sections HAR 11-54-9 and HAR 11-54-12, to the existing chapter 55, titled “Water Pollution Control,” of the Hawaii Administrative Rules (HAR 11-55). The following modifications are proposed for HAR 11-54:

- A. Repeal existing section 9.1 for “Water Quality Certification.” As mentioned above, the water quality certification requirements will be moved to HAR 11-53.
- B. Repeal existing sections 9.1.01 to 9.1.09, all related to “Water Quality Certification.” As mentioned above, the water quality certification requirements will be moved to HAR 11-53.
- C. Repeal existing section 9 for “Zones Of Mixing.” As mentioned above, the mixing zone requirements will be transferred to HAR 11-55.
- D. Repeal existing section 11 for “Schedule Of Compliance.”
- E. Repeal existing section 12 for “Intake Credits.” As mentioned above, the intake credit requirements will be transferred to HAR 11-55.
- F. Add new section 9.2 for “Site-Specific Flexibilities” and include definitions.
- G. Add new sections 9.3, 9.4, and 9.5 for “Use Attainability Analysis,” “Water Quality Standards Variance,” and “Site-Specific Criterion,” respectively.
- H. Add new section 9.6 for “Schedule Of Compliance.” This new section is based substantially upon the repealed section 11 (see modification D).

A. Repeal existing section HAR 11-54-9.1

~~§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:~~

~~"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 2011, unless otherwise specified.~~

~~"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2011, unless otherwise specified.~~

~~"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. section 1251 et. seq.~~

~~"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).~~

~~"Discharge" means the same thing as defined in Section 502(16) of the Act.~~

~~"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in section 502(12) of the Act.~~

~~"Duly authorized representative" means a person or position as defined in 40 CFR section 122.22(b).~~

~~"License or permit" means any permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.~~

~~"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."~~

~~"Navigable waters" means the waters of the United States, including the territorial seas.~~

~~"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.~~

~~"Pollutant" means the same thing as defined in section 502(6) of the Act.~~

~~"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.~~

~~"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.~~

~~"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.~~

~~"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.~~

~~"Waters of the United States" or "waters of the U.S." means:~~

- ~~(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;~~
- ~~(2) All interstate waters, including interstate "wetlands";~~
- ~~(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands,"~~

~~sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:~~

- ~~(A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;~~
- ~~(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~
- ~~(C) Which are used or could be used for industrial purposes by industries in interstate commerce;~~

~~(4) All impoundments of waters otherwise defined as waters of the United States under this definition;~~

~~(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;~~

~~(6) The territorial sea; and~~

~~(7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17 /00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R ]~~

~~(Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

B. Repeal existing sections HAR 11-54-9.1.01 to HAR 11-54-9.1.09

~~§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~
  - ~~(2) A statement that the director has either:
    - ~~(A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or~~
    - ~~(B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a) (3);~~~~
  - ~~(3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;~~
  - ~~(4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and~~
  - ~~(5) Other information the director determines to be appropriate.~~
- ~~(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during~~

~~the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility~~

~~(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.~~

~~(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver.] [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)~~

~~[§11-54-9.1.02 Water quality certification; contents of water quality certification application.~~

~~(a) The owner or its duly authorized representative~~

~~shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:~~

- ~~(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;~~
- ~~(2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);~~
- ~~(3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;~~
- ~~(4) Associated existing or pending federal and environmental permits and corresponding file numbers;~~
- ~~(5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;~~
- ~~(6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;~~
- ~~(7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;~~
- ~~(8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;~~

- ~~(9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);~~
- ~~(10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);~~
- ~~(11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);~~
- ~~(12) Additional information regarding any irregularities or unique features of the project; and~~
- ~~(13) Additional information as required by the director.~~

~~(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.~~

~~(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.~~

~~(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.~~

~~(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.~~

~~(1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;~~

~~(2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.~~

~~(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application.~~

~~may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted~~

~~or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:~~

- ~~(1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;~~
- ~~(2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and~~
- ~~(3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.~~

~~(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[\$11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated~~

~~with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.~~

~~(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[\$11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.~~

~~(b) In any case where:~~

- ~~(1) A certification or waiver was issued without applicable water quality standards;~~
- ~~(2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or~~
- ~~(3) The director determines that the activity is violating new water quality standards;~~

~~The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.~~

~~(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to section 401 of the Act.~~

~~(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).~~

~~(e) This section shall not preclude the department from taking other enforcement action authorized by law.]~~

~~[Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06 / 15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14;~~

~~R ] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or~~

~~permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

~~[§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards.] [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)~~

Due to the repeal of the above “Water Quality Certification” sections from HAR 11-54, minor modifications are proposed for the definition of “Wetlands,” in section HAR 11-54-1, to respectively reference the HDOH requirements for water

quality certifications as the new chapter 53 (HAR 11-53), and for NPDES permits as the existing chapter 55 (HAR 11-55). Amendments are also proposed for section HAR 11-54-1 to include the definitions of "pollutant" and "water quality standards."

**§11-54-1 Definitions.** As used in this chapter:

"Pollutant" or "water pollutant", as defined in section 342D-1, HRS, means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

"Water quality standards" or "WQS" means provisions of state law which consist of a designated use or designated uses for state waters and water quality criteria for such waters based upon such uses. WQS are to protect the public health or welfare, enhance the quality of state waters, and serve the purposes of the Act.

"Wetlands" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes:

- (1) At least periodically the land supports predominantly hydrophytic vegetation;
- (2) The substratum is predominantly undrained hydric soil; or
- (3) The substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated

seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the ~~[purpose]~~ purposes of applying for water quality certifications ~~[under Clean Water Act Section 401,]~~ as specified in chapter 11-53, and ~~[for]~~ National Pollutant Discharge Elimination System (NPDES) [permit purposes,] permits, as specified in chapter 11-55, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987).

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

C. Repeal existing section HAR 11-54-9

~~§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.~~

~~(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.~~

~~(c) Establishment, renewal, and termination.~~

~~(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.~~

~~(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter.~~

- ~~(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.~~
- ~~(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.~~
- ~~(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
  - ~~(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;~~
  - ~~(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;~~
  - ~~(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and~~
  - ~~(D) The discharge occurring or proposed to occur does not violate the basic~~~~

- ~~standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.~~
- ~~(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:~~
- ~~(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;~~
- ~~(B) The director may issue a zone of mixing for a period not exceeding five years;~~
- ~~(C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the~~

- ~~methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and~~
- ~~(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.~~
- ~~(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal~~

- ~~Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.~~
- ~~(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.~~
- ~~(9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.~~
- ~~(10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.~~
- ~~(11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.~~
- ~~(12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.] [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp~~

10/2/04; comp 06/15/09; comp 10/21/12; am  
and comp 12/6/13; comp 11/15/14;  
R ] (Auth: HRS §§342D-1,  
342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

Due to the repeal of section HAR 11-54-9, an amendment is proposed for section HAR 11-54-1 to include the definition of “zones of mixing.”

**§11-54-1 Definitions.** As used in chapter:

“Zones of mixing” means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges. Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

D. Repeal existing section HAR 11-54-11

~~§11-54-11 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.~~

~~(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.~~

~~(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.~~

~~(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:~~

- ~~(1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2014, and~~
- ~~(2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23 (10), and 11-55-34.07(3)(B).~~
- ~~(3) Require compliance as soon as possible.~~

~~(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved.] [Eff and~~

~~comp 11/15/14; R ] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)~~

E. Repeal existing section HAR 11-54-12

~~§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.~~

~~(b) As used in this section:~~

~~"Background pollutant concentration means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.~~

~~"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.~~

~~"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:~~

- ~~(1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and~~
- ~~(2) There is a direct hydrologic connection between the intake and discharge points; and~~
- ~~(3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.~~

~~The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall~~

~~point in the receiving water within a reasonable period had it not been removed by the permittee.~~

~~(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:~~

- ~~(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and~~
- ~~(2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.~~

~~(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.~~

~~(e) The director shall grant credit for water quality-based effluent limits only if:~~

- ~~(1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;~~
- ~~(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;~~
- ~~(3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,~~
- ~~(4) The director finds that the discharge of intake pollutants into the same body of~~

~~water will not adversely impact narrative or numeric water quality criteria specified in this chapter.~~

~~(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.~~

~~(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:~~

- ~~(1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and~~
- ~~(2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and~~
- ~~(3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.~~

~~(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.~~

- ~~(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.~~
- ~~(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.~~

~~(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.~~

~~(j) All other water quality criteria established under this chapter continue to apply.] [Eff and comp 11/15/14; R ] (Auth: HRS §§342D-~~

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4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4,  
342D-5, 342D-6, Ch. 342E)

F. Add new section HAR 11-54-9.2

**§11-54-9.2 Site-specific flexibilities.** As used in sections 11-54-9.3, 11-54-9.4, 11-54-9.5, and 11-54-9.6:

"40 C.F.R. §25" means title 40, Code of Federal Regulations, part 25, entitled "Public Participation in Programs under the Resource Conservation And Recovery Act, the Safe Drinking Water Act, and the Clean Water Act", revised as of 16 February 1979 unless otherwise noted.

"40 C.F.R. §131" means title 40, Code of Federal Regulations, part 131, entitled "Water Quality Standards", revised as of 21 August 2015 unless otherwise noted. [Eff and comp ]

(Auth: HRS §§342D-4, 342D-5, 342D-7) (Imp: §§342D-4, 342D-5, 342D-6, 342D-7; 40 C.F.R. §§25.5, 131.10, 131.11)

G. Add new sections HAR 11-54-9.3, HAR 11-54-9.4, and HAR 11-54-9.5

**§11-54-9.3 Use attainability analysis.**

(see rationale III for rules)

**§11-54-9.4 Water quality standards variance.**

(see rationale IV for rules)

**§11-54-9.5 Site-specific aquatic life criterion.**

(see rationale V for rules)

H. Add new section HAR 11-54-9.6

**§11-54-9.6 Schedule of compliance.** (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in title 40, Code of Federal Regulations, section 122.47, revised as of July 1, 2014;
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23 (10), and 11-55-34.07(3)(B); and
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and

comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

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Historical note: §11-54-9.6 is based substantially  
upon §11-54-11. [Eff and comp 11/15/14;  
R ]

## **VII. RATIONALE FOR VARIOUS MINOR MODIFICATIONS**

First, the current version of HAR 11-54 is not published in the manner established by the revisor of statutes in section 91-5(a), titled “Publication of Rules,” of the Hawaii Revised Statutes (HRS). Specifically, section headings should be boldface instead of underscored. Next, the current version of HAR 11-54 has definitions that reference either applicable HRS or HAR sections. Some of these definitions include both the section number, and the statutory or regulatory language, while others only include the section number. Last, the current version of HAR 11-54 has abbreviations and acronyms before they are defined, unclear and incorrect references, and incomplete definitions. HDOH proposes to maintain the correct and consistent use of headings, definitions, abbreviations, acronyms, and references in HAR 11-54 as follows:

- A. Change all section headings from underscore to boldface.
- B. Include section number, and statutory/regulatory language in definitions.
- C. Define abbreviations and acronyms before they are used.
- D. Clarify unclear definitions
- E. Update incorrect references
- F. Clarify unclear references.

Along with the above minor modifications, HDOH also proposes to add missing punctuation marks, to correct formatting and typographical errors, to spell out numbers, to convert “State” in “State waters” to lower case, to remove the ’okina in Hawaiian words (e.g., to replace “Hawai’i” with “Hawaii,” “Kaua’i” with “Kauai,” and so on), to substitute “shall” for certain instances of “will,” to replace “oxidation – reduction” with “oxidation-reduction,” and “CFR” or “C.F.R.” with “Code of Federal Regulations” for consistency, and to hyphenate two or more words that are used together as compound adjectives.

A. Change all section headings from underscore to boldface.

All section headings are boldface instead of underscored in the proposed version of HAR 11-54 with amendments. The following three sections of HAR 11-54 (HAR 11-54-5, HAR 11-54-13, and HAR 11-54-14) do not include any proposed amendments, and they will be compiled along with the amended sections.

**§11-54-5 Uses and specific criteria applicable to inland waters.** Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

**§11-54-13 Revision.** These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp 11/15/14; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

**§11-54-14 Severability.** If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp 11/15/14; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

B. Include section number, and statutory/regulatory language in definitions.

**§11-54-1 Definitions.** As used in this chapter:

"Amphidromous" means aquatic life that ~~[migrate]~~ migrates to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in ~~[Hawaiian]~~ state streams ~~[are]~~ is confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Aquatic life", as defined in section 187A-1, HRS, means ~~["]~~ any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof ~~[" (section 187A-1, HRS)]~~.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ~~[State]~~ state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, measures, or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be applied before, during, and after pollution-producing activities ~~[-to reduce or eliminate the introduction of pollutants into receiving State waters]~~.

"Coastal waters", as defined in section 342D-1, HRS, means ["]all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters, and salt waters that are subject to the ebb and flow of the tide[" ~~(section 342D-1, HRS)~~].

"Department" means the department of health, State of [Hawai'i.]Hawaii.

"Director" means the director, department of health, State of [Hawai'i,]Hawaii, or the director's duly authorized agent.

"Elevated wetlands" means natural freshwater wetlands located above [100 m (330 ft)]one hundred meters (three hundred thirty feet) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps, and ditches and flumes.

"Low wetlands" means freshwater wetlands located below [100 m (330 ft)]one hundred meters (three hundred thirty feet) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds, and

fishponds), and agricultural wetlands such as taro [~~lo'i~~]loi.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 [~~ha~~]hectares (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty per cent of the surface area. Natural freshwater lakes in [~~Hawai'i~~]Hawaii occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Nonpoint source pollution" [~~has the meaning~~], as defined in section 342E-1, HRS [~~is~~], means water pollution that does not originate from a point source.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above [~~800 m (2600 ft)~~]eight hundred meters (two thousand six hundred feet) or gradient above [~~30~~]thirty per cent or both);
- (2) Mid-zone (elevation between [~~50-800 m (165-2600 ft)~~],fifty and eight hundred meters (one hundred sixty-five and two thousand six hundred feet) or gradient between [~~5 and 30~~]five and thirty per cent or both); and
- (3) Terminal zone (elevation below [~~50 m (165 ft)~~]fifty meters (one hundred sixty-five feet) or gradient below [~~5~~]five per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and

contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Person" [~~has the same meaning~~], as defined in section 342D-1, HRS [~~-~~], means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Point source" [~~has the same meaning~~] or "point source pollution", as defined in section [~~11-55-01.~~] 342E-1, HRS, means pollution from any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

"Pollutant" or "water pollutant", as defined in section 342D-1, HRS, means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

"Pollution" [~~means~~] or "water pollution", as defined in section 342D-1, HRS [~~-~~], means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including

- change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters, as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

~~["Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.]~~

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"State waters", as defined ~~[by]~~in section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches,

ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all ~~[State]~~ state waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater, except the director may in the director's discretion take appropriate actions when the director believes that the discharge of pollutants to the ground or groundwater has adversely affected, is adversely affecting, or will adversely affect the quality of any ~~[State]~~ state water other than groundwater.
- (2) This chapter does not apply to drainage ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to drainage ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into or otherwise adversely affect the quality of any other ~~[State]~~ state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in ~~[40 C.F.R.]~~ title 40 Code of Federal Regulations section 122.2. The State ~~[of Hawai'i]~~ has those boundaries stated in the ~~[Hawai'i]~~ Hawaii Constitution, art. XV, §1.

"Water pollution control system" means a system designed and constructed specifically for the purpose of collecting, handling, storing, treating, or disposing of storm water, domestic wastewater, ~~[and/ or]~~ industrial wastewater, or any combination of these waters to prevent water pollution.

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp

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06/15/09; comp 10/21/12; am and comp 12/6/13; am and  
comp 11/15/14; am and comp ] (Auth:  
HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp:  
HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2,  
130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

C. Define abbreviations and acronyms before they are used.

There is a first use of the abbreviation "Act," in paragraph HAR 11-54-7(f)(3), which precedes its definition, in section HAR 11-54-9.1, as the Clean Water Act. The "Act" has to be defined in section HAR 11-54-1 instead of section HAR 11-54-9.1. There are also many uses of the acronym "EPA" which is not defined in HAR 11-54. The following amendments are proposed to define the abbreviation "Act" and the acronym "EPA" in section HAR 11-54-1, and to maintain their consistent use in sections HAR 11-54-1.1 and HAR 11-54-7.

**§11-54-1 Definitions.** As used in this chapter:

"Act" means the Clean Water Act (formally referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483, Public Law 97-117, and Public Law 114-115, (33 U.S.C. §1251 et seq).

"Best degree of treatment or control" means that treatment or control which is required by applicable [~~statutes and regulations of the State of Hawai'i]~~ state statutes and state regulations and the [Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.)] Act or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"U.S. Environmental Protection Agency" or "EPA" means the federal agency whose mission is to protect human and environmental health.

[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp:

HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

**§11-54-1.1 General policy of water quality antidegradation.** (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the ~~[state's]~~ State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the ~~[Clean Water Act.]~~ Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and

comp 10/2/04; comp 06/15/09; comp 10/21/12; am and  
comp 12/6/13; comp 11/15/14; am and comp  
] (Auth: HRS §§342D-1, 342D-4, 342D-  
5, Ch. 342E; 40 C.F.R. §131.12) (Imp: HRS §§342D-4,  
342D-5, Ch. 342E)

Incidental to the aforementioned amendments for section HAR 11-54-7, it is also proposed not to list the water areas to be protected in side-by-side columns, and to only list them in single columns.

**§11-54-7 Uses and specific criteria applicable to marine bottom types.** (a) Sand beaches.

- (1) As used in this subsection [~~:"Sand~~], "sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.
- (2) Water areas to be protected:
  - (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian [~~archipelago~~]Archipelago which lies northwest of the island of Kauai and is part of the State [~~of Hawaii~~]; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.
  - (B) Class II - All beaches not in Class I.
- (3) The following criteria are specific to sand beaches:

- ~~[(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.]~~
- ~~[(B)]~~ (A) Oxidation~~---~~-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts.
- ~~[(C)]~~ (B) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (C) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.

- (b) Lava rock shoreline and solution benches.  
(1) As used in this subsection:

"Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure.

"Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals.

- (2) Water areas to be protected:

- (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195 or chapter 190, HRS, or

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similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

- (B) Class II
- (i) All other lava rock shorelines not in Class I.
  - (ii) The following solution benches:

<u>Maui</u>	<del>[Oahu]</del>
Kihei	<del>[Diamond Head]</del>
Papaula Point	<del>[Manana Island]</del>
	<del>[Makapuu]</del>
<u>Kauai</u>	<del>[Laie]</del>
<del>[Near Hanapepe</del>	Kahuku
<del>Salt Ponds</del>	Mokuleia]
<u>Near Hanapepe Salt Ponds</u>	
Milolii	<del>[Makua]</del>
Nualolo	<del>[Makaha]</del>
Makaha	<del>[Maile]</del>
Mahaulepu	<del>[Lualualei]</del>
<del>[Kuhio Beach Park</del>	<del>Barbers Point</del>
<del>(Kukuiula)]</del>	
<u>Kuhio Beach Park (Kukuiula)</u>	

Oahu  
Diamond Head  
Manana Island  
Makapuu  
Laie  
Kahuku  
Mokuleia  
Makua  
Makaha  
Maile  
Lualualei  
Barbers Point

- (3) The following criteria are specific to lava rock shorelines and solution benches:
- (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm.
  - (B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class ~~[will]~~shall be clarified when situations require their identification~~[. For example,]~~ such as when a discharge permit is applied for or a waiver pursuant to section 301(h) of the ~~[Federal Water Pollution Control Act (33 U.S. C. Section 1311)]~~Act is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (c) Marine pools and protected coves.
- (1) As used in this subsection:
- "Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed

with water, are essentially marine, and support more diverse fauna.

"Protected coves" means small inlets which are removed from heavy wave action or surge.

(2) Water areas to be protected.

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Fisheries Service[-]; and

(ii) Hawaii  
Honaunau  
Kiholo

(B) Class II.

<u>Hawaii</u>	[ <del>Maui</del> ]
Kalapana	[ <del>Hana</del> ]
Pohakuloa	[ <del>Keanae</del> ]
Kapalaoa	[ <del>Napili</del> ]
Kapoho	[ <del>Puu Olai to</del> ]
[ <del>King's Landing</del> ]	[ <del>Cape</del> ]
[ <del>(Papai)</del> ]	[ <del>Hanamanioa</del> ]
<u>King's Landing (Papai)</u>	[ <del>Kipahulu</del> ]
Hilo	
Leileiwi Point	[ <del>Molokai</del> ]
Wailua Bay	[ <del>Cape Halawa</del> ]
	[ <del>Kalaupapa</del> ]

Maui [South Coast]

Hana

Keanae

Napili

Puu Olai to Cape Hanamanioa

Kipahulu

Molokai

Cape Halawa

Kalaupapa

South Coast

Oahu

Diamond Head

Halona Blowhole to Makapuu

Mokuleia

Kaena Point

Makua

Punaluu

Kauai

Kealia

Mahaulepu

Hanamaulu

Poipu

Puolo Point

- (3) The following criteria are specific to marine pools and protected coves:
- (A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts.
  - (B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter.
  - (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities

exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:

- (i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals).
  - (ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms.
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (d) Artificial basins.
- (1) As used in this subsection [~~:"Artificial]~~, "artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.
- (2) Class II water areas to be protected are as follows:
- (A) Shallow draft harbors:

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<u>Hawaii</u>	<del>[Maui]</del>
<del>[Wailoa River Boat]</del>	<del>[Maalaea Boat]</del>
<del>[Harbor]</del>	<del>[Harbor]</del>
<u>Wailoa River Boat Harbor</u>	<del>[Lahaina Boat]</del>
Mahukona Harbor	<del>[Harbor]</del>
Keauhou Harbor	<del>[Hana Harbor]</del>
Kailua-Kona Harbor	
Honokohau Boat Harbor	<del>[Lanai]</del>
Kawaihae Boat Harbor	<del>[Manele Boat]</del>
	<del>[Harbor]</del>
<u>Maui</u>	<del>[Kaunalapau]</del>
<u>Maalaea Boat Harbor</u>	<del>[Harbor]</del>
<u>Lahaina Boat Harbor</u>	
<u>Hana Harbor</u>	
<u>Lanai</u>	
<u>Manele Boat Harbor</u>	
<u>Kaunalapau Harbor</u>	
<u>Molokai</u>	
Kalaupapa Anchorage	
Kaunakakai Small Boat Harbor	
Hale o Lono Harbor	
<u>Oahu</u>	
Heeia Kea Boat Harbor	
Kaneohe Marine Corps Air Station	
Kaneohe Yacht Club	
Hawaii Kai Marina (Kuapa Pond)	
Pokai Bay	
Waianae Boat Harbor	
Keehi Marine Center	
La Mariana Sailing Club	
Haleiwa Harbor	
Makani Kai Marina	
Keehi Boat Harbor	
Ala Wai Boat Harbor:	
Ala Wai Fuel Dock	
Hawaii Yacht Club	
Waikiki Yacht Club	
Ko Olina	

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Kauai

Nawiliwili Small Boat Harbor  
Kukuiula Boat Harbor  
Kikiaola Boat Harbor  
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)  
Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor  
Barbers Point Harbor  
Kewalo Basin

Kauai

Nawiliwili Harbor  
Port Allen Harbor

- (3) Specific criterion to be applied -  
Oxidation-reduction potential (EH) in the  
uppermost ten centimeters (four inches) of  
sediment shall not be less than -100  
millivolts.
- (e) Reef flats and reef communities.
- (1) As used in this subsection:  
"Nearshore reef flats" means shallow  
platforms of reef rock, rubble, and sand  
extending from the shoreline. Smaller,  
younger flats projected out as semi-circular  
aprons while older, larger flats form wide  
continuous platforms. Associated animals  
are mollusks, echinoderms, worms,

crustaceans (many living beneath the surface), and reef-building corals.

"Offshore reef flats" means shallow, submerged platforms of reef rock and sand between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class I.

(i) All reef flats and reef communities in preserves,

reserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

<u>Hawaii</u>	<del>[Maui]</del>
Puako	<del>[Honolua]</del>
<del>[Lanai]</del>	<del>[Oahu]</del>
<del>[Northwest Lanai Reef]</del>	<del>[Hanauma Bay]</del>
<del>[Molokai]</del>	<del>[Kauai]</del>
<del>[Western Kalaupapa]</del>	<del>[Nualolokai]</del>
<del>[Southeast Molokai Reef]</del>	<del>[Hanalei]</del>
<del>[Honomuni Harbor]</del>	<del>[(Anini to</del>
<del>[Kulaalamihī Fishpond]</del>	<del>[Haena])]</del>

Lanai  
Northwest Lanai Reef

Molokai  
Western Kalaupapa  
Southeast Molokai Reef  
Honomuni Harbor  
Kulaalamihī Fishpond

Maui  
Honolua  
Oahu  
Hanauma Bay

Kauai  
Nualolokai  
Hanalei (Anini to Haena)

(iii) Offshore reef flats:

Moku o Loe (Coconut Island,  
Kaneohe Bay, Oahu)  
Kure Atoll  
Pearl and Hermes Atoll  
Lisianski Island  
Laysan Island  
Maro Reef  
French Frigate Shoals

(iv) Wave exposed reef communities:

Hawaii

1823 Lava Flow (Punaluu)  
1840 Lava Flow (North Puna)  
1868 Lava Flow (South Point)  
1887 Lava Flow (South Point)  
1955 Lava Flow (South Puna)  
1960 Lava Flow (Kapoho)  
1969 Lava Flow (Apuna Point)  
1970 Lava Flow (Apuna Point)  
1971 Lava Flow (Apuna Point)  
1972 Lava Flow (Apuna Point)  
1973 Lava Flow (Apuna Point)

Maui

Hana Bay  
Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -  
Kalawao  
Halawa Bay

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Oahu

Sharks Cove (Pupukea)  
Moku Manu (Islands)  
Outer Hanauma Bay  
Waimea Bay  
Kawela Bay  
Kahana Bay

Kauai

[~~Ke'e~~] Kee Beach  
Poipu Beach  
Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako  
Honaunau  
Kealakekua  
Kiholo  
Anaehoomalu  
Hapuna

Hawaii (continued)

Kahaluu Bay  
Keaweula (North Kohala)  
Milolii Bay to Keawaiki  
Kailua-Kaiwi (Kona)  
Onomea Bay  
1801 Lava Flow (Keahole or Kiholo)  
1850 Lava Flow (South Kona)  
1859 Lava Flow (Kiholo)  
1919 Lava Flow (Milolii)  
1926 Lava Flow (Milolii)

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Maui

Honolua

Ahihi-La Perouse (including 1790  
Lava Flow at Cape Kinau)

Molokini Island

All protected reef communities

Lanai

Manele

Hulopoe

Molokai

[Oahu]

Southeast Molokai [~~Hanauma Bay~~]

Kalaupapa [~~Moku o Loe~~]

Honomuni Harbor [~~(Coconut Island,~~  
[~~Kaneohe Bay)~~]

Oahu

Hanauma Bay

Moku o Loe (Coconut Island,  
Kaneohe Bay)

Kauai

Hoai Bay (Poipu)

Northwestern Hawaiian Islands

Kure Atoll Lagoon

Pearl and Hermes Lagoon

Lisianski Lagoon

Maro Reef Lagoon

French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director, considering environmental impact

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and the public interest pursuant to section 342D-6, HRS.

Hawaii [Maui]  
Blonde Reef (Hilo Harbor) [Lahaina]  
Kawaihae Small Boat Harbor [Harbor]  
[Kahului]

Maui [Harbor]  
Lahaina Harbor  
Kahului Harbor

Lanai  
Manele

Molokai  
Kaunakakai Harbor  
Hale o Lono Harbor  
Palaau ([~~2.4 kilometers~~/1.5  
[mile,] 1.5 miles or 2.4  
kilometers, east of Pakanaka  
Fishpond)

Oahu  
Keehi Boat Harbor  
Ala Moana Reef  
Honolulu Harbor  
Heeia Harbor

Oahu (continued)  
Kaneohe Yacht Club  
Ala Wai Harbor  
Haleiwa Boat Harbor  
Maunalua Bay  
Pearl Harbor  
Kaneohe Bay  
Kahe

- All other nearshore reef flats not in Class I;  
(ii) Offshore reef flats:

Oahu

Kapapa Barrier Reef

Kaneohe Patch Reefs (Kaneohe Bay)

- (iii) All other wave exposed or protected reef communities not in Class I.
- (3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.
  - (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts[+].
  - (B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter[+].
  - (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
    - (i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces[+].
    - (ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms[+].
    - (iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms[+].

- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to ~~[Section]~~section 301(h) of the ~~[Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.)]~~Act is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (f) Soft bottom communities.
- (1) As used in this subsection~~["Soft"],~~ "soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.
- (2) Water areas to be protected:  
Class II - All soft bottom communities.

- (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to ~~[Section]~~section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

D. Clarify unclear definitions

The following amendments are proposed for section HAR 11-54-2 to clarify the definition of marine waters.

**§11-54-2 Classification of ~~[State]~~state waters.**

- (a) State waters are classified as either inland waters or marine waters.
- (b) Inland waters may be fresh, brackish, or saline.
- (1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:
- (A) Flowing waters.
    - (i) Streams (perennial and intermittent);
    - (ii) Flowing springs and seeps; and
    - (iii) Ditches and flumes that discharge into any other ~~[waters of the State;]~~state waters;
  - (B) Standing waters.
    - (i) Natural freshwater lakes; and
    - (ii) Reservoirs (impoundments);
  - (C) Wetlands.
    - (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
    - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
- (A) Standing waters.
    - (i) Anchialine pools; and
    - (ii) Saline lakes~~[-]~~;
  - (B) Wetlands.
    - (i) Coastal wetlands (marshes, swamps, and associated ponds) ~~[-]~~;
  - (C) Estuaries.

- (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
  - (ii) Developed estuaries.
- (c) Marine waters may be embayments, open coastal, or oceanic waters.
- ~~[(1) All marine waters are either embayments, open coastal, or oceanic waters;]~~
- ~~[(2)]~~ (1) All [marine waters which are] embayments or open coastal waters are [also] classified [according to the following] as follows, based on their bottom subtypes:
- (A) Sand beaches;
  - (B) Lava rock shorelines and solution benches;
  - (C) Marine pools and protected coves;
  - (D) Artificial basins;
  - (E) Reef flats; and
  - (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

There is an incomplete definition of the “Statistical Threshold Value (STV)” in section HAR 11-54-8. This definition does not include “colony forming units (CFU)” as part of the units of measurement for the STV. This section also includes many occurrences of “enterococcus.” “Enterococci” (i.e., the group of bacteria which is used widely as an indicator of fecal contamination) should be used in place of the genus “*Enterococcus*.” The following amendments are proposed for section HAR 11-54-8 to include the units of measurement for the STV and to maintain the consistent use of “enterococci.”

**§11-54-8 Recreational criteria for all [State] state waters.** (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for [~~enterococcus~~] enterococci shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used.

(b) [~~Enterococcus~~] Enterococci content shall not exceed a geometric mean of [~~35 colony forming units~~] thirty-five CFU per one hundred milliliters over any [~~thirty day~~] thirty-day interval.

(c) A Statistical Threshold Value (STV) of [~~130~~] one hundred thirty CFU per one hundred milliliters shall be used for [~~enterococcus~~] enterococci. The STV shall not be exceeded by more than ten per cent of samples taken within the same [~~thirty day~~] thirty-day interval in which the geometric mean is calculated.

(d) State waters in which [~~enterococcus~~] enterococci content does not exceed the standard shall not be lowered in quality.

(e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director [~~of health~~], shall not be present in natural public swimming, bathing, or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the [~~enterococcus~~] enterococci count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §342D-4, 342D-5, Ch. 342E)

E. Update incorrect references

As described on page 6 of the rationale for the Proposed Revisions to HAR 11-54 dated June 2014,<sup>14</sup> the addition of sub-section HAR 11-54-4(b) is to clarify that there can be exceedances of Water Quality Standards whether a pollutant is discharged from a point source or a non-point source. This addition forced the re-numbering of subsequent sub-sections in HAR 11-54-4. However, references to the re-numbered sub-section HAR 11-54-4(f) were not updated. Specifically, the current version of HAR 11-54 includes incorrect references to HAR 11-54-4(e), which was re-numbered as HAR 11-54-4(f). There is also the inconsistent use of references to the basic water quality criteria. These criteria are specified in sub-section HAR 11-54-4(a). The current version of HAR 11-54 includes the use of either HAR 11-54-4 or HAR 11-54-4(a) as the reference to these criteria. The following amendments are proposed for sections HAR 11-54-3 and HAR 11-54-5.2 to update references to sub-sections HAR 11-54-4(a) and HAR 11-54-4(f), and to clarify that “basic criteria” means “basic water quality criteria.”

Incidental to the aforementioned amendments for section HAR 11-54-3, it is also proposed to amend section HAR 11-54-3(c)(1) to clarify that class AA marine waters must remain in their natural pristine state with an absolute minimum of pollution from point source discharges of industrial wastewater and industrial stormwater, and to correct the “off shore” typographical error. For the clarification of class AA marine waters, note that the placeholder date (i.e., Month DD, 2021) will be substituted with the actual date of the next compilation of all proposed amendments to the current version of HAR 11-54.

**§11-54-3 Classification of water uses.** (a) The following use categories classify inland and marine waters for purposes of applying the water quality standards set forth in this chapter, and for the selection or definition of appropriate water quality parameters and uses to be protected in these waters. Storm water discharge into [~~State~~]state waters shall be allowed provided it meets the requirements

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<sup>14</sup> [https://health.hawaii.gov/cwb/files/2013/04/Clean\\_Water\\_Branch\\_HAR\\_11-54\\_20141115\\_Rationale.pdf](https://health.hawaii.gov/cwb/files/2013/04/Clean_Water_Branch_HAR_11-54_20141115_Rationale.pdf)

specified in this section and the basic water quality criteria specified in section ~~[11-54-4.]~~11-54-4(a).

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section ~~[11-54-4(e).]~~11-54-4(f). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2.

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;
- (B) Storm water discharges associated with industrial activities (defined in [40 C.F.R.] title 40 Code of Federal Regulations sections 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55 [~~, titled "Water Pollution Control"~~]; and
- (C) Discharges covered by a National Pollutant Discharge Elimination System (NPDES) general permit, approved by the [~~U.S. Environmental Protection Agency~~] EPA and issued by the [~~Department~~] department in accordance with [40 C.F.R.] title 40 Code of Federal

Regulations section 122.28 and all applicable requirements specified in chapter 11-55 [ ~~titled "Water Pollution Control"~~].

(c) Marine waters.

(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected.

(A) No new permit shall be issued for point source discharges of industrial wastewater, industrial storm water, and those facilities designated by the department as pollutant sources, except for construction-related discharges. All permitted discharges in effect on or before Month DD, 2021; all future modifications of such discharges; and all future renewals of such discharges may be allowed and permitted with conditions specified in discharge permits to meet applicable and appropriate protection levels for class AA waters.

(B) No zones of mixing shall be permitted in this class:

~~[(A)]~~ (i) Within a defined reef area, in waters of a depth less than ~~[18 meters (ten fathoms);]~~ ten fathoms (eighteen meters); or

~~[(B)]~~ (ii) If there is no defined reef area, ~~[18]~~ in waters up to a distance of ~~[300]~~ three hundred meters (one thousand feet) [off shore] offshore ~~[if there is no defined reef area]~~ and if the

depth is greater than [~~18 meters~~  
(~~ten fathoms~~).] ten fathoms  
(eighteen meters).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

Start of addendum added on 28 May 2021.

HDOH published public notices on 16 December 2020, established a 45-day public comment period, and held a public hearing on 1 February 2021 to receive testimony from interested parties about all proposed amendments that are described in this rationale document. HDOH received a total of eighty-nine (89) written testimonies during the public comment period. Eighty-three (83) of these written testimonies (or more than 90%) were in opposition to the proposed amendment to prohibit industrial point source discharges into class AA marine waters (see above section HAR 11-54-3(c)(1) which is highlighted in yellow).

Considering all of the written testimonies received, HDOH has decided to defer the prohibition component in the proposed amendment of class AA marine waters to the next triennial review of State WQS. This deferral will allow for the evaluation and consideration of alternate amendments to protect class AA marine waters and to ensure these waters remain in their natural pristine state with a minimum of pollution. The next triennial review of State WQS is scheduled for April 2022.

There are two key components in the proposed amendment of class AA marine waters. First, there is the clarification that class AA marine waters must remain in their natural pristine state with an absolute minimum of pollution from industrial point source discharges. Second, there is the clarification that the primary units for measuring the depth of marine waters are fathoms and not meters. Note that only the first component in the proposed amendment is deferred and that the

second component is retained. It is still proposed to amend section HAR 11-54-3(c)(1) to clarify the primary units for measuring the depth of marine waters, to spell out numbers, and to correct the “off shore” typographical error (see below).

- (1) Class AA.
- It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:
- (A) Within a defined reef area, in waters of a depth less than [~~18 meters (ten fathoms)~~]; ten fathoms (eighteen meters); or
  - (B) In waters up to a distance of [~~300~~] three hundred meters (one thousand feet) [~~off shore~~]offshore if there is no defined reef area and if the depth is greater than [~~18 meters (ten fathoms)~~]; ten fathoms (eighteen meters).
- The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

End of addendum added on 28 May 2021.

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges [~~will~~]shall be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
  - (i) Honolulu Harbor, Oahu;
  - (ii) Barbers Point Harbor, Oahu;
  - (iii) Keehi Lagoon Marina Area, Oahu;
  - (iv) Ala Wai Boat Harbor, Oahu; and
  - (v) Kahului Harbor, Maui~~[-]~~;
- (B) Storm water discharges associated with industrial activities (defined in [~~40 C.F.R.~~]title 40 Code of Federal Regulations sections 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section [~~11-54-4~~]11-54-4(a), and all applicable requirements specified in the chapter 11-55~~[, titled "Water Pollution Control"]~~; and
- (C) Discharges covered by a NPDES general permit, approved by the [~~U.S. Environmental Protection Agency~~]EPA and issued by the [~~Department~~]department in

accordance with [~~40 C.F.R.~~] title 40 Code of Federal Regulations section 122.28 and all applicable requirements specified in chapter 11-55 [~~, titled "Water Pollution Control"~~].

- (d) Marine bottom ecosystems.
  - (1) Class I.

It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;
  - (2) Class II.

It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization (dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may

be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, [~~HRS~~ HRS], in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ]  
(Auth: HRS §174C, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

Incidental to the aforementioned amendments for section HAR 11-54-5.2, it is also proposed to standardize the listing order of the specific criteria for inland waters, and to clarify all occurrences of the definition of “Nephelometric Turbidity Units” in HAR 11-54-5.2.

**§11-54-5.2 Inland water criteria.** (a)

~~[Criteria for springs]~~ Springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools.

- (1) Only the ~~[basic criteria]~~ basic water quality criteria set forth in section ~~[11-54-4]~~ 11-54-4(a) apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools.
- (2) Natural freshwater lakes, saline lakes, and anchialine pools ~~[will]~~ shall be maintained in the natural state through ~~[Hawaii's]~~ the State's "no discharge" policy for these waters.

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- (3) Waste discharge into these waters is prohibited, except as provided in section ~~[11-54-4(e)]~~ 11-54-4(f) (see section 11-54-3(b)(1)).
- (b) ~~[Specific criteria for streams.]~~ Streams.
- (1) ~~[Water column]~~ Specific criteria for streams shall be as provided in the following table:

<del>[Parameter</del>	<del>Geometric mean not to exceed the given value</del>	<del>Not to exceed the given value more than ten per cent of the time</del>	<del>Not to exceed the given value more than two per cent of the time]</del>
<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	250.0* 180.0**	520.0* 380.0**	800.0* 600.0**
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	70.0* 30.0**	180.0* 90.0**	300.0* 170.0**
Total Phosphorus (ug P/L)	50.0* 30.0**	100.0* 60.0**	150.0* 80.0**
Total Suspended Solids (mg/L)	20.0* 10.0**	50.0* 30.0**	80.0* 55.0**
Turbidity (N.T.U.)	5.0* 2.0**	15.0* 5.5**	25.0* 10.0**

\* Wet season - November 1 through April 30.

\*\* Dry season - May 1 through October 31.

L = liter.

N.T.U. [=] ~~—~~ Nephelometric Turbidity Units ~~[—A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.]~~ are

used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than eighty per cent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - ~~[Not]~~ Shall not be more than three hundred ~~[micromhos/centimeter.]~~ micromhos per centimeter.

~~[(1)]~~ (2) Bottom criteria for streams ~~[+]~~ shall be applied as:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm ~~[+]~~ ;
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm ~~[+]~~ ;
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts ~~[+]~~ ;
- (D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter ~~[+]~~ ; and

(E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) ~~[Specific criteria]~~ Elevated wetlands.  
Specific criteria to be applied for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) ~~[Specific criteria for estuaries.]~~ Estuaries.

(1) ~~[The following table is applicable to all]~~  
Specific criteria for all estuaries except Pearl Harbor[+] shall be as provided in the following table:

<u>[Parameter]</u>	<u>Geometric</u>	<u>Not to exceed</u>	<u>Not to</u>
	<u>mean not to</u>	<u>the given value</u>	<u>exceed the</u>
	<u>exceed the</u>	<u>more than</u>	<u>given value</u>
	<u>given value</u>	<u>ten per cent</u>	<u>more than</u>
		<u>of the time</u>	<u>two per</u>
			<u>cent of</u>
			<u>the time]</u>

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<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	200.00	350.00	500.00
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>6.00</del>	<del>10.00</del>	<del>20.00</del>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	8.00	25.00	35.00
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>6.00</u>	<u>10.00</u>	<u>20.00</u>
Total Phosphorus (ug P/L)	25.00	50.00	75.00
<del>[Parameter</del>	<del>Geometric mean not to exceed the given value</del>	<del>Not to exceed the given value more than ten per cent of the time</del>	<del>Not to exceed the given value more than two per cent of the time]</del>
Chlorophyll a (ug/L)	2.00	5.00	10.00
Turbidity (N.T.U.)	1.5	3.00	5.00

L = liter.

N.T.U. [=]\_ Nephelometric Turbidity Units[. — A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.] are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

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Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation~~[—]~~-reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) ~~[The following table is applicable only to]~~ Specific criteria for Pearl Harbor Estuary[-] shall be as provided in the following table:

<del>[Parameter</del>	<del>Geometric mean not to exceed the given value</del>	<del>Not to exceed the given value more than ten per cent of the time</del>	<del>Not to exceed the given value more than two per cent of the time]</del>
<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	300.00	550.00	750.00
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>10.00</del>	<del>20.00</del>	<del>30.00</del>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	15.00	40.00	70.00
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>10.00</u>	<u>20.00</u>	<u>30.00</u>
Total Phosphorus (ug P/L)	60.00	130.00	200.00
Chlorophyll a (ug/L)	3.50	10.00	20.00
Turbidity (N.T.U.)	4.00	8.00	15.00

L = liter.

N.T.U. [=] Nephelometric Turbidity Units [~~—~~ A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.] are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - [~~shall~~] Shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - [~~Not~~] Shall not be less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation [~~—~~] Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

There is a reference, in section HAR 11-54-10, to EPA “Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms” as EPA 821-R-02-031. The last three-digits are transposed, and this reference should be listed as EPA 821-R-02-013 instead. The following amendments are proposed for section HAR 11-54-8 to correct this error.

**§11-54-10 Water quality analyses.** (a)

Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

<u>Parameter</u>	<u>Reference</u>
Sample Collection (Phytoplankton and other Bioassays)	Standard Methods for the Examination of Water and Waste Water, twenty first edition, APHA
Sample Preservation and Holding Time, Bacteriological and Chemical Methodology	<del>["Guidelines Establishing] [Test Procedures for the] [Analysis of Pollutants,"] [Federal Register, July 1, [2011 (40 CFR 136)]</del>  <u>Title 40, Code of Federal Regulations, part 136, entitled "Guidelines Establishing Test Procedures for the Analysis of Pollutants", (40 C.F.R. §136)</u>  "A Manual of Chemical and Biological Methods for Seawater Analysis" T.R. Parsons, Y. Maita, and C.M. Lalli, 1984, Pergamon Press, New York.  "Methods of Seawater Analysis", 2nd, Revised and Extended Edition, ed. by K. Grashof, M. Erhardt, K. Kremling, 1983. Verlag Chemie, Weinheim, Germany.

Toxicity Test

EPA [~~821-R-02-031,~~] 821-R-02-013, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition, October 2002.

or:

EPA 821-R-02-012, Methods For Measuring the Acute Toxicity of Effluents and Receiving waters to Freshwater and Marine Organisms, 5th edition, October 2002.

or:

EPA 821-R-02-014, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3<sup>rd</sup> edition, October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

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EPA 833-R-10-004, National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, June 2010.

or:

EPA/600/R-12/022, Tropical Collector Urchin, *Tripneustes gratilla*, Fertilization Test Method, April 2012.

Quality Control (Bacteriological and Biology) and Chemistry

EPA/600/4-79-019, Handbook for Analytical Quality Control in Water and Wastewater Laboratories, March 1979.

Kona Coast Area Specific Standards

Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. [~~Hawaii State Department of Health. March 1997.~~] Department of Health, State Of Hawaii. March 1997.

or as otherwise previously specified or approved by the director. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

There are references to paragraphs (a)(1)(A), (B), (C), and (D) in section HAR 11-54-15; however, these paragraphs do not exist. The correct references are paragraphs (b)(1)(A), (B), (C), and (D), respectively. The following amendments are proposed for section HAR 11-54-15 to update the incorrect references to paragraphs (a)(1)(A), (B), (C), and (D), and to update the location of the Clean Water Branch from "Honolulu" to "Pearl City."

**§11-54-15 Field citations; non-compliance.** (a)

This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter.

Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(b) Offer to settle.

- (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
  - (A) Any person who discharges or otherwise causes or allows water pollutants to enter [~~State~~]state waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter [~~342D~~]342D, HRS, for that person's discharges;
  - (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
  - (C) Any person who violates monitoring requirements as required by the director; and

- (D) Any person who violates record keeping requirements as required by the director.
- (2) A field citation shall indicate the following amounts for violations:
  - (A) \$500 for any person who violates [~~paragraph (a) (1) (A), (B), or (C)~~] sections 11-54-15(b) (1) (A), 11-54-15(b) (1) (B), or 11-54-15(b) (1) (C) for first violation, and \$2,000 for a subsequent violation; and
  - (B) \$100 for any person who violates [~~paragraph (a) (1) (D)~~] section 11-54-15(b) (1) (D) for first violation, and \$200 for a subsequent violation.
- (c) Resolution of field citation.
  - (1) A person issued a field citation may accept the citation by:
    - (A) Signing the field citation;
    - (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
    - (C) Mailing or delivering the signed citation and full payment to the clean water branch in [~~Honolulu~~] Pearl City or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
    - (D) Correction within seven [~~(7)~~] days, or unless otherwise specified on the field citation, of the violation of this chapter.
  - (2) By signing the field citation, the person to whom it was issued agrees to:

- (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (B) Pay the full amount indicated; and
  - (C) Correct the violation.
- (3) If the field citation is not accepted in compliance with [~~paragraph (1)~~], section 11-54-15(c) (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (d) Form of citation. The department shall prescribe a field citation form. ["] [Eff and comp 11/15/14; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

F. Clarify unclear references.

The following amendments are proposed to section HAR 11-54-5.1 to clarify the protection of inland waters areas.

**§11-54-5.1 Inland water areas to be protected.**

(a) Freshwaters.

(1) Flowing waters[÷] include perennial streams and rivers, intermittent streams, springs and seeps, and man-made ditches and flumes that discharge into any other state waters [~~of the State~~].

(A) Class 1.a.:

- (i) All flowing waters within the natural reserves, preserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (ii) All flowing waters in national and state parks.
- (iii) All flowing waters in state or federal fish and wildlife refuges.
- (iv) All flowing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All flowing waters in Waimanu National Estuarine Research Reserve (~~[Hawaii-i]~~Hawaii).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and ~~will~~ shall not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in section 11-54-1.1 to the whole chapter.

- (2) Standing waters ~~[+]include~~ include natural freshwater lakes and ~~reservoirs[+]~~ reservoirs.
- (A) Class 1.a.:
  - (i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
  - (ii) All standing waters in national and state parks.
  - (iii) All standing waters in state or federal fish and wildlife refuges.
  - (iv) All standing waters which have been identified as a unique or

- critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All standing waters in Waimanu National Estuarine Research Reserve (~~[Hawai'i]~~Hawaii).  
As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
  - (B) Class 1.b.: All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
  - (C) Class 2.: All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands[÷].
- (A) Class 1.a.:
    - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
    - (ii) All elevated and low wetlands in national and state parks.
    - (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
    - (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species

by the U.S. Fish and Wildlife Service.

- (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (~~[Hawaii]~~ Hawaii).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters [~~+~~ include anchialine pools, saline lakes, coastal wetlands, and estuaries~~+~~].

(1) Class 1.a.:

- (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (B) All inland brackish or saline waters in national and state parks.
- (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
- (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or

endangered species by the U.S. Fish and Wildlife Service.

- (E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (~~[Hawai'i]~~Hawaii).
- (F) The following natural estuaries: ~~[Lumaha'i]~~Lumahai and Kilauea estuaries (~~[Kaua'i]~~Kauai).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (2) Class 1.b.: All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (3) Class 2.: All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp \_\_\_\_\_ ] (Auth: HRS §342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D- 4, 342D-5, Ch. 342E)

There is the use of an asterisk “\*,” at the end of sub-paragraph HAR 11-54-6(d)(1)(A), to indicate that “specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).” This asterisk does not refer to any specific parts of HAR 11-54-6(d). There is also the use of a reference, at the end of sub-paragraph HAR 11-54-6(d)(1)(B), to “clause (i).” This clause does not exist in HAR 11-54-6(d). The following amendments are proposed for section HAR 11-54-6 to clarify the above unclear references.

Incidental to the above updates, the following amendments are also proposed to standardize the listing order of the specific criteria for marine waters, and to

clarify all occurrences of the definition of "Nephelometric Turbidity Units" in HAR 11-54-6.

**§11-54-6 Uses and specific criteria applicable to marine waters.** (a) Embayments.

(1) As used in this subsection:

"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.

"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected[-]:

(A) Class AA.

(i) Waters are listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the state department of land and natural resources under chapter 195 or chapter 190, HRS, as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS, as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments",

located at the end of this chapter.

- (iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.
- (iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(B) Class A.  
Waters are listed in Appendix C dated July 1, 2014, entitled "Class A, Marine Waters and Embayments", located at the end of this chapter.

- (3) The following criteria are specific for all embayments excluding those described in ~~[subsection (d)].~~ section 11-54-6(d). (Note that criteria for embayments differ based on fresh water inflow.)

<u>[Parameter</u>	<u>Geometric</u>	<u>Not to exceed</u>	<u>Not to</u>
<u>mean not to</u>	<u>exceed the</u>	<u>the given value</u>	<u>exceed the</u>
<u>exceed the</u>	<u>given value</u>	<u>more than</u>	<u>given value</u>
		<u>ten per cent</u>	<u>more than</u>
		<u>of the time</u>	<u>two per</u>
			<u>cent of</u>
			<u>the time]</u>

Rationale for HAR 11-54 (Compiled March 2021)

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	200.00* 150.00**	350.00* 250.00**	500.00* 350.00**
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>6.00* 3.50**</del>	<del>13.00* 8.50**</del>	<del>20.00* 15.00**</del>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	8.00* 5.00**	20.00* 14.00**	35.00* 25.00**
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>6.00* 3.50**</u>	<u>13.00* 8.50**</u>	<u>20.00* 15.00**</u>
Total Phosphorus (ug P/L)	25.00* 20.00**	50.00* 40.00**	75.00* 60.00**
Chlorophyll a (ug/L)	1.50* 0.50**	4.50* 1.50**	8.50* 3.00**
Turbidity (N.T.U.)	1.5* 0.40**	3.00* 1.00**	5.00* 1.50**

\* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

\*\* "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

L = liter.

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than  
seventy-five per cent saturation, determined as a  
function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree  
Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from  
natural or seasonal changes considering hydrologic  
input and oceanographic factors.

~~[L = liter~~

~~N.T.U. = Nephelometric Turbidity Units. A comparison  
of the intensity of light scattered by the sample  
under defined conditions with the intensity of light  
scattered by a standard reference suspension under the  
same conditions. The higher the intensity of  
scattered light, the higher the turbidity.~~

~~ug = microgram or 0.000001 grams]~~

(b) Open coastal waters.

(1) As used in this subsection~~[7]~~, "[Open] open  
coastal waters" means marine waters bounded  
by the ~~[183 meter or 600 foot (100 fathom)]~~  
one hundred fathoms (one hundred eighty-  
three meters or six hundred feet) depth  
contour and the shoreline, excluding bays  
named in [subsection (a)]. section 11-54-  
6(a).

(2) Water areas to be protected:

(A) Class AA as listed in Appendix D dated  
July 1, 2014, entitled "Class AA, Open  
Coastal Waters", located at the end of  
this chapter.

All open waters in preserves, reserves,  
sanctuaries, and refuges established by  
the state department of land and  
natural resources under chapter 195,  
HRS, or chapter 190, HRS, as listed in  
Appendix D dated July 1, 2014, entitled  
"Class AA, Open Coastal Waters",  
located at the end of this chapter~~[7]~~;  
or similar reserves for the protection  
of marine life established under  
chapter 190, HRS, as amended, as listed

in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in [~~subsection (d).~~] section 11-54-6(d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

<u>[Parameter</u>	Geometric mean not to exceed the <u>given value</u>	<del>Not to exceed the given value more than ten per cent of the time</del>	<del>Not to exceed the given value more than two per cent of <u>the time]</u></del>
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Rationale for HAR 11-54 (Compiled March 2021)

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	150.00* 110.00**	250.00* 180.00**	350.00* 250.00**
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>3.50* 2.00**</del>	<del>8.50* 5.00**</del>	<del>15.00* 9.00**]</del>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	5.00* 3.50**	14.00* 10.00**	25.00* 20.00**
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>3.50* 2.00**</u>	<u>8.50* 5.00**</u>	<u>15.00* 9.00**</u>
Total Phosphorus (ug P/L)	20.00* 16.00**	40.00* 30.00**	60.00* 45.00**
<del>[Light Extinction Coefficient (k units)]</del>	<del>0.20* 0.10**</del>	<del>0.50* 0.30**</del>	<del>0.85* 0.55**]</del>
Chlorophyll a (ug/L)	0.30* 0.15**	0.90* 0.50**	1.75* 1.00**
Turbidity (N.T.U.)	0.50* 0.20**	1.25* 0.50**	2.00* 1.00**
<u>Light Extinction Coefficient (k units)</u>	<u>0.20* 0.10**</u>	<u>0.50* 0.30**</u>	<u>0.85* 0.55**</u>

\* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

\*\* "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

L = liter.

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

~~[L - liter]~~

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the ~~[Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended,]~~ Act and are required by EPA to monitor it.

~~[N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity. ug = microgram or 0.000001 grams]~~

(c) Oceanic waters.

(1) As used in this subsection ~~[÷],~~ "[Oceanic] oceanic waters" means all other marine waters outside of the ~~[183 meter (600 feet or 100 fathom)]~~ one hundred fathoms (one hundred eighty-three meters or six hundred feet) depth contour.

(2) Water areas to be protected: Class A - All oceanic waters.

(3) The following criteria are specific for oceanic waters:

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<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	50.00	80.00	100.00
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>1.00</del>	<del>1.75</del>	<del>2.50</del>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	1.50	2.50	3.50
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>1.00</u>	<u>1.75</u>	<u>2.50</u>
Total Phosphorus (ug P/L)	10.00	18.00	25.00
Chlorophyll a (ug/L)	0.06	0.12	0.20
Turbidity (N.T.U.)	0.03	0.10	0.20

L = liter.

N.T.U. [=] ~~Nephelometric Turbidity Units [—A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.]~~ are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - ~~[shall]~~ Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) ~~[For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:]~~ As used in this subsection, "Kona coast of the island of Hawaii" means the area from Loa Point, South Kona District, clockwise to Malae Point, North Kona District.

(2) Water areas to be protected: All marine waters and all areas from the shoreline at mean lower low water to a distance one thousand meters seaward, excluding Honokohau Harbor and Kawaihae Harbor.

(3) The following criteria are specific to the Kona coast of the island of Hawaii, except for Honokohau Harbor and Kawaihae Harbor (see section 11-54-6(a) (3) for Class A embayments):

(A) In areas where nearshore marine water salinity is greater than ~~[32.00]~~ thirty-two parts per thousand the following specific criteria apply:

<u>[Parameter</u>	<u>Geometric mean</u>
	<u>not to exceed the</u>
	<u>given single value]</u>

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<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>
Total Dissolved Nitrogen (ug N/L)	100.00
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	4.50
<u>Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)</u>	<u>2.50</u>
Total Dissolved Phosphorus (ug P/L)	12.50
Phosphate (ug PO <sub>4</sub> -P/L)	5.00
<del>[Ammonia Nitrogen (ug NH<sub>4</sub>-N/L)]</del>	<del>2.50</del>
Chlorophyll a (ug/L)	0.30
Turbidity (N.T.U.)	0.10

~~[\* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).]~~

- (B) If nearshore marine water salinity is less than or equal to ~~[32.00]~~thirty-two parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

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Y = parameter concentration (in ug/L)  
 X = salinity (in ppt)  
 M = regression coefficient (or "slope")  
 B = constant (or "Y intercept").

The absolute value of the upper [95] ninety-five per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

<u>Parameter</u>	<u>M</u>
<u>Total Dissolved Nitrogen (ug N/L)</u>	<u>-40.35</u>
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	-31.92
<del>[Total Dissolved Nitrogen (ug N/L)]</del>	<del>-40.35</del>
<del>[Phosphate (ug PO<sub>4</sub>-P/L)]</del>	<del>-3.22]</del>
Total Dissolved Phosphorus (ug P/L)	-2.86
<u>Phosphate (ug PO<sub>4</sub>-P/L)</u>	<u>-3.22</u>

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in [~~elause (i)~~] section 11-54-6(d)(3)(A) also apply.

- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of [~~1, 10, 50, 100, and 500]~~ one, ten, fifty, one hundred, and five hundred meters from the shoreline sampling location. Samples shall be collected within one

meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

L = liter.

N.T.U. - Nephelometric Turbidity Units are used to measure changes in the intensity of light scattered by a water sample. The higher the intensity of scattered light means there is higher turbidity.

ug = microgram or 0.000001 grams.

pH Units - ~~[shall]~~ Shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - ~~[Not]~~ Shall not be less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

~~[L - liter~~

~~N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.~~

Rationale for HAR 11-54 (Compiled March 2021)

~~ug — microgram or 0.000001 grams.~~ [Eff 11/12/82; am  
and comp 10/6/84; am and comp 04/14/88; am and comp  
01/18/90; am and comp 10/29/92; am and comp 04/17/00;  
am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am  
and comp 12/6/13; am and comp 11/15/14; am and  
comp ] (Auth: HRS §§342D-1, 342D-4,  
342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch.  
342E)

### **III. Old Business – After Public Hearing**

#### **C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, promulgated by DOH**

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

Department or Agency: Hawaii Department of Health, Clean Water Branch

Administrative Rule Title and Chapter: HAR 11-55

Chapter Name: Water Pollution Control

Contact Person/Title: Darryl Lum/Engineering Section Supervisor

Phone Number: (808) 586-4309

E-mail Address: darryl.lum@doh.hawaii.gov Date: 5/28/2021

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. **Please see paragraph 1 of the attached response to comments for HAR 11-55.**

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

Yes  No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description:  New  Repeal  Amendment  Compilation

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

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

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

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

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

Yes  No

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

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

Yes  No

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

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

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. All comments received (including from any affected small businesses) were considered.

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

Please see the attached response to comments.

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

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

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. The Clean Water Branch also mentioned the upcoming rule amendment to participants at a monthly General Contractor's Association Environmental Committee meeting.

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

Please see the attached response to comments.

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

Please see the attached response to comments.

4. The number of persons who:
- (i) Attended the public hearing: 44
  - (ii) Testified at the hearing: 1
  - (iii) Submitted written comments: 5

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

Yes  No

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

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

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)  
This statement may be found on the SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

Forty new toxic chemical pollutants will be added to the toxic chemical pollutants list per the current EPA Human Health Criteria Table. Mr. Darryl Lum, Clean Water Branch's Engineering Section Supervisor, acknowledged the new chemical pollutants and explained that when a new standard is incorporated into a permit, the rules allow for a period of time where the standards become the "back-drops" to the permits. Thus, the rules then provide for an opportunity, when businesses that have new requirements imposed upon them, to allow for time to adapt to and comply with the changes.

The proposed amendments will largely impact twenty major permittees/businesses; these are mostly the wastewater sewer plants but the militaries and municipalities are also included. There are no foreseeable impacts to the small business community. GCA (General Contractors Association) members and others were approached on these rules.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

### 3. Amendments to HAR Chapter 55, Water Pollution Control

July 2020 Meeting Minutes

Mr. Wong explained that the changes to this chapter incorporate provisions from Chapter 54. The rules are intended to improve upon and clarify the permitting procedures and are expected to be more transparent for small businesses. Many of the changes are based on stakeholders' comments and concerns which will help expedite the permitting process and procedures when a discharge occurs.

Mr. Lum stated that prior to the public hearings, there is a mailing list of businesses that are interested in receiving information on the rule changes. Recently, an email blast was sent out to all those on the list including permittees and the counties.

Regarding who the dischargers are, Mr. Lum explained that dischargers are described as those releasing pollutants into the State waters. They include wastewater treatment plants, Hawaiian Electric power generating stations, refineries and other industrial-type discharging businesses. However, most of the permittees are from construction-related businesses; two to four permit applications a day are received from these types of companies.

Mr. Lum further explained that pollution for regulatory purposes is broken out into industrial and non-industrial businesses. The permits given to these businesses are considered "pro-active" tools. This means that permits are given first and then subsequently a business may comply by either not polluting or polluting to a level where it would impact a community whereby it would be mandated by DOH to cease discharging.

When a permit is not complied with or the business is polluting without a permit, DOH will invoke enforcement and order corrections. If there is an immediate issue, but it is remediated by the company and subsequently discharge reoccurs, it still may be treated as an acceptable discharge. While this does not always occur, Mr. Lum noted that in the sixteen years he has been with DOH, there was only one time when a business was shut down by DOH. This was because the remediation required was no longer economically viable for that business' type of facility. He also noted that closing of a facility in Hawaii is very rare.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

#### 4. New HAR Chapter 56, Nonpoint Source Pollution Control

Mr. Wong explained that Chapter 56 is new although the state law governing these rules Chapter 342E, HRS, has been in existence for several years. The rules' purpose is to ensure that Hawaii's waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

Specifically, Chapter 342 provides the framework for the prevention, abatement and control of new and existing NPS pollution from activities conducted by State agencies; i.e., the departments of land and natural resources and agriculture. It also identifies known NPS water pollution and requires registration, development of a water pollution prevention plan, and implementation of management measures to be used to prevent or abate NPS pollution.

Mr. Lum provided some history to these rules and explained that while NPS is largely from industrial sources, which has been regulated by the federal and state governments since the 1970's, the Clean Water Act expressly requires states and not the federal government to regulate everything else that may be a pollutant that falls outside of NPS. Thus, Chapter 342E requires DOH to comply with the federal mandates and to have adequate authority to deal with water pollution issues that are not standard industrial practices.

Recently, there has been much concern because the major pollutant sources in Hawaii are not necessarily the same pollutants that have been dealt with in the past. For example, every time it rains, brown water advisories are given; this is run-off from some of Hawaii's major landowners. While a lot of good practices have been involuntary, from forestries to marinas and even department of agriculture, there is a need to have some form of formality and standards that all can follow for DOH to feel comfortable with.

The rules are expected to have a minimal direct impact on small businesses because the requirements target major landowners (not lessors of land) and government agencies, all of whom have been approached by DOH. It is recognized that a major effort is required for outreach purposes, particularly on the neighbor islands as many of the larger government agencies own marinas who are required to comply with the rules.

Chair Cundiff and Mr. Nakamoto appreciated all the work that was involved in preparing the proposed rules as well as being proactive in terms of the environment and the community's welfare. Chair Cundiff thanked DOH for its review and thoroughness of the rules and added that while he is confident that DOH will be reaching out to stakeholders he would like to reinforce the proactive outreach via emails, etc.

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

**Response to Public Comments on Proposed  
Hawaii Administrative Rules (HAR),  
Chapter 11-55  
Docket No. CWB-1-21**

The Department of Health (DOH), Clean Water Branch (CWB) solicited public comments from December 16, 2020 through February 1, 2021, on proposed amendments to HAR Chapter 11-55 (Water Pollution Control). HAR Chapter 11-55 contains the rules regarding issuance of National Pollutant Discharge Elimination System (NPDES) permits within the State of Hawaii.

A virtual public hearing was held at 9:00 a.m. on February 1, 2021. The DOH-CWB published notices of the comment period and public hearing on December 16, 2020 in the Honolulu Star Advertiser, The Garden Island, Maui News, West Hawaii Today, and Hawaii Tribune-Herald. Below is a summary of the comments received and the DOH-CWB responses.

**HAR 11-55 (WATER POLLUTION CONTROL)**

**Comments from Malama Pupuokea-Waimea**

**Comment 1:** 11-55-13(d) – Eliminating oral testimony – Oppose the deletion of the opportunity to provide oral testimony.

We can understand the desire for efficiency noted in the Rationale (“DOH does not believe requiring a written statement is unduly burdensome when it is mandated to address comments in making a permit determination. Instead, it will require DOH to address such comments in a more direct and discernable way.”). We acknowledge that written-only testimony will be normal for more organized and engaged commenters (e.g., non-profit organizations).

However, given the history and cultural context of Hawai'i and its diverse communities, with strong oral traditions, not allowing oral testimony reduces public participation particularly from those who are less inclined to use email and computers, or who have access limitations. This change unnecessarily raises an environmental justice issue. Eliminating oral testimony may also erode community support for an otherwise strong DOH initiative with these rule changes.

The number of public hearings at which oral testimony would be requested would likely be small and, to catch up with the times, oral submissions do not have to be in person, although that may be desirable to certain high public interest applications. At minimum, asynchronous oral submissions should be allowed using recordings and synchronous submissions should be allowed via videoconferencing (e.g., Zoom). A reasonable advance registration requirement to request synchronous oral testimony may limit the administrative burden of setting up for a hearing where no one shows up to testify.

One more note: this Rationale document comment – “This rule change should not be construed as prohibiting oral statements on written commentary.” – is really unclear and should be re-explained – what does that mean? That clarification may affect our comments on this issue.

Therefore, we suggest deleting the brackets around [and oral] and reverting the text back to: *(d) Any person may submit oral or written statements and data concerning the draft permit. And adding for the sake of modernization the process and increasing access: Oral testimony may be submitted electronically or by a videoconference system to the hearing officer.*

**Response 1:** The intent of the rule change was by limiting public statements to only written, DOH would be able to respond to public statements much more accurately. For statements that are only submitted orally, there was a risk of misinterpreting or transcription error when recording oral statements. This could cause the DOH to not accurately and effectively respond to a public statement. However, in response to the concerns outlined in this comment, the DOH has revised the proposed rule. The rule would now allow for oral statements submitted at the public hearing, provided that a written copy of the oral statements provided at the public hearing is submitted to the DOH prior to the close of the public comment period. This will allow the public to provide oral emphasis to key components of their written statements and an opportunity to voice their statement(s) in a public setting, while also providing DOH an exact written record of the statement from the public commenter. This should prevent any misinterpretations or transcription errors. It should be noted that public hearings are time-limited and rarely (if ever) allow for extensive oral testimony, while written testimony allows for a much more detailed and extensive comment.

**Comment 2:** 11-55-15(i) – Support denying applications to applicants in an open enforcement action, with outstanding penalties, or with a history of violations.

**Response 2:** Thank you for your comment of support.

**Comment 3:** 11-55-17(c)(5) – Support DOH’s ability to terminate permits or deny renewals for violation of permit conditions or failure to pay penalties.

**Response 3:** Thank you for your comment of support.

**Comment 4:** 11-55-34.09(d) – Typo “it’s” should be “its” (“The DOH will notify the permittee in writing that it’s administrative extension is being terminated and the reason(s) why.”)

**Response 4:** The typo has been corrected.

### **Comments from EarthJustice**

**Comment 5:** Objections to Removing Water Sampling Requirement, HAR § 11-55-41(b)(6)(C). Removing the existing mandate for effluent and receiving water sampling in zones of mixing, and instead making it discretionary for the Department to require such sampling, could deprive the Department and public of critical information for determining whether a zone of mixing qualifies for renewal. Under both the existing and proposed rules, a zone of mixing application is subject to a public hearing and may be approved only if the application and supporting documentation “clearly show” that the zone of mixing “is in the public interest,” “does not substantially endanger human health or safety,” and “will not unreasonably interfere with any actual or probable use of the water areas for which it is classified.” HAR § 11-54-9(c)(4), (5); HAR § 11-55-41(b)(4), (5). Over the course of a five-year zone of mixing permit, see HAR § 11-54-9(c)(6)(B); HAR § 11-55-41(b)(6)(B), discharges could substantially degrade water quality, and water use in and around the zone of mixing could change, such that renewing the zone of mixing would endanger human health and safety and disserve the public interest. The Department and public would have no way of knowing a zone of mixing is no longer warranted or safe if, for whatever reason, the Department has not specifically required the discharger to sample the effluent and receiving waters in the interim. The Department should, thus, not amend this provision and instead keep the existing language: “Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director.” HAR § 11-54-9(c)(6)(C).

**Response 5:** It should be noted that the current rule already does not automatically require all Permittees granted a ZOM to conduct receiving water monitoring. The rule currently reads: “Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director.” In DOH’s interpretation, effluent and receiving water sampling requirements are qualified by the term appropriate, which already allows the CWB to determine appropriate monitoring requirements. Therefore, the proposed rule change was to clarify and codify this interpretation. In certain cases, certain monitoring requirements are not appropriate. Most notably, in certain situations, bottom biological communities monitoring is not appropriate due to conditions at the ZOM.

It should also be noted that if a discharge has reasonable potential to cause or contribute to an exceedance of water quality standards for a pollutant, regardless of whether the discharge has a ZOM for the pollutant, an effluent limit and effluent monitoring shall be established. Currently, CWB considers receiving water quality monitoring to be appropriate for pollutants for which a ZOM has been granted. Current procedures use ZOM receiving water data in the reasonable potential analysis procedures. Further, all individual NPDES permits are reviewed internally, by the EPA, and by the public during the public comment period and any concerns regarding appropriate monitoring will be addressed.

However, to address these concerns, the proposed rule has been revised. The rule now explicitly requires effluent monitoring for pollutants with effluent limitations and receiving water quality monitoring for pollutants for which the ZOM was granted. Bottom biological communities monitoring may be required as appropriate. This rule explicitly codifies current practice in regards to effluent and receiving water quality monitoring, while still allowing discretion for bottom biological communities monitoring as appropriate.

**Comment 6:** Objections to Removing EPA Concurrence Requirement, HAR § 11-54-9(c)(9). Requiring the U.S. Environmental Protection Agency's ("EPA's") concurrence on establishing a zone of mixing provides an important safeguard to ensure compliance with the Clean Water Act. EPA publishes extensive guidance for implementing zones of mixing<sup>2</sup> and, as the federal agency charged with ensuring compliance with the Act nationwide, should have the opportunity to review and provide input regarding decisions that effectively allow dischargers to exceed water quality standards in designated areas. The Department should not remove the following provision from the Zone of Mixing rules: "The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency." HAR § 11-54-9(c)(9).

**Response 6:** There are no federal statutes requiring the EPA to approve or concur with the establishment of a ZOM. Currently, as part of the Memorandum of Agreement between the DOH and EPA, both parties have agreed to coordination and consultation. As a result of this, it is CWB practice to provide EPA contacts a chance to review and comment on all individual NPDES permits (regardless of the establishment or continuance of a ZOM) prior to public notice of a draft permit. Through this process, CWB receives comments, and suggestions from the EPA, to ensure that the proposed permit is in compliance with the Act and EPA guidance/policy. EPA, just like the public is also capable of providing comments during the public comment period for the permit, to further provide feedback in regards to draft permits. The proposed rule change is in accordance with current procedures and practices, and therefore has not been revised in response to this comment.

**Comment 7:** Objections to Removing Prohibition on Increasing Discharges, HAR § 11-55-41(b)(7). Prohibiting discharges that increase the quantity of mass emissions in zones of mixing is essential to avoid further impairing water quality. Zones of mixing already afford discharges special privileges to exceed water quality standards in designated areas; discharges should not be allowed to increase pollution levels in these waters, which, by definition, would not be meeting water quality standards. The Department, therefore, should re-insert this restriction to proposed HAR § 11-55-41(b)(7), as follows: Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration.

**Response 7:** The intent of the rule change was to allow for increased mass emissions from facilities with a zone of mixing, which would be prohibited under the current rule. This was intended to address situations that may arise from needed increases (particularly flow) from discharges from critical infrastructure facilities. Under the current rule, unless the discharger is able to decrease the concentration of a pollutant in their effluent (which may be physically impossible or economically infeasible), they would not be able to increase their flow even if necessary, to provide critical public services. It should be noted that even if the proposed rule were to be adopted as written, anytime a permitted discharge may increase loading, the permittee is required to perform an anti-degradation study to either prove that the increased discharge shall not degrade the receiving water or such degradation is necessary to provide important socioeconomic benefits as allowed under federal regulations. Further, less stringent effluent limitations would only be allowed if in compliance with federal and state anti-backsliding regulations.

To address these concerns, the proposed rule has been revised. The rule now explicitly states that increases in mass emissions shall not be allowed unless in compliance with state and federal anti-degradation and anti-backsliding regulations as applicable. This change still allows for increases of mass emissions under conditions, while also explicitly prohibiting this increase if it cannot be justified/not in accordance with anti-degradation and anti-backsliding requirements as applicable.

#### **Comments from HDOT Design Branch**

**Comment 8:** Appreciate that DOH is now including intake credit for HAR 11-54 and recognizing the current water quality of water bodies, but how does this reconcile with the Modified Blanket WQC that the USACE has jurisdiction over?

**Response 8:** Intake credits are an NPDES implementation permitting tool that is not applicable to the Section 401 WQC program. As such, any changes to intake credits has no effect on WQCs.

**Comment 9:** 11-55-04(a) - Before discharging any pollutant,.....,or for regulated small municipal separate storm sewers system,...., a person shall submit a complete NPDES permit application.

Is this requirement saying to small MS4 Permit holders to submit their NOI prior to their current permit expiring?

**Response 9:** The proposed language is intended for new or unpermitted MS4s as applicable. MS4s that are currently permitted or covered under a general permit must comply with the requirements in their permit regarding renewals.

**Comment 10:** 11-55-34.09(d) - The director may, automatically or by notification, administratively extend a notice of general permit coverage [upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration

of the general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the

How will the permittee certify that they will comply with the new general permit conditions if the new rules have not yet been issued?

**Response 10:** The CWB plans to add automatic administrative extension provisions to all general permits moving forward. This is in accordance with the rule change. The new general permits will have deadlines on when automatic administrative extensions begin and end. The deadline to submit an NOI for coverage under the new general permit for existing dischargers will be at some deadline after the effective date of the new general permit. The proposed rule change is to remove the current requirement of a renewal NOI prior to the expiration date of the general permit under which coverage was granted. This is in accordance with the new approach to general permit renewals. It should be noted that [bracketed] text in the Ramseyer format that the proposed rule is in, specifies that the bracketed text is to be removed. In the above referenced text, the current language regarding submittal of a renewal NOI prior to general permit expiration has been bracketed and marked for proposed removal.

**Comment 11:** 11-55-34.09(d) - The department will inform the Permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any Permittee granted coverage under the general permit that receives an administrative extension for coverage, will remain covered by the general permit until the earlier of:....

How much notice will DOH provide the permittees to submit a complete NOI for coverage under the new NGPC?

**Response 11:** The draft general permit shall be public noticed prior to being issued and will contain the deadlines to submit an NOI for existing covered discharges. Based on this, dischargers can estimate the timeframe for submittal of an NOI (e.g., 30 days after the effective date of the new general permit). Once the general permit is issued, DOH will notify existing dischargers (via email to permittee contact information and CWB's website) that the new general permit is effective, and dischargers must comply with the deadline established in the new general permit.

**Comment 12:** 11-55-34.09(d) - NOI needs to be in the effective general permit. The reason is so that the discharger will know what the permit conditions are, and it will allow them to certify that they will comply with these conditions.

Is the NOI for the new general permit provide for automatic administrative extension? What if your project only needs a few more months to be completed, do you still need to submit a NOI even though you may not need coverage under the new general permit?

**Response 12:** The CWB plans to add automatic administrative extension provisions to all general permits moving forward. This is in accordance with the rule change. The new general permits will have deadlines on when automatic administrative extensions begin and end. If a project will continue discharging, or otherwise needs to maintain NPDES permit coverage beyond the end of their administrative extension, they will need to submit an NOI for the new general permit or apply for an individual NPDES permit.

**Comment 13:** 11-55-34.09(e)(2), Rationale - The additional sentence clarifies that general permit automatic coverage provisions do not apply to small MS4. It should not apply because the general permit for these types of facilities will follow the Two-Step General Permit Approach ....

What is the two step general permit process? Does Maui District MS4 programs do that currently?

**Response 13:** The Two-Step General Permit approach allows the DOH to establish some requirements in the general permit and later establish other requirements applicable to specific MS4s through a second proposal and public comment process specific to that MS4. The first step of the Two-Step General Permit is to develop and issue the final small MS4 general permit, or “base general permit.” The need for the second step arises because the base general permit does not include all of the terms and conditions necessary to meet the MS4 permit standard, and therefore has left the development of the additional requirements to a second step. This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of the MS4s and for non-traditional MS4s (e.g. counties, state department of transportation, public universities, and military bases).

For more information please refer to 40 CFR 122.28(d) and FR Vol. 81, No. 237 pg. 89330, Section V.B.

Existing small MS4s, including the County of Maui and other Maui district MS4s do not follow the Two-Step approach because the HAR, Chapter 11-55, Appendix K has not yet been readopted. A future rules revision proposal is expected to include the revised Appendix K with the Two-Step approach.

**Comment 14:** DOH appears to be providing their Director more authority to revoke permits or renewals for non-compliance to permits.

**Response 14:** This is correct.

### **Comments from Hart Crowser**

**Comment 15:** §11-55-15 Issuance of NPDES permits, Item (i) - Recommend clarification of this statement to tie it to adjudicated enforcement actions and history. The language in 11-55-17 items (C)(5) and (C)(6) is clearer. Recommend revising to:

(i) The director may deny applications for a permit from persons who are respondents in open enforcement [actions] orders associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of [violating water pollution laws] enforcement orders.

**Response 15:** The intent of the rule change was to allow for the Director to deny applications for permits from persons who failed to resolve certain enforcement actions issued from DOH. To further clarify this language and in response to the concerns above, the proposed rule has been revised. The revised language now reads: "The director may deny applications for a permit from persons who are respondents in DOH issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution control laws such as failing to comply with permit requirements, effluent limits, or enforcement orders." This revised language should further clarify the ability to deny issuing permits when there are unresolved enforcement actions issued from the DOH, require payment of fees and penalties as required by law, and clarify the types of considerations the Director can make for withholding or denying permits.

### **Comments from County of Hawaii, Planning Department**

**Comment 16:** Thank you for the opportunity to provide comments to amendments to Hawaii Administrative Rules. The Hawai'i Department of Health (DOH) is responsible for monitoring and protecting the quality of waters themselves under the authority of the Federal Clean Water Act. To the degree designed by law, counties share this public trust responsibility with the State.

In addition to the Administrative Rule amendments proposed for water quality certifications, water quality standards, and water pollution control, we understand that DOH is proposing a new Administrative Rule that provides the regulatory framework for the prevention, abatement, and control of new and existing nonpoint sources of pollution.

The 2005 County of Hawaii General Plan (GP) calls for "work with the appropriate agencies to adopt appropriate measures and provide incentives to control point and non-point sources of pollution". In furtherance of this, the GP also addresses:

- Policy 4.3(k) Implementation of the management measures contained in Hawaii's Coastal Nonpoint Pollution Control Program as a condition of land use permitting.
- Standard 4.4(a) Pollution prevention, abatement, and control at levels that will protect and preserve the public health and wellbeing, through the enforcement of appropriate Federal, State and County standards,
- Standard 4.4(b) Incorporate environmental quality controls either as standards in appropriate ordinances or as conditions of approval.

For similar reasons, improved environmental water quality, water quality monitoring and the human health considerations around the same are a recurring theme in the majority of our County's adopted Community Development Plans (CDPs):

- Complete a comprehensive water quality-monitoring program for the Planning Area's coastal waters
- "encourage growth management and environmental quality policies that use public infrastructure to influence the location and timing of growth; ensuring the same in a manner that reduces waste and pollution, conserves water, and generally minimizes environmental impacts;
- State law mandates that Class AA waters "remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions." For this reason, wastewater disposal in the coastal zone requires special precaution Encourage State legislation to prohibit the use of cesspools as a means for wastewater disposal in areas below 1,000 feet Mean Sea Level.
- Future development and uses need to take into consideration water quality and promote proper watershed management; including water quality monitoring on a district-wide basis.
- Whether intentionally or inadvertently, we degrade our resources by introducing sediments or chemicals to our water resources through non-point or point sources ... groundwater pollution from cesspools, septic systems, fertilizers and pesticides. Some of these same activities also threaten nearshore coastal waters.

We recommend ongoing collaboration with County Department of Water Supply (DWS), Dept of Environmental Management (DEM), Department of Public Works (DPW). Moreover, we also encourage increased engagement with our entire watershed and coastal partnerships and any projects to improve groundwater, stream and coastal water quality and encourage local communities to develop such projects.

**Response 16:** Thank you for your comments of support and continued collaboration.

## Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air-conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Adding Federal MS4 [i.e., 40 CFR §122.32(d) and (e)] waiver provisions.
- Enlarging the deadline to submit individual NPDES renewal permit applications from 180 days to 360 days before permit expiration.
- Clarifying that public notice and public hearing procedures must follow Hawaii Revised Statutes (HRS) §1-28.5.
- Limiting public hearing comments to written comments.
- Authorizing DOH to deny permits to dischargers that bounce checks or who are currently in violation of other permits issued to them.
- Clarifying that automatic coverage does not apply to Appendix K.
- Including provisions for automatically terminating administrative extensions for projects/activities covered under general permits.
- Including zone of mixing and intake credit requirements from HAR Chapter 11-54.

## Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
Throughout		Various formatting, grammatical, and stylistic changes.	Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements.
Title Page	Stamped adoption date.	Placeholder.	Left a placeholder for the adoption date to be stamped after rule making.
Table of Contents	Notice of general permit coverage revocation and termination.	Notice of general permit coverage revocation and/or termination.	Revised title of 11-55-34.11 to be consistent with section title in the body of the rules. Non-substantive change for consistency.
Table of Contents	None	Added 11-55-41 (zones of mixing) and 11-55-42 (intake credits)	Provisions were previously in HAR Chapter 11-54. Moved those provisions to 11-55-41 and 11-55-42 since these are NPDES requirements that belong in the NPDES rules.

## Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-04(a)	<p>Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p>	<p>Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, <u>or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e)</u>, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p>	<p>To be consistent with Federal requirements and be able to waive MS4 requirements.</p>
11-55-04(a)(1)	<p>At least one hundred eighty days before the discharge or construction begins or, for renewals, at least one hundred eighty days before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days</p>	<p>At least one hundred eighty days before the discharge or construction begins or, for renewals, at least <u>three hundred sixty</u> days before the expiration date of the existing permit. The director may waive this <u>three hundred sixty</u> day requirement by issuing the permit with an effective date before the <u>three hundred sixty</u> days</p>	<p>40 CFR 122.21(d) and 40 CFR 123.25 require renewal permit applications to be submitted one hundred and eighty days before the existing permit expires. The DOH has decided to require renewal permit applications to be submitted sooner (three hundred sixty days before the existing permit expires) so there is enough time to process and draft the renewal permit before the existing permit expires. 40 CFR 123.25(a) allows States to impose more stringent requirements.</p>

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-09(a)(1) and (2)	<p>Public notice procedures shall include at least the following:</p> <p>(1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:</p> <p>(A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;</p> <p>(B) Posting near the entrance to the owner's or operator's premises and in nearby places; or</p> <p>(C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.</p> <p>(2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....</p>	<p>Public notice procedures shall include at least the following:</p> <p>(1) <u>Notice shall comply with section 1-28.5, HRS;</u></p> <p>(2) Notice shall be mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and....</p>	<p>DOH regularly publishes notices in newspapers in accordance with section 1-28.5, HRS. DOH has found this method to be sufficient and rarely, if ever, posts notice in the local post office, other local public place, or near the effluent source or owner's or operator's premises. DOH believes it is more appropriate to reference the statute in 11-55-09(a)(1) as the statute has a more comprehensive treatment of newspaper publication.</p> <p>Email notice was added to 11-55-09(a)(2) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.</p>
11-55-13(d)	<p>Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11 55 09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.</p>	<p>Any person may submit oral or written statements and data concerning the draft permit[-], <u>provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period.</u> The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.</p>	<p>The DOH believes it is appropriate to require oral commenters at a public hearing to provide a written copy of oral statements to ensure that concerns are accurately and adequately memorialized for consideration with respect to the draft permit at issue. DOH does not believe requiring a written statement is unduly burdensome when it is mandated to address comments in making a permit determination. Instead, it will require DOH to address such comments in a more direct and discernable way.</p>

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Section	Current	Proposed	Rationale
11-55-14(a)	<p>Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be:</p> <p>(1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;</p> <p>(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;</p> <p>(3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and</p> <p>(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.</p>	<p>Public notice of any hearing held under section 11 55 13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11 55 13 shall be:</p> <p>(1) Published <u>in accordance with section 1-28.5, HRS</u>;</p> <p>(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;</p> <p>(3) Mailed <u>or emailed</u> to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and</p> <p>(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.</p>	<p>As discussed in connection with revisions to 11-55-09(a), DOH believes it is more appropriate to reference section 1-28.5, HRS, in HAR 11-55-14(a)(1).</p> <p>Email notice was added to 11-55-14(a)(3) as DOH has determined from experience that many applicants and interested groups prefer receiving notices by email.</p>
11-55-15(i)	None	<p>The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders.</p>	<p>The director should have explicit authority to deny renewals of permits for permittees who are violating permit conditions. The addition of this section prevents the same permittees from obtaining new permits without resolving their ongoing violations. Further, this allows the director to halt a new permit issuance for permittee's who failed to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision.</p>
11-55-17(c)(5)	None	<p>The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.</p>	<p>The director has authority to terminate or deny renewal for permittee's in violation of permit conditions. The added paragraph codifies that failure to comply with enforcement orders issued for permit violations is grounds for permit termination or denial of renewal.</p>

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55-17(c)(6)	None	The permittee's failure to pay penalties or fees, as required by law.	The added paragraph codifies that permittee's failure to pay fees or penalties as required by law, court judgment, or a final administrative hearing decision is grounds for permit termination or denial of renewal.
11-55-34.02(b)(2) through (9), (11), and (2)	None	Added effective dates of the general permits.	Effective dates were added for clarity. Stamped dates for paragraphs 2, 9, and 11 were replaced with typed dates. Dates for paragraphs 3-8 and 12 were copied from stamped dates from their respective appendices.
11-55-34.09(d)	<p>The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.</p>	<p>The director may, automatically or by notification, administratively extend a notice of general permit coverage <del>[ upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first]</del>. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the <u>permittee</u> otherwise. <u>The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for coverage, shall remain covered by the general permit until the earlier of:</u></p> <ul style="list-style-type: none"> <li>• <u>Authorization for coverage under reissuance or replacement of the general permit;</u></li> <li>• <u>The permittee's submittal of a notice of cessation;</u></li> <li>• <u>The issuance of an individual NPDES permit;</u></li> </ul>	<p>The intent of the proposed revisions are to:</p> <ol style="list-style-type: none"> <li>1) allow administrative extensions for general permit coverages to be automatic without the need for a permittee to submit a renewal NOI, which would require the permittee to certify that they will comply with a general permit that is not effective yet. The deadline to submit the renewal NOI needs to be in the effective general permit. The reason is so that the discharger will know what the permit conditions are, and it will allow them to certify that they will comply with these conditions.</li> <li>2) clarify that coverage under an administrative extension is terminated once the permittee is granted coverage under the reissued general permit.</li> <li>3) clarify that coverage under an administrative extension is terminated upon the permittee's submittal of the Notice of Cessation</li> </ol>

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
	<p>The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.</p>	<ul style="list-style-type: none"> <li>• <u>A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit; or</u></li> <li>• <u>A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.</u></li> </ul> <p><u>The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why.</u></p> <p>An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance <del>[will]</del> may be <del>[automatically]</del> terminated and may be required to apply for individual NPDES permit coverage. <del>[If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that projects that do not submit NOIs prior to the expiration date will not be administratively extended.]</del></p> <p>The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.</p>	<p>4) clarify that coverage under an administrative extension is terminated upon the issuance of an Individual NPDES Permit; and</p> <p>5) provide rules for terminating administrative extensions if the Director decides not to reissue a general permit.</p>

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Section	Current	Proposed	Rationale
11-55-34.09(e)(2)	<p>Authorization to discharge under the general permit is effective upon the earlier of: ..... The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.</p>	<p>Authorization to discharge under the general permit is effective upon the earlier of: ..... The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. <u>This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.</u></p>	<p>The additional sentence clarifies that general permit automatic coverage provisions do not apply to small municipal separate storm sewer systems. It should not apply because the general permit for these types of facilities will follow the Two-Step General Permit Approach in FR Vol. 81, No. 237 pg. 89330, Section V.B., which requires a public notice.</p>
11-55-41	None	<p>Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.</p> <p>(b) Establishment, renewal, and termination.</p> <p>(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.</p> <p>(2) Each application for a zone of mixing shall be reviewed in light of the</p>	<p>This provision is being incorporated in HAR Chapter 11-55 from HAR section 11-54-9(c) because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-9(c) was copied as currently written, except for the following:</p> <ol style="list-style-type: none"> <li>1) Proposed 11-55-41(a) was included to introduce zones of mixing and to define zones of initial dilution.</li> <li>2) Proposed 11-55-41(b) is from 11-54-9(c).</li> </ol>

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Section	Current	Proposed	Rationale
		<p>descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.</p> <p>(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.</p> <p>(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.</p> <p>(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:</p> <p>(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;</p>	

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

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		<p>(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;</p> <p>(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and</p> <p>(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.</p> <p>(E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.</p> <p>(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:</p> <p>(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing,</p>	<p>3) Proposed 11-55-41(b)(5)(E) was included to clarify that DOH will not grant a zone of mixing for a pollutant if assimilative capacity is not available in the receiving water.</p>

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>controlling, or abating the discharge involved;</p> <p>(B) The director may issue a zone of mixing for a period not exceeding five years;</p> <p>(C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established. Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and</p> <p>(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.</p> <p>(7) Any zone of mixing established pursuant to this section may be renewed</p>	<p>4) Proposed 11-55-41(b)(6)(C) revises the language from 11-54-9(c)(6)(C) to clarify minimum required effluent and receiving water sampling, and additional monitoring when appropriate.</p> <p>5) Proposed 11-55-41(b)(7) revised the language from 11-54-9(c)(7) to clarify that a zone of mixing can be</p>

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Section	Current	Proposed	Rationale
		<p>from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days days prior to the expiration of the zone of mixing.</p> <p>(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.</p> <p>(9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or</p>	<p>renewed provided that requirements from 11-55-41 are complied with. Removed previous increase in mass emissions restriction provided that the increase is in accordance with anti-degradation and anti-backsliding regulations.</p> <p>6) Proposed 11-55-41(b)(7) requires the renewal application for a zone of mixing to be submitted at least 360 days prior to expiration. This is to match the proposal in HAR 11-55-04(a)(1) because the zone of mixing renewal application is required to be submitted with the NPDES renewal application.</p> <p>7) The language in HAR 11-54-9(c)(9) was not included in the proposed HAR 11-55-41 as establishment of a zone of mixing does not require EPA concurrence.</p>

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Section	Current	Proposed	Rationale
		<p>impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.</p> <p>(10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.</p> <p>(11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)</p>	
11-55-42	None	<p>Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.</p> <p>(b) As used in this section:                      “Background pollutant concentration” means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.                      “Intake pollutant” means the background pollutant concentration that is present in the intake water body.                      “Same body of water” means an intake pollutant is considered to be from the “same body of water” as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:                      (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility’s</p>	<p>This provision is being incorporated in HAR Chapter 11055 from HAR section 11-54-12 because these are NPDES requirements that belong in the NPDES rules. HAR 11-54-12 were copied as currently written except for the following:</p> <p>1) Proposed 11-55-42(b) revises the 11-54-12(b) definitions of “background pollutant concentration” and “intake pollutant” for clarity.</p>

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Section	Current	Proposed	Rationale
		<p>discharge) is similar to that in the intake water; and</p> <p>(2) There is a direct hydrologic connection between the intake and discharge points; and</p> <p>(3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.</p> <p>The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.</p> <p>(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:</p> <p>(1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and</p> <p>(2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the background pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.</p> <p>(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed</p>	<p>2) Proposed 11-55-42(c)(2) revises the 11-54-12(c)(2) restriction for intake credit usage for clarity.</p>

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Section	Current	Proposed	Rationale
		<p>and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.</p> <p>(e) The director shall grant credit for water quality-based effluent limits only if:</p> <p>(1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;</p> <p>(2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;</p> <p>(3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,</p> <p>(4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.</p> <p>(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.</p> <p>(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:</p> <p>(1) Documentation showing a complete and detailed description of</p>	<p>3) Proposed 11-55-42(e) revises the 11-54-12(e) requirement for clarity and to include 40 CFR 122.45(g)(4) requirements that allow the permitting agency to waive the requirement for the intake water containing the intake pollutant to be withdrawn from the same body of water into which the discharge is made if the permitting agency finds that no environmental degradation will result.</p>

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
		<p>present conditions and how present conditions do not conform to standards; and</p> <p>(2) Documentation showing that the intake and discharge waterbodies are the “same body of water” or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and</p> <p>(3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.</p> <p>(h) Credit for intake pollutants shall be specified in the discharger’s NPDES permit and shall become effective with the department’s issuance of the permit for the specified permittee:</p> <p>(1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term; and</p> <p>(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.</p> <p>(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.</p> <p>(j) All other water quality criteria established under this chapter continue to apply. [Eff ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)</p>	<p>4) Proposed 11-55-42(g)(2) revises the 11-54-12(g)(2) requirement to include the 40 CFR 122.45(g)(4) requirement described above.</p>
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.

# Rationale, Hawaii Administrative Rules Chapter 11-55 Water Pollution Control

#### **IV. New Business** – Before Public Hearing

##### **A. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by DCCA**

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

RECEIVED  
By SBRRB at 8:42 am, Jun 01, 2021

Date: 5/28/2021

Department or Agency: Dept. of Commerce and Consumer Affairs, Insurance Division

Administrative Rule Title and Chapter: Title 16, Chapter 171, Subchapter 3

Chapter Name: Miscellaneous Insurance Rules

Contact Person/Title: Eunice Park, Staff Attorney

E-mail: epark@dcca.hawaii.gov Phone: 808-586-3041

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.

Please see attachment.

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

Please see attachment.

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

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

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.

Transition to electronic filing system of the applications and applicable fees would benefit the Insurance Division in that it would result in time saving, and thereby cost saving, by allowing for more expeditious processing of the applications and applicable fees by the Division staff.

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.

N/A. Proposed amendments will likely benefit small businesses by providing uniformity to the duration of the licenses and registrations. Also by allowing Insurance Division to utilize electronic filing system, small businesses would benefit from the streamlined application and fee filing system.

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

N/A. Proposed amendments to HAR §§16-171-301 to 16-171-324 provides uniformity to the duration of the licenses and registrations issued by the Insurance Division.

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.

All business entities licensed and registered by the Insurance Division will be directly affected and benefit from proposed amendments to HAR §§16-171-301 to 16-171-324. Insurance Division's transition to electronic filing system, as it would be allowed under the proposed HAR amendments, would streamline the application process for small businesses and bring uniformity to the process.

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

The Insurance Division will give all interested persons an opportunity to submit data, views, or arguments, orally or in writing, on proposed amendments to HAR §§16-171-301 to 16-171-324 at a public hearing.

- 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.

N/A

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.

Proposed amendments to HAR §§16-171-301 to 16-171-324 are not more stringent than those mandated by any comparable or related federal, state, or county standards.

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](mailto: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>

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

**A. Statement of the topic of the proposed rules**

With the passage of S.B. 1098, Regulatory Authority of the Insurance Commissioner in the 2021 legislative session, it is necessary to amend HAR Chapter 16-171, Miscellaneous Insurance Rules, to be aligned with the changes that will be made to various sections of Hawaii Revised Statutes Chapters, 431, 431S, 481R, and 481X. More specifically, amendments will be made to HAR §§16-171-301 to 324. These amendments will clarify the terms and durations of licenses and registrations issued by the Insurance Division. In addition, these amendments would allow the Insurance Division to utilize an electronic process for processing insurance licensing fees, registrations fees, renewal fees, and reinstatement fees. Amendments will have an effective date of 1/1/22, with a provision allowing for a delayed implementation if necessary, but no later than beyond December 31, 2022.

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

All small businesses that are required to be licensed or registered by the Insurance Division under Hawaii Revised Statutes Chapters 431, 431S, 481R, and 481X, will be impacted by the proposed HAR amendments. However, we believe the proposed amendments will benefit these affected small businesses by: (1) providing for uniformity in the duration of the licenses and registrations; and (2) allowing for electronic filing of the applications and applicable fees.

**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.**

N/A. Proposed amendments will not result in additional costs, whether direct or indirect. The amendments will bring uniformity to the terms and durations of license and registration issued by the Insurance Division and would also allow the Insurance Division to accept electronic filing of insurance licensing fees, registrations fees, renewals fees, reinstatements fees, and applications. These changes may result in cost savings for the affected small businesses. There is no additional cost for the Insurance Division to utilize the electronic filing system, as the vendors affiliated with the National Association of Insurance Commissioners (NAIC) offer these services at no cost to all states.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-171  
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-171, Hawaii Administrative Rules, entitled, "Miscellaneous Insurance Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 171

MISCELLANEOUS INSURANCE RULES

Subchapter 1 General Provisions

§16-171-101 Definitions  
§16-171-102 Repealed  
§16-171-103 Written notice to claimants of payment  
of claims in third-party settlements

Subchapter 2 Health Provisions

- §16-171-201 Disclosure to enrollee or authorized representative
- §16-171-202 Accident and health or sickness filing requirement

### Subchapter 3 Licensing Requirements

- §16-171-301 Term of license
- §16-171-302 License renewal or extension for a natural person
- §16-171-303 Term of surplus lines broker; license
- §16-171-304 License renewal or extension for a business entity
- §16-171-305 Payment of initial licensing and registration fees, and renewal fees
- §16-171-306 Continuing education course credit
- §16-171-307 Continuing education requirement for resident licensee
- §16-171-308 Continuing education requirement for licensee reactivating a line of authority
- §16-171-309 Continuing education prerequisite for business entity license renewal
- §16-171-310 Application for approval of a continuing education course
- §16-171-311 Passing examination score
- §16-171-312 Term of managing general agent license
- §16-171-313 Repealed
- §16-171-314 Term of reinsurance intermediary broker and reinsurance intermediary manager licenses
- §16-171-315 Repealed
- §16-171-316 Initial term of vehicle protection product warrantor registration
- §16-171-317 Initial term of service contract provider registration
- §16-171-318 Electronic mail address is required of all licensees, registrants, certificate holders, certificate of authority holders
- §16-171-319 Renewal for registration

§16-171-320 Initial term of pharmacy benefit  
manager registration  
§16-171-321 Initial term of limited lines portable  
electronics producer license  
§16-171-322 Reinstatement fee  
§16-171-323 Reinstatement after license or  
registration has been surrendered  
voluntarily  
§16-171-324 Electronic filings through  
nongovernmental entities

Subchapter 4 CSO Mortality Table for Use in  
Determining Minimum Reserve  
Liabilities and Nonforfeiture  
Benefits

§16-171-401 Purpose  
§16-171-402 Definitions  
§16-171-403 2001 CSO Mortality Table  
§16-171-404 Conditions  
§16-171-405 Gender-Blended Tables

Subchapter 5 Preferred Mortality Tables for Use  
in Determining Minimum Reserve  
Liabilities

§16-171-501 Purpose  
§16-171-502 Definitions  
§16-171-503 2001 CSO Preferred Class Structure  
Table  
§16-171-504 Conditions

Subchapter 6 Military Sales Practices

§16-171-601 Purpose and authority  
§16-171-602 Definitions  
§16-171-603 Scope and exemptions

- §16-171-604 Practices declared false, misleading, deceptive, or unfair on a military installation.
- §16-171-605 Practices declared false, misleading, deceptive, or unfair regardless of location
- §16-171-606 Severability

Subchapter 7 (Reserved)

Subchapter 8 Repealed

§§16-171-801 to 16-171-808 Repealed

Subchapter 9 Valuation of Life Insurance Policies

- §16-171-901 Purpose
- §16-171-902 Applicability
- §16-171-903 Definitions
- §16-171-904 General calculation requirements for basic reserves and premium deficiency reserves
- §16-171-905 Calculation of minimum valuation standard for policies, other than universal life policies, with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits
- §16-171-906 Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§16-171-101 Definitions.** As used in this chapter:

"Commissioner" means the insurance commissioner.

"Enrollee" means a person covered for health insurance by the insurer.

"Insured" means a person covered for insurance by the insurer.

"Insurer" means a person defined as an insurer pursuant to section 431:1-202, Hawaii Revised Statutes ("HRS").

"Managed care plan" means a health plan defined as a managed care plan pursuant to section 431:14G-102, HRS. [Eff 1/1/05; am and comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §431:2-201) (Imp: HRS §§431:1-202, 431:2-102, 431:2-201, 431:14G-102)

**§16-171-102 Repealed. [R 12/26/06]**

**§16-171-103 Written notice to claimants of payment of claims in third-party settlements.** (a) Upon payment in settlement of any third-party liability claim, the insurer shall provide written notice to the claimant where:

- (1) The claimant is a natural person; and
- (2) The payment is delivered to the claimant's lawyer by draft, check, or otherwise.

(b) A written notice shall be required when the insurer or the insurer's representative, including the insurer's lawyer, makes payment to a claimant. [Eff

and comp 12/26/06; comp 03/28/08; comp 1/22/10; comp  
12/13/12; comp 02/02/17; comp ] (Auth:  
HRS §431:2-201) (Imp: HRS §§431:1-202, 431:10-230)

## SUBCHAPTER 2

### HEALTH PROVISIONS

**§16-171-201 Disclosure to enrollee or authorized representative.** (a) Upon written request and payment of fifty dollars to a managed care plan by an enrollee or authorized representative, a managed care plan shall deliver, within ten business days of that request, to that enrollee or authorized representative data that forms the basis for the premium rates that the managed care plan seeks to charge the enrollee in the next enrollment period.

(b) Subject to subsection (c), the enrollee or authorized representative may request all pertinent information as to the rate including, but not limited to, the managed care plan's data for the enrollee relating to:

- (1) Loss trend;
- (2) Loss ratio;
- (3) Annual financial statements of the managed care plan; and
- (4) Its rate filing.

(c) A managed care plan shall not be required to disclose supporting information or supplementary rating information that:

- (1) Consists of proprietary information, including trade secrets, commercial information, and business plans that the commissioner deems may result in competitive harm to the managed care plan if disclosed;
- (2) Is confidential in accordance with federal or Hawaii law; or

- (3) Is exempt from disclosure by federal or Hawaii law. [Eff 1/1/05; comp 12/26/06; am and comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §431:2-201) (Imp: HRS §§92F-13, 92F-22, 431:2-209, 431:14G-105, 431:14G-109)

**§16-171-202 Accident and health or sickness filing requirement.** Notwithstanding the need to have a plan qualified under section 393-7, HRS, a managed care plan shall file accident and health or sickness insurance contract rates with the commissioner that comply with title 24, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 432:1-102, 432D-2) (Imp: HRS §431:14G-105)

### SUBCHAPTER 3

### LICENSING REQUIREMENTS

**§16-171-301 Term of license.** The term of the license granted pursuant to articles [~~9 and 9A~~] 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, [~~HRS 7~~] chapter 431C, and article 2 of chapter 432, HRS, shall be not less than one year and not more than three years. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-232, 431:9A-107, 432:2-609)

**§16-171-302 License renewal or extension for a natural person.** (a) The day for renewal or extension of a license issued to a natural person pursuant to articles ~~[9 and 9A]~~ 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, ~~[HRS,]~~ chapter 431C, and article 2 of chapter 432, HRS, shall be the ~~[sixteenth]~~ last day of the licensee's birth month.

~~{(b) The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in even-numbered months shall be the next succeeding even-numbered year. The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in odd-numbered months shall be the next succeeding odd-numbered year.~~

~~(c) The term of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.~~

~~(d)}~~ (b) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 432:2-609)

**§16-171-303 Term of surplus lines broker; license.** The term of the surplus lines broker license issued pursuant to article 8 of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:8-310, 431:9A-108)

**§16-171-304 License renewal or extension for a business entity.**

(a) The day for renewal or extension of a license issued to a business entity pursuant to articles ~~[9 and 9A]~~ 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, ~~[HRS,]~~ and chapter 431C, HRS, shall be the ~~[sixteenth]~~ last day of April for a nonresident licensee and the ~~[sixteenth]~~ last day of July for a resident licensee.

~~{(b) The year for renewal or extension for a nonresident business entity licensee shall be the next succeeding even-numbered year.~~

~~(c) The year for renewal or extension for a resident business entity licensee shall be the next succeeding odd-numbered year.~~

~~(d) The term of the license issued to a business entity pursuant to articles 9 and 9A of chapter 431, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.~~

~~(e)}~~ (b) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-106, 431:9A-107)

**§16-171-305 Payment of initial licensing and registration fees [and penalties], and renewal fees.**

Prior to the issuance, renewal, or extension of a license or registration, the licensee or registrant shall pay all applicable fees~~[and penalties]~~. ~~[A service fee, consisting of annual fees for each full year or partial year included in the term, shall be paid by the licensee.]~~ The fees for the initial term of the license or registration shall include an issuance fee pursuant to section 431:7-101(a), HRS, and a two-year service fee pursuant to section 431:7-101(b), HRS. Renewals after the initial term shall

include a renewal fee which includes either a two-year service fee for a license or registration which is renewed biennially, or a one-year service fee for a license or registration which is renewed annually. There shall be no pro rata of the service fee. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 431:9A-107.5, 432:2-609)

**§16-171-306 Continuing education course credit.**

Credits earned for a continuing education course shall be valid for twenty-four months after the course provider determines that the licensee has successfully completed all course requirements. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-124, 431:9A-155)

**§16-171-307 Continuing education requirement for resident licensee ~~[that acquires additional line of authority]~~.** ~~[Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer who acquires an additional line of insurance through the examination process within the twenty-three months preceding the producer's renewal or extension date shall complete the continuing education requirement for the additional acquired line by the producer's next succeeding renewal or extension date.]~~ The continuing education compliance period for a resident licensee shall coincide with their license renewal date. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 431:9A-118)

(Imp: HRS §§431:9A-124, 431:9A-142, 431:9A-155,  
432:2-609)

**§16-171-308 Continuing education requirement for licensee reactivating a line of authority.** Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer who applies to reactivate a line of authority shall fulfill the continuing education requirement for the line of authority prior to its reactivation. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:9A-118)  
(Imp: HRS §§431:9A-124, 431:9A-142, 432:2-609)

**§16-171-309 Continuing education prerequisite for business entity license renewal.** Failure by the designated representative to complete the continuing education requirement on behalf of the business entity shall result in the business entity's and, if applicable, the designated representative's license being automatically placed on "inactive" status. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp ]  
(Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-106, 431:9A-124, 431:9A-142, 432:2-609)

**§16-171-310 Application for approval of a continuing education course.** (a) A continuing education course provider seeking approval of a continuing education course shall submit an application to the commissioner at least sixty days prior to the proposed date the course will be offered.  
(b) A continuing education course provider shall obtain the commissioner's prior approval for the course before advertising or soliciting for that

course. [Eff 1/1/05; comp 12/26/06; comp 03/28/08;  
comp 1/22/10; comp 12/13/12; comp 02/02/17; comp  
] (Auth: HRS §§431:2-201, 431:9A-118)  
(Imp: HRS §431:9A-153)

**§16-171-311 Passing examination score.** An applicant for licensure under article 9 or article 9A of chapter 431, HRS, or article 2 of chapter 432, HRS, shall obtain a score of seventy or higher to pass the examination. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-206, 431:9A-105, 432:2-609)

**§16-171-312 Term of managing general agent license.** The term of licensure for a managing general agent license issued pursuant to article 9C of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108, 431:9C-102)

**§16-171-313 Repealed. [R 12/13/12]**

**§16-171-314 Term of reinsurance intermediary broker and reinsurance intermediary manager licenses.** The term of licensure for reinsurance intermediary broker and reinsurance intermediary manager licenses issued pursuant to article 9B of chapter 431, HRS, shall be the same as the licensee's producer license

issued pursuant to article 9A of chapter 431, HRS.  
[Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp  
1/22/10; comp 12/13/12; comp 02/02/17; comp  
] (Auth: HRS §§431:2-201, 431:9A-118)  
(Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108,  
431:9B-102)

**§16-171-315 Repealed. [R 12/13/12]**

**§16-171-316 [Term] Initial term of vehicle protection product [warrantors registrations.] warrantor registration.** The initial term of vehicle protection product [warrantors' registrations] warrantor registration issued pursuant to chapter 481R, HRS, shall not be for [not more than one year and, unless renewed,] less than one year and not more than three years and shall automatically expire on December 31 of each year[-], unless renewed. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 481R-3)  
(Imp: HRS §§431:7-101, 481R-4)

**§16-171-317 [Term] Initial term of service contract provider [registrations.] registration.** The initial term of a service contract [providers' registrations] provider registration issued pursuant to chapter 481X, HRS, shall not be for [not more than one year and, unless renewed,] less than one year and not more than three years and shall automatically expire on July [15] 31 of each year[-], unless renewed. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp ] (Auth: HRS §§431:2-201, 481X-11)  
(Imp: HRS §§431:7-101, 481X-3)

**§16-171-318 Electronic mail address is required of all licensees, registrants, certificate holders, certificate of authority holders.** All licensees, registrants, and certificate holders shall provide the commissioner with an electronic mail address to receive communications from the commissioner. Communications sent to the electronic mail address shall be construed as actual notice to the licensee, registrant, certificate holder, or certificate of authority holder for all purposes, but not as a service of legal process. [Eff 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:19-102, 431K-13, 432:1-102, 432D-2, 481R-3, 481X-11) (Imp: HRS §§431:9-204, 431:9A-106, 431:9A-108, 431:9A-142, 431:9A-151, 431:19-102, 431K-2, 432:1-302, 432:2-609, 432D-2, 481R-4, 481X-3, 488-3)

**§16-171-319 Renewal for registration.** The day for renewal or extension of a registration issued to a registrant shall be the last day of the designated month. [Eff and comp ] (Auth: HRS §§431:2-201, 431S-6, 481R-3, 481X-11) (Imp: HRS §§431S-4, 481R-4, 481X-3)

**§16-171-320 Initial term of pharmacy benefit manager registration.** The initial term of a pharmacy benefit manager registration issued pursuant to chapter 431S, HRS, shall not be less than one year and not more than three years and shall automatically expire on March 31 of each year, unless renewed. [Eff and comp ] (Auth: HRS §§431:2-201, 431S-6) (Imp: HRS §431S-4)

**§16-171-321 Initial term of limited lines portable electronics producer license.** The initial term of limited lines portable electronics producer license issued pursuant to article 31, chapter 431, HRS, shall not be less than one year and not more than three years. [Eff and comp ] (Auth: HRS §§431:2-201) (Imp: HRS §431:31-102)

**§16-171-322 Reinstatement fee.** If a license or registration was inactivated due to a nonrenewal, an incomplete continuing education, or failure to meet other applicable requirements, the license or registration may be reinstated within one year of inactivation provided the applicable fees and penalties have been paid and any applicable continuing education or other requirements have been met. The fee for reinstatement shall include any unpaid renewal fees and penalty fees. If more than one year has passed since the inactivation, the applicant must apply as a new applicant. [Eff and comp ] (Auth: HRS §§431:2-201, 431:9A-118, 431:9B-111, 431:9C-107, 431:9J-114, 431C-53, 431S-6, 481R-3, 481X-11) (Imp: HRS §§431:8-310, 431:9-232, 431:9A-107, 431:9B-102, 431:9C-102, 431:9J-102, 431C-3, 432:2-609, 431S-3, 481R-4, 481X-3)

**§16-171-323 Reinstatement after license or registration has been surrendered voluntarily.** The license or registration may be reinstated within one year from the date of surrender if a license or registration was voluntarily surrendered, provided a two-year service fee has been paid and any applicable continuing education requirements have been met. If more than one year has passed since the voluntary surrender, the applicant must apply as a new applicant. [Eff and comp ] (Auth: HRS §§431:2-201, 431:9A-118, 431:9B-111, 431:9C-107, 431:9J-114, 431C-53, 431S-6, 481R-3, 481X-11) (Imp:

HRS §§431:8-310, 431:9-232, 431:9A-107, 431:9B-102, 431:9C-102, 431:9J-102, 431C-3, 432:2-609, 431S-3, 481R-4, 481X-3)

**§16-171-324 Electronic filings through nongovernmental entities.** The commissioner may mandate all holders of licenses or registrations to apply for licensure or registration electronically through the nongovernmental entities. [Eff and comp ] (Auth: HRS §431:2-201) (Imp: HRS §§431:8-321, 431:9-204, 431:9A-106, 431:9B-102, 431:9C-102, 431:9J-102, 431:31-102, 431C-3, 431S-3, 432:2-609, 481R-4, 481X-3)

#### SUBCHAPTER 4

### CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

**§16-171-401 Purpose.** The purpose of this subchapter is to authorize the use of the 2001 Commissioners' Standard Ordinary ("CSO") Mortality Table for the computation of the minimum reserve standard for nonforfeiture and valuation of life insurance policies and contracts. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

**§16-171-402 Definitions.** As used in this subchapter:

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the valuation basic mortality table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002 (the 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002)). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"2001 CSO Mortality Table (F)" means that portion of the 2001 CSO Mortality Table that consists of the rates of mortality for female lives.

"2001 CSO Mortality Table (M)" means that portion of the 2001 CSO Mortality Table that consists of the rates of mortality for male lives from the 2001 CSO Mortality Table.

"Composite mortality tables" means that portion of the 2001 CSO Mortality Table that consists of rates of mortality that do not distinguish between smokers and nonsmokers.

"Smoker and nonsmoker mortality tables" means that portion of the 2001 CSO Mortality Table that consists of separate rates of mortality for smokers and nonsmokers. [Eff 1/1/05; comp 12/26/06 comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

**§16-171-403 2001 CSO Mortality Table.** (a) At the election of the insurer and for any one or more of the insurer's specified plans of insurance and subject

to the conditions stated in section 16-171-404, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and in sections 431:5-307 and 431:10D-104, as applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in section 16-171-404, insurers shall use the 2001 CSO Mortality Table in determining minimum standards for policies issued on and after January 1, 2009, in sections 431:5-307 and 431:10D-104, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c) (2) (A), 431:10D-104(e) (8) (G) (vii))

**§16-171-404 Conditions.** (a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- (1) Composite mortality tables to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by sections 431:5-307 and 431:10D-104, HRS, and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers, the insurers shall use the composite mortality tables.

(c) For the purpose of determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each plan of insurance, be used in its select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed by the insurer with the commissioner shall be based on an asset adequacy analysis as specified in sections 431:5-307 and 431:10D-104, HRS. Upon application, the commissioner may exempt an insurer from this requirement only if it does business in this State and in no other state. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

**§16-171-405 Gender-blended tables.** (a) For any ordinary life insurance policy delivered or issued for delivery in this State on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the subchapter.

(b) The insurer may choose from among the blended tables within the 2001 CSO Mortality Table by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) It shall not, in and of itself, be a violation of article 13 of chapter 431, HRS, for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c) (2) (A), 431:10D-104(e) (8) (G) (vii))

## SUBCHAPTER 5

### PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

**§16-171-501 Purpose.** The purpose of this subchapter is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with sections 431:5-307 and 431:10D-104, HRS. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

**§16-171-502 Definitions.** As used in this subchapter:

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force and adopted by the NAIC in

December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless indicated otherwise, the 2001 CSO Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables and the composite mortality tables;
- (3) Both the age-nearest-birthday and age-last-birthday bases of the mortality tables;
- (4) The "2001 CSO Mortality Table (F)" that consists of the rates of mortality for female lives from the 2001 CSO Mortality Table;
- (5) The "2001 CSO Mortality Table (M)" that consists of the rates of mortality for male lives from the 2001 CSO Mortality Table;
- (6) The "Composite mortality tables" that consist of tables with rates of mortality that do not distinguish between smokers and nonsmokers; and
- (7) The "Smoker and nonsmoker mortality tables" that consist of mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the NAIC Proceedings (3rd Quarter 2006). Unless the context indicates otherwise, the 2001 CSO Preferred Class Structure Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables found in the 2001 CSO Mortality Table;

- (3) Both the male and female mortality tables and the gender composite mortality tables found in the 2001 CSO Mortality Table; and
- (4) Both the age-nearest-birthday and age-last-birthday bases of the mortality table found in the 2001 CSO Mortality Table.

"CSO" means Commissioners' Standard Ordinary.

"NAIC" means the National Association of Insurance Commissioners.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers, and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

### **§16-171-503 2001 CSO Preferred Class Structure**

**Table.** (a) At the election of insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this subchapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the smoker and nonsmoker mortality tables, found in the 2001 CSO Mortality Table, as the minimum valuation for policies issued.

(b) No such election shall be made until the insurer demonstrates at least twenty per cent of the business to be valued on this table is in one or more of the preferred classes.

(c) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this section, will be treated as part of the 2001 CSO

Mortality Table only for purposes of reserve valuation pursuant to the requirements of subchapter 4, title 16, chapter 171, HAR. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

**§16-171-504 Conditions.** (a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table

to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Mortality Table shall annually file with the commissioner, the NAIC, or a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this section. The form of the reports shall be established by the commissioner, or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ]  
(Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

## SUBCHAPTER 6

## MILITARY SALES PRACTICES

**§16-171-601 Purpose and authority.** (a) The purpose of this subchapter is to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this subchapter.

(c) This subchapter is adopted under the authority of section 431:2-201.8, HRS. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201, 431:2-201.8) (Imp: HRS §431:1-201.8)

**§16-171-602 Definitions.** As used in this subchapter:

"Active duty" means full-time duty in the active military service of the United States Armed Forces, National Guard, and reserves while serving under published orders for active service or full-time training. The term does not include members of the National Guard and reserves who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one calendar days.

"Department of Defense, "DD", or "DoD" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees of that government agency.

"Door to door" means a solicitation or sales method whereby an insurance producer or insurer proceeds randomly or selectively from household to household without prior specific appointment.

"General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

"Insurance producer" means a person required to be licensed under the laws of the State of Hawaii to sell, solicit, or negotiate life insurance, including annuities.

"Insurer" means an insurance company required to be licensed under the laws of the State of Hawaii to provide life insurance products, including annuities.

"IRC" means the Internal Revenue Code.

"Known" or "knowingly", depending on its use herein, means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of, that the person solicited:

- (1) Is a service member; or
- (2) Is a service member with a pay grade of E-4 or below.

"Life insurance" means insurance coverage on human lives, including benefits of endowments and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

"Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" is a Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service member" means any active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.

"SGLI" means a contract offered by Servicemembers' Group Life Insurance, as authorized by 38 U.S.C. section 1965 *et seq.*

"Side fund" means an account or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities by rider, endorsement, or other means. The term "side fund" does not include:

- (1) Accumulated value or cash value or secondary guarantees provided by a universal life policy;
- (2) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (3) A premium deposit fund which:
  - (A) Contains only premiums paid in advance which accumulate at interest;
  - (B) Imposes no penalty for withdrawal;
  - (C) Does not permit funding beyond future required premiums;
  - (D) Is not marketed or intended as an investment; and
  - (E) Does not carry a commission, either paid or calculated.

"Solicitation" means the sale or negotiation of any life insurance or annuity product by an insurer of insurance producer in this State.

"Specific appointment" means a prearranged appointment agreed upon by an insurer or a producer and a service member at a definite place and time.

"United States Armed Forces" means all components of the United States army, navy, air force, marine corps, and coast guard.

"VGLI" means a contract offered by Veterans' Group Life Insurance, as authorized by 38 U.S.C. section 1965 *et seq.* (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

**§16-171-603 Scope and exemptions.** (a) This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

(b) This subchapter shall not apply to solicitations or sales involving:

- (1) Credit insurance;
- (2) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or insurer or where the contract or certificate does not include a side fund;
- (3) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;
- (4) Individual stand-alone health policies, including disability income policies;
- (5) Except as provided herein, contract offered by SGLI or VGLI, as authorized by 38 U.S.C. section 1965 *et seq.*;
- (6) Life insurance contracts offered through or by a non-profit military association, qualifying under section 501(c)(23) of the IRC, and which are not underwritten by an insurer; or
- (7) Contracts used to fund:
  - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act ("ERISA");
  - (B) A plan described by sections 401(a), 401(k), 403(b), 408(k), and 408 (p) of the IRC, as amended, if established or maintained by an employer;

- (C) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC;
  - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or a plan sponsor;
  - (E) Settlements or assumptions or liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - (F) Prearranged funeral contracts.
- (8) Nothing herein shall be construed to abrogate the ability of nonprofit organizations or other organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07, Personal Commercial Solicitation on DoD Installations, or successor directive.
- (9) For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned involves life insurance or an annuity and makes no statements that preclude a clear and unequivocal understanding that life insurance or any annuity is the only subject matter of the solicitation. Provided, however, that nothing in this subsection shall be construed to relieve an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection. [Eff 03/28/08; comp 1/22/10;

comp 12/13/12; am and comp 02/02/17; comp  
] (Auth: HRS §§431:2-201,  
431:2-201.8) (Imp: HRS §431:1-201.8)

**§16-171-604 Practices declared false, misleading, deceptive, or unfair on a military installation.** (a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;
- (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;
- (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
- (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation;
- (5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
- (6) Posting unauthorized bulletins, notices, or advertisements;
- (7) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit form DD 2885; or

- (8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the DoD or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive or unfair:

- (1) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or
- (2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program. (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ]  
(Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

**§16-171-605 Practices declared false, misleading, deceptive, or unfair regardless of location.** (a) The following acts or practices by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Submitting, processing or assisting in the submission or processing of any allotment

form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for that purpose. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

- (2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:
  - (A) Provides the service member with a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. section 4301 *et seq.* and the regulations promulgated thereunder; and
  - (B) Permits the service member to make deposits and withdrawals unrelated to the payment of processing of insurance premiums;
- (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in paragraph (2);
- (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or

- without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;
- (5) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family member of those service members;
  - (6) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;
  - (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or
  - (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the

United States government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor", "Unit Insurance Advisor", "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".

Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. These designations include, but are not limited to, Chartered Life Underwriter ("CLU"), Chartered Financial Consultant ("ChFC"), Certified Financial Planner ("CFP"), Master of Science in Financial Services ("MSFS"), or Masters of Science Financial Planning ("MS"); or

- (2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the United States government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or
- (2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(d) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Making any representation regarding the availability, suitability, amount, cost exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, deceptive, or unfair;
- (2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, deceptive, or unfair; or
- (3) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy, unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be

contacted by an insurer or insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

- (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;
- (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;
- (4) Failing to make, at the time of sale or offer to individual known to be a service member, the written disclosures required by section 10 of the "Military Personnel Financial Services Protection Act", Pub. L. No. 109-290, at 1323-1324; or
- (5) Excluding individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:
  - (A) An explanation of any free-look period with instructions on how to cancel if a policy is issued; and
  - (B) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of chapter 431, article 10D, part IV, HRS, shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be

false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below, unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;
- (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below, who is currently enrolled in SGLI, is presumed unsuitable, unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For the purposes of this paragraph:
  - (A) "Insurable needs" are the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors or dependents; and
  - (B) "Other military survivor benefits" include, but are not limited to: the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits;
- (3) Excluding individually issued annuities, offering for sale or selling any life

insurance contract which includes a side fund:

- (A) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
  - (B) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and
  - (C) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due;
- (4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which, after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance; or
- (5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded. (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp

] (Auth: HRS §§431:2-201;  
431:2-201.8) (Imp: HRS §431:1-201.8)

**§16-171-606 Severability.** If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections, which can be given effect without the invalid provisions or application. To this end, all provisions of these sections are declared to be severable. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp ] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

#### SUBCHAPTER 7 (Reserved)

#### SUBCHAPTER 8-REPEALED

**§16-171-801 Repealed. [R 12/13/12]**

**§16-171-802 Repealed. [R 12/13/12]**

**§16-171-803 Repealed. [R 12/13/12]**

**§16-171-804 Repealed. [R 12/13/12]**

§16-171-805 Repealed. [R 12/13/12]

§16-171-806 Repealed. [R 12/13/12]

§16-171-807 Repealed. [R 12/13/12]

§16-171-808 Repealed. [R 12/13/12]

## SUBCHAPTER 9

### VALUATION OF LIFE INSURANCE POLICIES

**§16-171-901 Purpose.** (a) The purpose of this subchapter is to provide:

- (1) Tables of select mortality factors and rules for their use;
- (2) Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and
- (3) Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

(b) The method for calculating basic reserves defined in this subchapter will constitute the commissioner's reserve valuation method for policies to which this subchapter is applicable. [Eff and comp 02/02/17; comp ] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

**§16-171-902 Applicability.** (a) This subchapter shall apply to all life insurance policies, with or without nonforfeiture values, and subject to the exceptions and conditions set forth in subsections (b) and (c).

- (b) Exceptions:
- (1) This subchapter shall not apply to any individual life insurance policy issued on or after the effective date of this regulation if the policy is issued in accordance with, and as a result of, the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this subchapter, that guarantees the premium rates of the new policy. This subchapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy;
  - (2) This subchapter shall not apply to any universal life policy that meets all of the following requirements:
    - (A) The universal life policy has a secondary guarantee period, if any, that is five years or less;
    - (B) The specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in section 16-171-903, and the applicable valuation interest rate; and
    - (C) The initial surrender charge is not less than one hundred per cent of the first year annualized specified premium for the secondary guarantee period.
  - (3) This subchapter shall not apply to any variable life insurance policy or universal life insurance policy that provides for life

insurance and the amount or duration of which varies according to the investment experience of any separate account or accounts;

- (4) This subchapter shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
- (c) Conditions:
  - (1) Calculation of the minimum valuation standard for policies other than universal life policies with guaranteed nonlevel gross premiums, guaranteed nonlevel benefits, or both, shall be in accordance with the provisions of section 16-171-905.
  - (2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, which contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, shall be in accordance with the provisions of section 16-171-906. [Eff and comp 02/02/17; comp ] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

**§16-171-903 Definitions.** For purposes of this subchapter:

"1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table ("1980 CSO Table") without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

"Basic reserves" means reserves calculated in accordance with subsection 431:5-307(h), HRS.

"Contract segmentation method" means the method of dividing the period from issuance to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception for the first segment) to the end of the latest policy year as described in this definition. All calculations are made using the 1980 CSO valuation tables, as defined in this section, or any other valuation mortality table adopted by the NAIC for this purpose and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in section 16-171-904(b).

The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$ , the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t$  = 1, 2, ...;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$  = Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{Q_{x+k+t}}{Q_{x+k+t-1}},$$

However,  $R_t$  may be increased or decreased by one per cent in any policy year at the

company's option, but  $R_t$  shall not be less than one;

where:

$x$ ,  $k$  and  $t$  are as defined above; and  
 $q_{x+k+t-1}$  = valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of paragraph 16-171-904(b)(2), if section 16-171-904(b)(3), is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

"Deficiency reserves" means the excess, if greater than zero, of minimum reserves over basic reserves.

"Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

"Maximum valuation interest rates" means the interest rates defined in subsection 431:5-307(g), HRS, that are to be used in determining the minimum standard for the valuation of life insurance policies.

"Minimum reserves" means reserves calculated in accordance with subsection 431:5-307(e), HRS.

"Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in paragraph 16-171-906(a)(3), if any, or else the minimum premium described in paragraph 16-171-906(a)(4).

"Segmented reserves" means reserves calculated using segments produced by the contract segmentation method equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are

a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that at the beginning of the segment, the present value of the net premiums within the segment equals:

- (1) The present value of the death benefits within the segment, plus;
- (2) The present value of any unusual guaranteed cash value (see subsection 16-171-905(d)) occurring at the end of the segment, less;
- (3) Any unusual guaranteed cash value occurring at the start of the segment, plus;
- (4) For the first segment only, the excess of (A) over (B), as follows:
  - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy;
  - (B) A net one year term premium for the benefits provided for in the first policy year.

The length of each segment is determined by the "contract segmentation method," as defined in this section. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. For both basic reserves and deficiency reserves computed by the segmented method,

present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

"Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

"Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

"Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

- (1) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
- (2) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of (A) over (B), as follows:
  - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. The net level annual premium, however, shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy; and
  - (B) A net one year term premium for the benefits provided for in the first policy year.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

"Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. [Eff and comp 02/02/17; comp ] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

**§16-171-904 General calculation requirements for basic reserves and premium deficiency reserves.** (a)

At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC. If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix A entitled "Select Mortality Factors" dated October 2009, located at the end of this chapter; or
- (3) Any other table of select mortality factors adopted by the NAIC for the purpose of calculating basic reserves.

(b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross

premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC. If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix A of this regulation;
- (3) For durations in the first segment, X per cent of the select mortality factors in the Appendix A, subject to the following:
  - (A) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
  - (B) X is such that, when using the valuation interest rate used for basic reserves, (i) is greater than or equal to (ii) below:
    - (i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; and
    - (ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
  - (C) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of

- the first five years after the valuation date;
- (D) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of this paragraph;
  - (E) The appointed actuary may decrease X at any valuation date as long as X continues to meet all the requirements of this paragraph;
  - (F) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapse of any anticipated or actual increase in gross premiums;
  - (G) If X is less than one hundred per cent at any duration for any policy, the following requirements shall be met:
    - (i) The appointed actuary shall annually prepare an actuarial opinion and a memorandum for the company in accordance with the requirements of section 16-169-2;
    - (ii) The appointed actuary shall disclose in the Regulatory Asset Adequacy Issues Summary the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and
    - (iii) The appointed actuary shall annually opine for all policies subject to this subchapter as to whether the mortality rates resulting from the application of X meet the requirements of this paragraph. This opinion shall be supported by an actuarial report, subject to

appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, and take into account relevant emerging experience; or

- (4) Any other table of select mortality factors adopted by the NAIC for the purpose of calculating deficiency reserves.

(c) This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. If the first segment is less than ten years, however, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue. In addition, for policies that have reentry provisions, select mortality factors shall not be used in segments beginning after reentry unless a new policy is actually issued.

(d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium, but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

(e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following:

- (1) Reserves calculated ignoring the guarantee;
- (2) Reserves assuming the guarantee was made at issue; or

(3) Reserves assuming that the policy was issued on the date of the guarantee.

(f) The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including, but not limited to, policies issued prior to the effective date of this subchapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of section 16-169-2. [Eff and comp 02/02/17; comp ] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

**§16-171-905 Calculation of minimum valuation standard for policies, other than universal life policies, with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits.** (a) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, the following adjustments may be made:

- (1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment, and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or
- (2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment, and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the

present value of guaranteed life insurance and endowment benefits for each segment.

- (b) Deficiency reserves.
  - (1) The deficiency reserve at any duration shall be calculated:
    - (A) On a unitary basis if the corresponding basic reserve determined by subsection (a) is unitary;
    - (B) On a segmented basis if the corresponding basic reserve determined by subsection (a) is segmented; or
    - (C) On a segmented basis if the corresponding basic reserve determined by subsection (a) is equal to both the segmented reserve and the unitary reserve.
  - (2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality as specified in section 16-171-904(b), and rate of interest.
  - (3) For the current and all remaining periods, deficiency reserves, if any, shall be calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve, where A is obtained as indicated in section 16-171-904(b).
  - (4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.
- (c) If mean reserves are used, the minimum value of basic reserves may not be less than the tabular cost of insurance for the balance of the policy year. If mid-terminal reserves are used, basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy

anniversary. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. If select mortality factors are used, however, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves, including basic reserves, deficiency reserves, and any reserves held for supplemental benefits that would expire upon contract termination, exclusive of any deduction for policy loans upon termination of the policy, be less than the amount that the policyowner would receive, including the cash surrender value of the supplemental benefits, if any, referred to in subsection (a) (2).

(d) Unusual pattern of guaranteed cash surrender values. The requirements of this subsection are independent of both the segmentation and the unitary process.

- (1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where  $n$  is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
- (2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

- (A)  $n$  is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
    - (i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
    - (ii) The mandatory expiration date of the policy;
  - (B) The net premium for a given year during the  $n$  year period is equal to the product of the net to gross ratio and the respective gross premium; and
  - (C) The net to gross ratio is equal to (i) divided by (ii) as follows:
    - (i) The present value, at the beginning of the  $n$  year period, of death benefits payable during the  $n$  year period plus the present value, at the beginning of the  $n$  year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the  $n$  year period;
    - (ii) The present value, at the beginning of the  $n$  year period, of the scheduled gross premiums payable during the  $n$  year period.
- (3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- (A) One hundred ten per cent of the scheduled gross premium for that year;

- (B) One hundred ten per cent of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
  - (C) Five per cent of the first policy year surrender charge, if any.
- (e) Optional exemption for yearly renewable term ("YRT") reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:
- (1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
  - (2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c); or
  - (3) Deficiency reserves.
    - (A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
    - (B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A).
  - (4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted.
  - (5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

- (6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
- (f) Optional exemption for attained-age-based YRT life insurance policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
  - (1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
  - (2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c); or
  - (3) Deficiency reserves.
    - (A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
    - (B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A).
  - (4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted.
  - (5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:
    - (A) The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are based upon the attained age of the insured, such that the rate for any

given policy at a given attained age of the insured is independent of the year the policy was issued; and

- (B) The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance, and attained age.
- (6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
- (A) The initial period is constant for all insureds of the same sex, risk class, and plan of insurance; or
  - (B) The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and
  - (C) After the initial period of coverage, the policy meets the conditions of paragraph (5).
- (7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this regulation.

(g) Exemption from unitary reserves for certain  $n$ -year renewable term life insurance policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

- (1) The policy consists of a series of  $n$ -year periods, including the first period and all renewal periods, where  $n$  is the same for each period, except that for the final renewal period,  $n$  may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten years and less than twice the size of

the earlier  $n$ -year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

- (2) The guaranteed gross premiums in all  $n$ -year periods are not less than the corresponding net premiums based upon the 1980 CSO Table, with or without the ten-year select mortality factors; and
- (3) There are no cash surrender values in any policy year.

(h) Exemption from unitary reserves for certain juvenile policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

- (1) The insured at issue is age twenty-four or younger;
- (2) Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five, the gross premiums and death benefits are level and there are no cash surrender values; and
- (3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period and death benefits are level for the remainder of the life of the policy. [Eff and comp 02/02/17; comp  
] (Auth: HRS §§431:5-401,  
432:2-201) (Imp: HRS §431:5-307)

**§16-171-906 Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period.** (a) General.

- (1) Policies with a secondary guarantee include:
  - (A) A policy with a guarantee that the policy will remain in force at the

- original schedule of benefits, subject only to the payment of specified premiums;
- (B) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables, with or without ten-year select mortality factors, or any other table adopted; or
  - (C) A policy with any combination of subparagraphs (A) and (B).
- (2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections (b) and (c) shall be recalculated from issue to reflect these changes.
- (3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.
- (4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy

year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads, and expense charges, and the interest crediting rate, which are all guaranteed at issue.

- (5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in section 16-171-904(b)(2), (3), and (4), HAR, may not be used to calculate the one-year valuation premiums.
- (6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(b) Basic reserves for the secondary guarantees. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force. The segments will be determined according to the contract segmentation method as defined in section 16-171-903(b).

(c) Deficiency reserves for the secondary guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in section 16-171-905(b), with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) Minimum reserves. The minimum reserves during the secondary guarantee period are the greater of:

- (1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
- (2) The minimum reserves required by other rules or regulations governing universal life plans." [Eff and comp 02/02/17; comp ] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

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

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

4. These amendments to and compilation of chapter 16-171, Hawaii Administrative Rules, shall take effect on January 1, 2022; provided that if the commissioner determines that the insurance division is unable to implement this rule by January 1, 2022, the insurance division may delay implementation, but in no event shall the delay be in force beyond December 31, 2022.

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 MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

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CATHERINE P. AWAKUNI COLÓN  
Director of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

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Deputy Attorney General

## APPENDIX A: SELECT MORTALITY FACTORS

This appendix contains tables of select mortality factors that are the bases to which the respective percentage of paragraphs 16-171-904(a)(2), (b)(2) and (b)(3) are applied.

The six tables of select mortality factors contained herein include: Table 1 - male aggregate; Table 2 - male nonsmoker; Table 3 - male smoker; Table 4 - female aggregate; Table 5 - female nonsmoker; and Table 6 - female smoker.

These tables apply to both age last birthday and age nearest birthday mortality tables.

For sex-blended mortality tables, compute select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B Table, the calculated select mortality factors are eighty per cent of the appropriate male table in this appendix, plus twenty per cent of the appropriate female table in this appendix.

Table 1  
Male, Aggregate

Issue	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>18</b>	96	98	98	99	99	100	100	90	92	92	92	92	93	93	96	97	98	98	99	100
<b>19</b>	83	84	84	87	87	87	79	79	79	81	81	82	82	82	85	88	91	94	97	100
<b>20</b>	69	71	71	74	74	69	69	67	69	70	71	71	71	71	74	79	84	90	95	100
<b>21</b>	66	68	69	71	66	66	67	66	67	70	70	70	70	71	71	77	83	88	94	100
<b>22</b>	65	66	66	63	63	64	64	64	65	68	68	68	68	69	71	77	83	88	94	100
<b>23</b>	62	63	59	60	62	62	63	63	64	65	65	67	67	69	70	76	82	88	94	100
<b>24</b>	60	56	56	59	59	60	61	61	61	64	64	64	66	67	70	76	82	88	94	100
<b>25</b>	52	53	55	56	58	58	60	60	60	63	62	63	64	67	69	75	81	88	94	100
<b>26</b>	51	52	55	56	58	58	57	61	61	62	63	64	66	69	66	73	80	86	93	100
<b>27</b>	51	52	55	57	58	60	61	61	60	63	63	64	67	66	67	74	80	87	93	100
<b>28</b>	49	51	56	58	60	60	61	62	62	63	64	66	65	66	68	74	81	87	94	100
<b>29</b>	49	51	56	58	60	61	62	62	62	64	64	62	66	67	70	76	82	88	94	100
<b>30</b>	49	50	56	58	60	60	62	63	63	64	62	63	67	68	71	77	83	88	94	100
<b>31</b>	47	50	56	58	60	62	63	64	64	62	63	66	68	70	72	78	83	89	94	100
<b>32</b>	46	49	56	59	60	62	63	66	62	63	66	67	70	72	73	78	84	89	95	100
<b>33</b>	43	49	56	59	62	63	64	62	65	66	67	70	72	73	75	80	85	90	95	100
<b>34</b>	42	47	56	60	62	63	61	63	66	67	70	71	73	75	76	81	86	90	95	100
<b>35</b>	40	47	56	60	63	61	62	65	67	68	71	73	74	76	76	81	86	90	95	100
<b>36</b>	38	42	56	60	59	61	63	65	67	68	70	72	74	76	77	82	86	91	95	100
<b>37</b>	38	45	56	57	61	62	63	65	67	68	70	72	74	76	76	81	86	90	95	100
<b>38</b>	37	44	53	58	61	62	65	66	67	69	69	73	75	76	77	82	86	91	95	100
<b>39</b>	37	41	53	58	62	63	65	65	66	68	69	72	74	76	76	81	86	90	95	100
<b>40</b>	34	40	53	58	62	63	65	65	66	68	68	71	75	76	77	82	86	91	95	100

Effective: October 2009

**Male, Aggregate**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>41</b>	34	41	53	58	62	63	65	64	64	66	68	70	74	76	77	82	86	91	95	100
<b>42</b>	34	43	53	58	61	62	63	63	63	64	66	69	72	75	77	82	86	91	95	100
<b>43</b>	34	43	54	59	60	61	63	62	62	64	66	67	72	74	77	82	86	91	95	100
<b>44</b>	34	44	54	58	59	60	61	60	61	62	64	67	71	74	77	82	86	91	95	100
<b>45</b>	34	45	53	58	59	60	60	60	59	60	63	66	71	74	77	82	86	91	95	100
<b>46</b>	31	43	52	56	57	58	59	59	59	60	63	67	71	74	75	80	85	90	95	100
<b>47</b>	32	42	50	53	55	56	57	58	59	60	65	68	71	74	75	80	85	90	95	100
<b>48</b>	32	41	47	52	54	56	57	57	57	61	65	68	72	73	74	79	84	90	95	100
<b>49</b>	30	40	46	49	52	54	55	56	57	61	66	69	72	73	74	79	84	90	95	100
<b>50</b>	30	38	44	47	51	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100
<b>51</b>	28	37	42	46	49	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100
<b>52</b>	28	35	41	45	49	51	54	56	57	61	66	71	72	74	75	80	85	90	100	100
<b>53</b>	27	35	39	44	48	51	53	55	57	61	67	71	74	75	76	81	86	100	100	100
<b>54</b>	27	33	38	44	48	50	53	55	57	61	67	72	74	75	76	81	100	100	100	100
<b>55</b>	25	32	37	43	47	50	53	55	57	61	68	72	74	75	78	100	100	100	100	100
<b>56</b>	25	32	37	43	47	49	51	54	56	61	67	70	73	74	100	100	100	100	100	100
<b>57</b>	24	31	38	43	47	49	51	54	56	59	66	69	72	100	100	100	100	100	100	100
<b>58</b>	24	31	38	43	48	48	50	53	56	59	64	67	100	100	100	100	100	100	100	100
<b>59</b>	23	30	39	43	48	48	51	53	55	58	63	100	100	100	100	100	100	100	100	100
<b>60</b>	23	30	39	43	48	47	50	52	53	57	100	100	100	100	100	100	100	100	100	100
<b>61</b>	23	30	39	43	49	49	50	52	53	75	100	100	100	100	100	100	100	100	100	100
<b>62</b>	23	30	39	44	49	49	51	52	75	75	100	100	100	100	100	100	100	100	100	100
<b>63</b>	22	30	39	45	50	50	52	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>64</b>	22	30	39	45	50	51	75	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>65</b>	22	30	39	45	50	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>66</b>	22	30	39	45	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>67</b>	22	30	39	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>68</b>	23	32	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>69</b>	23	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>70</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	10

Effective: October 2009

**Male, Aggregate**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>72</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>73</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>74</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>75</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>76</b>	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 2  
Male, Non-Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>18</b>	93	95	96	98	99	100	100	90	92	92	92	92	92	95	95	96	97	98	98	99	100
<b>19</b>	80	81	83	86	87	87	79	79	79	81	81	82	83	83	86	89	92	94	97	100	100
<b>20</b>	65	68	69	72	74	69	69	67	69	70	71	71	72	72	75	80	85	90	95	100	100
<b>21</b>	63	66	68	71	66	66	67	66	67	70	70	70	71	71	73	78	84	89	95	100	100
<b>22</b>	62	65	66	62	63	64	64	64	67	68	68	68	70	70	73	78	84	89	95	100	100
<b>23</b>	60	62	58	60	62	62	63	63	64	67	68	68	67	69	71	77	83	88	94	100	100
<b>24</b>	59	55	56	58	59	60	61	61	63	65	67	66	66	69	71	77	83	88	94	100	100
<b>25</b>	52	53	55	56	58	58	60	60	61	64	64	64	64	67	70	76	82	88	94	100	100
<b>26</b>	51	53	55	56	58	60	61	61	61	63	64	64	66	69	67	74	80	87	93	100	100
<b>27</b>	51	52	55	58	60	60	61	61	62	63	64	66	67	66	67	74	80	87	93	100	100
<b>28</b>	49	52	57	58	60	61	63	62	62	64	66	66	63	66	68	74	81	87	94	100	100
<b>29</b>	49	51	57	60	61	61	62	62	63	64	66	63	65	67	68	74	81	87	94	100	100
<b>30</b>	49	51	57	60	61	62	63	63	63	64	62	63	66	68	70	76	82	88	94	100	100
<b>31</b>	47	50	57	60	60	62	63	64	64	62	63	65	67	70	71	77	83	88	94	100	100
<b>32</b>	46	50	57	60	62	63	64	64	62	63	65	66	68	71	72	78	83	89	94	100	100
<b>33</b>	45	49	56	60	62	63	64	62	63	65	66	68	71	73	74	79	84	90	95	100	100
<b>34</b>	43	48	56	62	63	64	62	62	65	66	67	70	72	74	74	79	84	90	95	100	100
<b>35</b>	41	47	56	62	63	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100	100
<b>36</b>	40	47	56	62	59	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100	100
<b>37</b>	38	45	56	58	59	61	62	63	66	67	67	69	71	73	74	79	84	90	95	100	100
<b>38</b>	38	45	53	58	61	62	63	65	65	67	68	70	72	74	73	78	84	89	95	100	100
<b>39</b>	37	41	53	58	61	62	63	64	65	67	68	70	71	73	73	78	84	89	95	100	100
<b>40</b>	34	41	53	58	61	62	63	64	64	66	67	69	71	73	72	78	83	89	94	100	100

Effective: October 2009

**Male, Non-Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>41</b>	34	41	53	58	61	61	62	62	63	65	65	67	69	71	71	77	83	88	94	100
<b>42</b>	34	43	53	58	60	61	62	61	61	63	64	66	67	69	71	77	83	88	94	100
<b>43</b>	32	43	53	58	60	61	60	60	60	60	62	64	66	68	69	75	81	88	94	100
<b>44</b>	32	44	52	57	59	60	60	59	59	58	60	62	65	67	69	75	81	88	94	100
<b>45</b>	32	44	52	57	59	60	59	57	57	57	59	61	63	66	68	74	81	87	94	100
<b>46</b>	32	42	50	54	56	57	57	56	55	56	59	61	63	65	67	74	80	87	93	100
<b>47</b>	30	40	48	52	54	55	55	54	54	55	59	61	62	63	66	73	80	86	93	100
<b>48</b>	30	40	46	49	51	52	53	53	54	55	57	61	62	63	63	70	78	85	93	100
<b>49</b>	29	39	43	48	50	51	50	51	53	54	57	61	61	62	62	70	77	85	92	100
<b>50</b>	29	37	42	45	47	48	49	50	51	54	57	61	61	61	61	69	77	84	92	100
<b>51</b>	27	35	40	43	45	47	48	50	51	53	57	60	61	61	62	70	77	85	92	100
<b>52</b>	27	34	39	42	44	45	48	49	50	53	56	60	60	62	62	70	77	85	100	100
<b>53</b>	25	31	37	41	44	45	47	49	50	51	56	59	61	61	62	70	77	100	100	100
<b>54</b>	25	30	36	39	43	44	47	48	49	51	55	59	59	61	62	70	100	100	100	100
<b>55</b>	24	29	35	38	42	43	45	48	49	50	56	58	59	61	62	100	100	100	100	100
<b>56</b>	23	29	35	38	42	42	44	47	48	50	55	57	58	59	100	100	100	100	100	100
<b>57</b>	23	28	35	38	42	42	43	45	47	49	53	55	56	100	100	100	100	100	100	100
<b>58</b>	22	28	33	37	41	41	43	45	45	47	51	53	100	100	100	100	100	100	100	100
<b>59</b>	22	26	33	37	41	41	42	44	44	46	50	100	100	100	100	100	100	100	100	100
<b>60</b>	20	26	33	37	41	40	41	42	42	45	100	100	100	100	100	100	100	100	100	100
<b>61</b>	20	26	33	37	41	40	41	42	42	75	100	100	100	100	100	100	100	100	100	100
<b>62</b>	19	25	32	38	40	40	41	42	75	75	100	100	100	100	100	100	100	100	100	100
<b>63</b>	19	25	33	36	40	40	41	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>64</b>	18	24	32	36	39	40	75	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>65</b>	18	24	32	36	39	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>66</b>	18	24	32	36	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>67</b>	18	24	32	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>68</b>	18	24	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>69</b>	18	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>70</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Male, Non-Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>72</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>73</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>74</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>75</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>76</b>	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Table 3  
Male, Smoker**

<b>Issue</b>	<b>Duration</b>																				
	<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>18</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>19</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>20</b>	98	100	100	100	100	100	100	99	99	99	100	99	99	99	100	100	100	100	100	100	100
<b>21</b>	95	98	99	100	95	96	96	95	96	97	97	96	96	96	96	97	98	98	99	99	100
<b>22</b>	92	95	96	90	90	93	93	92	93	95	95	93	93	92	93	94	96	97	99	99	100
<b>23</b>	90	92	85	88	88	89	89	89	90	90	90	90	89	90	92	94	95	97	98	98	100
<b>24</b>	87	81	82	85	84	86	88	86	86	88	88	86	86	88	89	91	93	96	98	98	100
<b>25</b>	77	78	79	82	81	83	83	82	83	85	84	84	84	85	86	89	92	94	97	97	100
<b>26</b>	75	77	79	82	82	83	83	82	83	84	84	84	84	85	81	85	89	92	96	96	100
<b>27</b>	73	75	78	82	82	83	83	82	82	82	82	84	84	80	81	85	89	92	96	96	100
<b>28</b>	71	73	79	82	81	82	83	81	81	82	82	82	80	80	81	85	89	92	96	96	100
<b>29</b>	69	72	78	81	81	82	82	81	81	81	81	77	80	80	81	85	89	92	96	96	100
<b>30</b>	68	71	78	81	81	81	82	81	81	81	76	77	80	80	81	85	89	92	96	96	100
<b>31</b>	65	70	77	81	79	81	82	81	81	76	77	79	81	81	83	86	90	93	97	97	100
<b>32</b>	63	67	77	78	79	81	81	81	76	77	77	80	83	83	85	88	91	94	97	97	100
<b>33</b>	60	65	74	78	79	79	81	76	77	77	79	80	83	85	85	88	91	94	97	97	100
<b>34</b>	57	62	74	77	79	79	75	76	77	79	79	81	83	85	87	90	92	95	97	97	100
<b>35</b>	53	60	73	77	79	75	75	76	77	79	80	82	84	86	88	90	93	95	98	98	100
<b>36</b>	52	59	71	75	74	75	75	76	77	79	79	81	83	85	87	90	92	95	97	97	100
<b>37</b>	49	58	70	71	74	74	75	76	77	78	79	81	84	86	86	89	92	94	97	97	100
<b>38</b>	48	55	66	70	72	74	74	75	76	78	79	81	83	85	87	90	92	95	97	97	100
<b>39</b>	45	50	65	70	72	72	74	74	75	77	79	81	84	86	86	89	92	94	97	97	100
<b>40</b>	41	49	63	68	71	72	73	74	74	76	78	80	83	85	86	89	92	94	97	97	100

Effective: October 2009

**Male, Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>41</b>	40	49	63	68	71	72	72	72	73	75	76	78	81	84	85	88	91	94	97	100
<b>42</b>	40	49	62	68	70	71	71	71	71	73	75	76	81	83	85	88	91	94	97	100
<b>43</b>	39	50	62	67	69	69	70	70	70	71	73	76	79	83	85	88	91	94	97	100
<b>44</b>	39	50	60	66	68	69	68	69	69	69	71	74	79	81	85	88	91	94	97	100
<b>45</b>	37	50	60	66	68	68	68	67	67	67	69	73	78	81	85	88	91	94	97	100
<b>46</b>	37	48	58	63	65	67	66	66	66	67	71	74	78	81	84	87	90	94	97	100
<b>47</b>	36	47	55	61	63	64	64	64	65	67	71	75	79	81	84	87	90	94	97	100
<b>48</b>	35	46	53	58	60	62	63	63	65	67	72	75	79	81	83	86	90	93	97	100
<b>49</b>	34	45	51	56	58	59	61	62	63	67	72	77	80	81	83	86	90	93	97	100
<b>50</b>	34	43	49	53	55	57	60	61	63	67	73	78	80	81	81	85	89	92	96	100
<b>51</b>	32	42	47	52	55	57	60	61	63	67	73	78	80	83	84	87	90	94	97	100
<b>52</b>	32	40	46	50	54	56	60	61	63	67	73	78	81	84	85	88	91	94	100	100
<b>53</b>	30	37	44	49	54	56	59	61	65	67	74	79	83	85	87	90	92	100	100	100
<b>54</b>	30	36	43	48	53	55	59	61	65	67	74	80	84	85	89	91	100	100	100	100
<b>55</b>	29	35	42	47	53	55	59	61	65	67	75	80	84	86	90	100	100	100	100	100
<b>56</b>	28	35	42	47	53	55	57	60	63	68	74	79	83	85	100	100	100	100	100	100
<b>57</b>	28	35	42	47	53	54	57	60	64	67	74	78	81	100	100	100	100	100	100	100
<b>58</b>	26	33	43	48	54	54	56	59	63	67	73	78	100	100	100	100	100	100	100	100
<b>59</b>	26	33	43	48	54	53	57	59	63	66	73	100	100	100	100	100	100	100	100	100
<b>60</b>	25	33	43	48	54	53	56	58	62	66	100	100	100	100	100	100	100	100	100	100
<b>61</b>	25	33	43	49	55	55	57	59	63	75	100	100	100	100	100	100	100	100	100	100
<b>62</b>	25	33	43	50	56	56	58	61	75	75	100	100	100	100	100	100	100	100	100	100
<b>63</b>	24	33	45	51	56	56	59	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>64</b>	24	34	45	51	57	57	75	75	75	75	100	100	100	100	100	100	100	100	100	100
<b>65</b>	24	34	45	52	57	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>66</b>	24	35	45	53	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>67</b>	25	35	45	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>68</b>	25	36	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>69</b>	27	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>70</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Male, Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>72</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>73</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>74</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>75</b>	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
<b>76</b>	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 4

**Female, Aggregate  
Duration**

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	99	100	100	100	100	100	100	100	93	95	96	97	97	100	100	100	100	100	100	100
<b>18</b>	83	83	84	84	84	84	86	78	78	79	82	84	85	88	88	90	93	95	98	100
<b>19</b>	65	66	68	68	68	68	63	63	64	66	69	71	72	74	75	80	85	90	95	100
<b>20</b>	48	50	51	51	51	47	48	48	49	51	56	57	58	61	63	70	78	85	93	100
<b>21</b>	47	48	50	51	47	47	48	49	51	53	57	60	61	64	64	71	78	86	93	100
<b>22</b>	44	47	48	45	47	47	48	49	53	54	60	61	63	64	66	73	80	86	93	100
<b>23</b>	42	45	44	45	47	47	49	51	53	54	61	64	64	67	69	75	81	88	94	100
<b>24</b>	39	40	42	44	47	47	50	51	54	56	64	64	66	69	70	76	82	88	94	100
<b>25</b>	34	38	41	44	47	47	50	53	56	57	64	67	69	71	73	78	84	89	95	100
<b>26</b>	34	38	41	45	49	49	51	56	58	59	66	69	70	73	70	76	82	88	94	100
<b>27</b>	34	38	41	47	50	51	54	57	59	60	69	70	73	70	71	77	83	88	94	100
<b>28</b>	34	37	43	47	53	53	56	59	62	63	70	73	70	72	74	79	84	90	95	100
<b>29</b>	34	38	43	49	54	56	58	60	63	64	73	70	72	74	75	80	85	90	95	100
<b>30</b>	35	38	43	50	56	56	59	63	66	67	70	71	74	75	76	81	86	90	95	100
<b>31</b>	35	38	43	51	56	58	60	64	67	65	71	72	74	75	76	81	86	90	95	100
<b>32</b>	35	39	45	51	56	59	63	66	65	66	72	72	75	76	76	81	86	90	95	100
<b>33</b>	36	39	44	52	58	62	64	65	66	67	72	74	75	76	76	81	86	90	95	100
<b>34</b>	36	40	45	52	58	63	63	66	67	68	74	74	76	76	76	81	86	90	95	100
<b>35</b>	36	40	45	53	59	61	65	67	68	70	75	74	75	76	75	80	85	90	95	100
<b>36</b>	36	40	45	53	55	62	65	67	68	70	74	74	74	75	75	80	85	90	95	100
<b>37</b>	36	41	47	52	57	62	65	67	68	69	72	72	73	75	74	79	84	90	95	100
<b>38</b>	34	41	44	52	57	63	66	68	69	70	72	71	72	74	75	80	85	90	95	100
<b>39</b>	34	40	45	53	58	63	66	68	69	69	70	70	70	73	74	79	84	90	95	100
<b>40</b>	32	40	45	53	58	65	65	67	68	69	70	69	70	73	73	78	84	89	95	100

Effective: October 2009

**Female, Aggregate  
Duration**

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	32	40	45	53	57	63	64	67	68	68	69	69	69	73	74	79	84	90	95	100
42	32	40	45	52	56	61	63	65	66	68	69	68	70	74	75	80	85	90	95	100
43	31	39	45	51	55	59	61	65	65	66	68	69	69	74	77	82	86	91	95	100
44	31	39	45	50	54	58	61	63	64	66	67	68	71	75	78	82	87	91	96	100
45	31	38	44	49	53	56	59	62	63	65	67	68	71	77	79	83	87	92	96	100
46	29	37	43	48	51	54	59	62	63	65	67	69	71	77	78	82	87	91	96	100
47	28	35	41	46	49	54	57	61	62	66	68	69	71	77	77	82	86	91	95	100
48	28	35	41	44	49	52	57	61	63	66	68	71	72	75	77	82	86	91	95	100
49	26	34	39	43	47	52	55	61	63	67	69	71	72	75	75	80	85	90	95	100
50	25	32	38	41	46	50	55	61	63	67	69	72	72	75	74	79	84	90	95	100
51	25	32	38	41	45	50	55	61	63	66	68	69	71	74	74	79	84	90	95	100
52	23	30	36	41	45	51	56	61	62	65	66	68	68	73	73	78	84	89	100	100
53	23	30	36	41	47	51	56	61	62	63	65	66	68	72	72	78	83	100	100	100
54	22	29	35	41	47	53	57	61	61	62	62	66	66	69	70	76	100	100	100	100
55	22	29	35	41	47	53	57	61	61	61	62	63	64	68	69	100	100	100	100	100
56	22	29	35	41	45	51	56	59	60	61	62	63	64	67	100	100	100	100	100	100
57	22	29	35	41	45	50	54	56	58	59	61	62	63	100	100	100	100	100	100	100
58	22	30	36	41	44	49	53	56	57	57	61	62	100	100	100	100	100	100	100	100
59	22	30	36	41	44	48	51	53	55	56	59	100	100	100	100	100	100	100	100	100
60	22	30	36	41	43	47	50	51	53	55	100	100	100	100	100	100	100	100	100	100
61	22	29	35	39	42	46	49	50	52	80	100	100	100	100	100	100	100	100	100	100
62	20	28	33	39	41	45	47	49	80	80	100	100	100	100	100	100	100	100	100	100
63	20	28	33	38	41	44	46	80	80	80	100	100	100	100	100	100	100	100	100	100
64	19	27	32	36	40	42	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	19	25	30	35	39	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	19	25	30	35	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	19	25	30	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	19	25	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	19	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Female, Aggregate**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>72</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>73</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>74</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>75</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>76</b>	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 5

## Female, Non-Smoker

## Issue

## Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	96	98	98	98	98	99	99	99	92	92	93	95	95	97	99	99	99	100	100	100
<b>18</b>	78	80	80	80	80	81	81	74	75	75	78	79	82	83	85	88	91	94	97	100
<b>19</b>	60	62	63	63	63	65	59	59	60	60	64	67	67	70	72	78	83	89	94	100
<b>20</b>	42	44	45	45	45	42	42	42	45	45	50	51	53	56	58	66	75	83	92	100
<b>21</b>	41	42	44	45	41	42	42	44	47	47	51	53	54	57	59	67	75	84	92	100
<b>22</b>	39	41	44	41	41	42	44	45	49	49	54	56	57	58	60	68	76	84	92	100
<b>23</b>	38	41	38	40	41	42	44	46	49	50	56	57	58	60	62	70	77	85	92	100
<b>24</b>	36	36	38	40	41	42	46	47	50	51	58	59	60	62	63	70	78	85	93	100
<b>25</b>	32	34	37	40	41	43	46	49	51	53	59	60	62	63	64	71	78	86	93	100
<b>26</b>	32	34	37	41	43	45	47	50	53	53	60	62	63	64	62	70	77	85	92	100
<b>27</b>	32	34	38	43	46	47	49	51	53	55	62	63	64	62	62	70	77	85	92	100
<b>28</b>	30	34	39	43	47	49	51	53	56	58	63	63	61	62	63	70	78	85	93	100
<b>29</b>	30	35	40	45	50	51	52	55	58	59	64	61	62	63	63	70	78	85	93	100
<b>30</b>	31	35	40	46	51	52	53	56	59	60	62	62	63	65	65	72	79	86	93	100
<b>31</b>	31	35	40	46	51	53	55	58	60	58	62	62	63	65	65	72	79	86	93	100
<b>32</b>	32	35	40	45	51	53	56	59	57	58	62	63	63	65	64	71	78	86	93	100
<b>33</b>	32	36	41	47	52	55	58	55	58	59	63	63	65	65	65	72	79	86	93	100
<b>34</b>	33	36	41	47	52	55	55	57	58	59	63	65	64	65	64	71	78	86	93	100
<b>35</b>	33	36	41	47	52	53	57	58	59	61	63	64	64	64	64	71	78	86	93	100
<b>36</b>	33	36	41	47	49	53	57	58	59	61	63	64	63	64	63	70	78	85	93	100
<b>37</b>	32	36	41	44	49	53	57	58	59	60	62	62	61	62	63	70	78	85	93	100
<b>38</b>	32	37	39	45	50	54	57	58	60	60	61	61	61	62	61	69	77	84	92	100
<b>39</b>	30	35	39	45	50	54	57	58	60	59	60	60	59	60	61	69	77	84	92	100
<b>40</b>	28	35	39	45	50	54	56	57	59	59	60	59	59	59	60	68	76	84	92	100

Effective: October 2009

**Female, Non-Smoker  
Duration**

**Issue**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>41</b>	28	35	39	45	49	52	55	55	58	57	58	59	58	59	60	68	76	84	92	100
<b>42</b>	27	35	39	44	49	52	54	55	56	57	57	57	58	60	61	69	77	84	92	100
<b>43</b>	27	34	39	44	47	50	53	53	55	55	56	57	56	60	61	69	77	84	92	100
<b>44</b>	26	34	38	42	47	50	52	53	54	55	55	55	56	61	62	70	77	85	92	100
<b>45</b>	26	33	38	42	45	48	51	51	52	53	54	55	56	61	62	70	77	85	92	100
<b>46</b>	24	32	37	40	43	47	49	51	52	53	54	55	56	60	61	69	77	84	92	100
<b>47</b>	24	30	35	39	42	45	47	49	51	53	54	55	56	59	60	68	76	84	92	100
<b>48</b>	23	30	35	37	40	44	47	49	50	53	54	55	55	59	57	66	74	83	91	100
<b>49</b>	23	29	33	35	39	42	45	48	50	53	54	55	55	57	56	65	74	82	91	100
<b>50</b>	21	27	32	34	37	41	44	48	50	53	54	55	55	56	55	64	73	82	91	100
<b>51</b>	21	26	30	34	37	41	44	48	49	51	53	53	54	55	55	64	73	82	91	100
<b>52</b>	20	25	30	33	37	41	44	47	48	50	50	51	51	55	53	62	72	81	100	100
<b>53</b>	19	24	29	32	37	41	43	47	48	48	49	49	51	52	52	62	71	100	100	100
<b>54</b>	18	24	29	32	37	41	43	45	47	47	47	49	49	51	51	61	100	100	100	100
<b>55</b>	18	23	28	32	37	41	43	45	45	45	46	46	47	50	50	100	100	100	100	100
<b>56</b>	18	23	28	32	36	39	42	44	44	45	46	46	46	49	100	100	100	100	100	100
<b>57</b>	18	23	28	31	35	38	41	42	44	44	45	45	46	100	100	100	100	100	100	100
<b>58</b>	17	23	26	31	35	36	38	41	41	42	45	45	100	100	100	100	100	100	100	100
<b>59</b>	17	23	26	30	33	35	38	39	40	41	44	100	100	100	100	100	100	100	100	100
<b>60</b>	17	23	26	30	32	34	36	38	39	40	100	100	100	100	100	100	100	100	100	100
<b>61</b>	17	22	25	29	32	33	35	36	38	80	100	100	100	100	100	100	100	100	100	100
<b>62</b>	16	22	25	28	30	32	34	35	80	80	100	100	100	100	100	100	100	100	100	100
<b>63</b>	16	20	24	28	30	32	34	80	80	80	100	100	100	100	100	100	100	100	100	100
<b>64</b>	14	21	24	27	29	30	80	80	80	80	100	100	100	100	100	100	100	100	100	100
<b>65</b>	15	19	23	25	28	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>66</b>	15	19	23	25	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>67</b>	15	19	22	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>68</b>	13	18	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>69</b>	13	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>70</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Female, Non-Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>72</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>73</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>74</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>75</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>76</b>	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 6

Female, Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
<b>0-15</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>16</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>17</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>18</b>	99	100	100	100	100	100	100	95	96	97	100	100	100	100	100	100	100	100	100	100	100
<b>19</b>	87	89	92	92	92	92	84	84	86	86	92	93	95	96	99	99	99	100	100	100	100
<b>20</b>	74	77	80	80	80	73	73	73	75	77	83	83	86	88	90	92	94	96	98	100	100
<b>21</b>	71	74	78	78	71	71	73	74	77	79	85	86	88	89	90	92	94	96	98	100	100
<b>22</b>	68	71	75	70	71	71	73	74	78	79	88	90	89	89	92	94	95	97	98	100	100
<b>23</b>	65	69	67	70	70	70	73	77	79	81	89	90	90	92	92	94	95	97	98	100	100
<b>24</b>	62	60	64	69	70	70	74	77	79	81	92	90	92	93	93	94	96	97	99	100	100
<b>25</b>	53	58	63	67	69	70	74	78	81	82	92	93	93	95	95	96	97	98	99	100	100
<b>26</b>	53	58	63	69	71	72	75	79	82	82	93	93	95	96	90	92	94	96	98	100	100
<b>27</b>	52	56	63	70	74	74	78	81	82	84	93	95	95	90	90	92	94	96	98	100	100
<b>28</b>	52	56	64	71	75	77	79	82	85	86	95	95	90	92	92	94	95	97	98	100	100
<b>29</b>	51	56	64	71	78	78	81	84	86	88	95	90	90	92	92	94	95	97	98	100	100
<b>30</b>	51	56	64	72	79	79	82	85	88	89	90	90	92	93	93	94	96	97	99	100	100
<b>31</b>	51	56	64	72	78	81	84	84	88	84	90	90	92	93	93	94	96	97	99	100	100
<b>32</b>	51	56	64	71	78	81	85	86	84	85	90	90	92	94	93	94	96	97	99	100	100
<b>33</b>	51	57	62	71	78	82	85	83	84	85	90	92	93	93	93	94	96	97	99	100	100
<b>34</b>	51	56	62	71	78	82	81	83	85	86	90	92	92	94	93	94	96	97	99	100	100
<b>35</b>	51	56	62	71	78	79	83	84	85	86	90	91	91	93	93	94	96	97	99	100	100
<b>36</b>	49	56	62	71	74	79	83	84	85	86	90	90	91	93	92	94	95	97	98	100	100
<b>37</b>	48	55	62	67	74	79	83	84	85	86	89	90	89	92	91	93	95	96	98	100	100
<b>38</b>	47	55	57	66	72	77	81	84	86	86	87	88	88	90	91	93	95	96	98	100	100
<b>39</b>	45	50	57	66	72	77	81	83	85	86	86	87	86	89	90	92	94	96	98	100	100
<b>40</b>	41	50	57	66	72	77	81	83	84	85	86	86	86	89	89	91	93	96	98	100	100

Effective: October 2009

**Female, Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>41</b>	40	50	57	65	71	76	79	81	83	84	85	86	85	89	90	92	94	96	98	100
<b>42</b>	40	49	57	65	69	74	77	80	82	83	84	85	86	90	92	94	95	97	98	100
<b>43</b>	39	49	55	63	69	73	76	78	80	82	83	84	85	92	93	94	96	97	99	100
<b>44</b>	39	48	55	62	67	71	75	78	80	80	82	84	86	93	96	97	98	98	99	100
<b>45</b>	37	47	55	61	65	70	73	76	78	80	81	84	86	94	97	98	98	99	99	100
<b>46</b>	36	46	53	59	63	68	71	75	77	79	83	85	86	93	96	97	98	98	99	100
<b>47</b>	34	44	51	57	62	66	70	75	77	80	83	85	86	93	94	95	96	98	99	100
<b>48</b>	34	44	50	54	60	64	69	74	77	80	84	86	87	92	92	94	95	97	98	100
<b>49</b>	33	42	48	53	58	63	68	74	77	81	84	86	87	92	91	93	95	96	98	100
<b>50</b>	31	41	46	51	57	61	67	74	77	81	85	87	87	91	90	92	94	96	98	100
<b>51</b>	30	39	45	51	56	61	67	74	75	80	83	85	85	90	90	92	94	96	98	100
<b>52</b>	29	38	45	50	56	62	68	74	75	79	81	83	84	90	90	92	94	96	100	100
<b>53</b>	28	37	43	49	57	62	68	73	74	77	79	81	83	89	89	91	93	100	100	100
<b>54</b>	28	36	43	49	57	63	69	73	74	75	78	80	81	87	89	91	100	100	100	100
<b>55</b>	26	35	42	49	57	63	69	73	73	74	76	78	79	86	87	100	100	100	100	100
<b>56</b>	26	35	42	49	56	62	67	71	72	74	76	78	79	85	100	100	100	100	100	100
<b>57</b>	26	35	42	49	55	61	66	69	72	73	76	78	79	100	100	100	100	100	100	100
<b>58</b>	28	36	43	49	55	59	63	68	69	72	76	78	100	100	100	100	100	100	100	100
<b>59</b>	28	36	43	49	54	57	63	67	68	70	76	100	100	100	100	100	100	100	100	100
<b>60</b>	28	36	43	49	53	57	61	64	67	69	100	100	100	100	100	100	100	100	100	100
<b>61</b>	26	35	42	48	52	56	59	63	66	80	100	100	100	100	100	100	100	100	100	100
<b>62</b>	26	33	41	47	51	55	58	62	80	80	100	100	100	100	100	100	100	100	100	100
<b>63</b>	25	33	41	46	51	55	57	80	80	80	100	100	100	100	100	100	100	100	100	100
<b>64</b>	25	33	40	45	50	53	80	80	80	80	100	100	100	100	100	100	100	100	100	100
<b>65</b>	24	32	39	44	49	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>66</b>	24	32	39	44	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>67</b>	24	32	39	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>68</b>	24	32	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>69</b>	24	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>70</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Female, Smoker**

**Issue**

**Duration**

<b>Age</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20+</b>
<b>71</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>72</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>73</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>74</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>75</b>	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
<b>76</b>	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
<b>77</b>	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
<b>78</b>	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>79</b>	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>80</b>	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>81</b>	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>82</b>	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>83</b>	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>84</b>	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>85+</b>	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Appendix

SELECT MORTALITY FACTORS

Male, Aggregate

Issue						Duration															
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+	
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	96	98	98	99	99	100	100	90	92	92	92	92	93	93	96	97	98	98	99	100	100
19	83	84	84	87	87	87	79	79	79	81	81	82	82	82	85	88	91	94	97	100	100
20	69	71	71	74	74	69	69	67	69	70	71	71	71	71	74	79	84	90	95	100	100
21	66	68	69	71	66	66	67	66	67	70	70	70	71	71	71	77	83	88	94	100	100
22	65	66	66	63	63	64	64	64	65	68	68	68	68	69	71	77	83	88	94	100	100
23	62	63	59	60	62	62	63	63	64	65	65	67	67	69	70	76	82	88	94	100	100
24	60	56	56	59	59	60	61	61	61	64	64	64	66	67	70	76	82	88	94	100	100
25	52	53	55	56	58	58	60	60	60	63	62	63	64	67	69	75	81	88	94	100	100
26	51	52	55	56	58	58	57	61	61	62	63	64	66	69	66	73	80	86	93	100	100
27	51	52	55	57	58	60	61	61	60	63	63	64	67	66	67	74	80	87	93	100	100
28	49	51	56	58	60	60	61	62	62	63	64	66	65	66	68	74	81	87	94	100	100
29	49	51	56	58	60	61	62	62	62	64	64	62	66	67	70	76	82	88	94	100	100
30	49	50	56	58	60	60	62	63	63	64	62	63	67	68	71	77	83	88	94	100	100
31	47	50	56	58	60	62	63	64	64	62	63	66	68	70	72	78	83	89	94	100	100
32	46	49	56	59	60	62	63	66	62	63	66	67	70	72	73	78	84	89	95	100	100
33	43	49	56	59	62	63	64	62	65	66	67	70	72	73	75	80	85	90	95	100	100
34	42	47	56	60	62	63	61	63	66	67	70	71	73	75	76	81	86	90	95	100	100
35	40	47	56	60	63	61	62	65	67	68	71	73	74	76	76	81	86	90	95	100	100
36	38	42	56	60	59	61	63	65	67	68	70	72	74	76	77	82	86	91	95	100	100
37	38	45	56	57	61	62	63	65	67	68	70	72	74	76	76	81	86	90	95	100	100
38	37	44	53	58	61	62	65	66	67	69	69	73	75	76	77	82	86	91	95	100	100
39	37	41	53	58	62	63	65	65	66	68	69	72	74	76	76	81	86	90	95	100	100
40	34	40	53	58	62	63	65	65	66	68	68	71	75	76	77	82	86	91	95	100	100



Issue	Male, Non-Smoker																			
	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	93	95	96	98	99	100	100	90	92	92	92	92	95	95	96	97	98	98	99	100
19	80	81	83	86	87	87	79	79	79	81	81	82	83	83	86	89	92	94	97	100
20	65	68	69	72	74	69	69	67	69	70	71	71	72	72	75	80	85	90	95	100
21	63	66	68	71	66	66	67	66	67	70	70	70	71	71	73	78	84	89	95	100
22	62	65	66	62	63	64	64	64	67	68	68	68	70	70	73	78	84	89	95	100
23	60	62	58	60	62	62	63	63	64	67	68	68	67	69	71	77	83	88	94	100
24	59	55	56	58	59	60	61	61	63	65	67	66	66	69	71	77	83	88	94	100
25	52	53	55	56	58	58	60	60	61	64	64	64	64	67	70	76	82	88	94	100
26	51	53	55	56	58	60	61	61	61	63	64	64	66	69	67	74	80	87	93	100
27	51	52	55	58	60	60	61	61	62	63	64	66	67	66	67	74	80	87	93	100
28	49	52	57	58	60	61	63	62	62	64	66	66	63	66	68	74	81	87	94	100
29	49	51	57	60	61	61	62	62	63	64	66	63	65	67	68	74	81	87	94	100
30	49	51	57	60	61	62	63	63	63	64	62	63	66	68	70	76	82	88	94	100
31	47	50	57	60	60	62	63	64	64	62	63	65	67	70	71	77	83	88	94	100
32	46	50	57	60	62	63	64	64	62	63	65	66	68	71	72	78	83	89	94	100
33	45	49	56	60	62	63	64	62	63	65	66	68	71	73	74	79	84	90	95	100
34	43	48	56	62	63	64	62	62	65	66	67	70	72	74	74	79	84	90	95	100
35	41	47	56	62	63	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
36	40	47	56	62	59	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
37	38	45	56	58	59	61	62	63	66	67	67	69	71	73	74	79	84	90	95	100
38	38	45	53	58	61	62	63	65	65	67	68	70	72	74	73	78	84	89	95	100
39	37	41	53	58	61	62	63	64	65	67	68	70	71	73	73	78	84	89	95	100
40	34	41	53	58	61	62	63	64	64	66	67	69	71	73	72	78	83	89	94	100



Male, Smoker

Issue	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
19	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
20	98	100	100	100	100	100	100	99	99	99	100	99	99	99	100	100	100	100	100	100
21	95	98	99	100	95	96	96	95	96	97	97	96	96	96	96	97	98	98	99	100
22	92	95	96	90	90	93	93	92	93	95	95	93	93	92	93	94	96	97	99	100
23	90	92	85	88	88	89	89	89	90	90	90	90	89	90	92	94	95	97	98	100
24	87	81	82	85	84	86	88	86	86	88	88	86	86	88	89	91	93	96	98	100
25	77	78	79	82	81	83	83	82	83	85	84	84	84	85	86	89	92	94	97	100
26	75	77	79	82	82	83	83	82	83	84	84	84	84	85	81	85	89	92	96	100
27	73	75	78	82	82	83	83	82	82	82	82	84	84	80	81	85	89	92	96	100
28	71	73	79	82	81	82	83	81	81	82	82	82	80	80	81	85	89	92	96	100
29	69	72	78	81	81	82	82	81	81	81	81	77	80	80	81	85	89	92	96	100
30	68	71	78	81	81	81	82	81	81	81	76	77	80	80	81	85	89	92	96	100
31	65	70	77	81	79	81	82	81	81	76	77	79	81	81	83	86	90	93	97	100
32	63	67	77	78	79	81	81	81	76	77	77	80	83	83	85	88	91	94	97	100
33	60	65	74	78	79	79	81	76	77	77	79	80	83	85	85	88	91	94	97	100
34	57	62	74	77	79	79	75	76	77	79	79	81	83	85	87	90	92	95	97	100
35	53	60	73	77	79	75	75	76	77	79	80	82	84	86	88	90	93	95	98	100
36	52	59	71	75	74	75	75	76	77	79	79	81	83	85	87	90	92	95	97	100
37	49	58	70	71	74	74	75	76	77	78	79	81	84	86	86	89	92	94	97	100
38	48	55	66	70	72	74	74	75	76	78	79	81	83	85	87	90	92	95	97	100
39	45	50	65	70	72	72	74	74	75	77	79	81	84	86	86	89	92	94	97	100
40	41	49	63	68	71	72	73	74	74	76	78	80	83	85	86	89	92	94	97	100



Female, Aggregate

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	99	100	100	100	100	100	100	100	93	95	96	97	97	100	100	100	100	100	100	100
18	83	83	84	84	84	84	86	78	78	79	82	84	85	88	88	90	93	95	98	100
19	65	66	68	68	68	68	63	63	64	66	69	71	72	74	75	80	85	90	95	100
20	48	50	51	51	51	47	48	48	49	51	56	57	58	61	63	70	78	85	93	100
21	47	48	50	51	47	47	48	49	51	53	57	60	61	64	64	71	78	86	93	100
22	44	47	48	45	47	47	48	49	53	54	60	61	63	64	66	73	80	86	93	100
23	42	45	44	45	47	47	49	51	53	54	61	64	64	67	69	75	81	88	94	100
24	39	40	42	44	47	47	50	51	54	56	64	64	66	69	70	76	82	88	94	100
25	34	38	41	44	47	47	50	53	56	57	64	67	69	71	73	78	84	89	95	100
26	34	38	41	45	49	49	51	56	58	59	66	69	70	73	70	76	82	88	94	100
27	34	38	41	47	50	51	54	57	59	60	69	70	73	70	71	77	83	88	94	100
28	34	37	43	47	53	53	56	59	62	63	70	73	70	72	74	79	84	90	95	100
29	34	38	43	49	54	56	58	60	63	64	73	70	72	74	75	80	85	90	95	100
30	35	38	43	50	56	56	59	63	66	67	70	71	74	75	76	81	86	90	95	100
31	35	38	43	51	56	58	60	64	67	65	71	72	74	75	76	81	86	90	95	100
32	35	39	45	51	56	59	63	66	65	66	72	72	75	76	76	81	86	90	95	100
33	36	39	44	52	58	62	64	65	66	67	72	74	75	76	76	81	86	90	95	100
34	36	40	45	52	58	63	63	66	67	68	74	74	76	76	76	81	86	90	95	100
35	36	40	45	53	59	61	65	67	68	70	75	74	75	76	75	80	85	90	95	100
36	36	40	45	53	55	62	65	67	68	70	74	74	74	75	75	80	85	90	95	100
37	36	41	47	52	57	62	65	67	68	69	72	72	73	75	74	79	84	90	95	100
38	34	41	44	52	57	63	66	68	69	70	72	71	72	74	75	80	85	90	95	100
39	34	40	45	53	58	63	66	68	69	69	70	70	70	73	74	79	84	90	95	100
40	32	40	45	53	58	65	65	67	68	69	70	69	70	73	73	78	84	89	95	100





Female, Non-Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Female, Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	99	100	100	100	100	100	100	100	95	96	97	100	100	100	100	100	100	100	100	100	100
19	87	89	92	92	92	92	84	84	86	86	92	93	95	96	99	99	99	100	100	100	100
20	74	77	80	80	80	73	73	73	75	77	83	83	86	88	90	92	94	96	98	100	100
21	71	74	78	78	71	71	73	74	77	79	85	86	88	89	90	92	94	96	98	100	100
22	68	71	75	70	71	71	73	74	78	79	88	90	89	89	92	94	95	97	98	100	100
23	65	69	67	70	70	70	73	77	79	81	89	90	90	92	92	94	95	97	98	100	100
24	62	60	64	69	70	70	74	77	79	81	92	90	92	93	93	94	96	97	99	100	100
25	53	58	63	67	69	70	74	78	81	82	92	93	93	95	95	96	97	98	99	100	100
26	53	58	63	69	71	72	75	79	82	82	93	93	95	96	90	92	94	96	98	100	100
27	52	56	63	70	74	74	78	81	82	84	93	95	95	90	90	92	94	96	98	100	100
28	52	56	64	71	75	77	79	82	85	86	95	95	90	92	92	94	95	97	98	100	100
29	51	56	64	71	78	78	81	84	86	88	95	90	90	92	92	94	95	97	98	100	100
30	51	56	64	72	79	79	82	85	88	89	90	90	92	93	93	94	96	97	99	100	100
31	51	56	64	72	78	81	84	84	88	84	90	90	92	93	93	94	96	97	99	100	100
32	51	56	64	71	78	81	85	86	84	85	90	90	92	94	93	94	96	97	99	100	100
33	51	57	62	71	78	82	85	83	84	85	90	92	93	93	93	94	96	97	99	100	100
34	51	56	62	71	78	82	81	83	85	86	90	92	92	94	93	94	96	97	99	100	100
35	51	56	62	71	78	79	83	84	85	86	90	91	91	93	93	94	96	97	99	100	100
36	49	56	62	71	74	79	83	84	85	86	90	90	91	93	92	94	95	97	98	100	100
37	48	55	62	67	74	79	83	84	85	86	89	90	89	92	91	93	95	96	98	100	100
38	47	55	57	66	72	77	81	84	86	86	87	88	88	90	91	93	95	96	98	100	100
39	45	50	57	66	72	77	81	83	85	86	86	87	86	89	90	92	94	96	98	100	100
40	41	50	57	66	72	77	81	83	84	85	86	86	86	86	89	91	93	96	98	100	100



#### **IV. New Business – Before Public Hearing**

##### **B. Discussion and Action on the Proposed Amendments to HAR Title 3 Chapter 40 Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps and Other Record Data, promulgated by DAGS**

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

Department or Agency: DAGS

Administrative Rule Title and Chapter: Title 3, Chapter 40

Chapter Name: Rules Governing Public Use Of The Land Survey Division Maps, Descriptions, And Records, And Schedule Of Fees For Services, Maps, And Other Record Data

Contact Person/Title: Reid Siarot, State Land Surveyor

Phone Number: 586-0390

E-mail Address: reid.k.siarot@hawaii.gov Date: 6/8/2021

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes  No  (If Yes, please provide webpage address and when and where rules may be viewed in person ☺)

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

I. Rule Description: New  Repeal  Amendment  Compilation

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

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

\* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

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

Any small business submitting land court and file plan maps for checking and processing will have to comply with the proposed fee schedule increase from \$10.00 to \$15.00 per hour. Small businesses may pass on these additional costs to their clients.

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

The direct cost to small businesses for the survey division to verify and check maps on the ground will increase from a maximum of \$418.00 to a maximum of \$625.00 for areas of up to 100 acres, a maximum of \$1,930.00 to a maximum of \$2,875.00 for areas of up to 1000 acres, and for areas of over 1,000 acres the fee of an additional \$0.84 per acre or fraction thereof will increase to \$1.25 per acre or fraction thereof. The cost for processing subdivisions and designations of easements of registered lands and file plans as well as checking surveys and maps as to form and mathematical correctness but not on the ground will increase from \$10.00 to \$15.00 an hour.

**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.

The current fee schedule is outlined in question number 2. Fees have not increased since 1990.

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

The proposed fee schedule is outlined in question number 2. The proposed fee schedule increase is approximately 50% higher than the current fee schedule.

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

Material costs and salaries have increased over time and the fees for the services outlined above do not cover the actual costs incurred by the Survey Division to provide said services.

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

The proposed fee schedule has been increased by approximately 50%, the maximum allowable increase in State service fees as authorized by HRS §92-28.

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.

Significant monetary costs to the agency associated with the proposed fee schedule increase are not anticipated. However, based on monies collected from fees for checking and processing land court and file plan maps between fiscal years 2016 to 2020, it is approximated that an additional \$4600 will be collected per fiscal year and added to the General Fund.

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.

The majority of direct costs to small businesses from the proposed increase in the fee schedule come from the hourly rates the Survey Division charges for checking maps. Small Businesses may mitigate some of these costs by reducing the number of hours needed by the Survey Division to check and correct maps. The Survey Division provides guidance on-line and has conducted training for small businesses to help improve the quality of their maps.

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

There are no alternatives that could be implemented in lieu of the proposed fee schedule increase.

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

The actual cost to the Survey Division for providing the services mentioned above is approximately 3 times greater than the fees collected at the rate set in the current fee schedule. These costs can only be mitigated by an increase in the fee schedule.

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

Survey Division has not involved small business in the development of the proposed rule changes.

- 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.

There were no recommendations made by small businesses.

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

The proposed fee schedule increases are not imposing any more stringent a standard than what is currently in place.

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.

The proposed fee schedule increases will allow the survey division to continue to provide necessary subdivision and easement processing, and map and survey checking services to the public for registered lands and file plans.

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

none

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

none

- 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.

none

- 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.

none

\* \* \*

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

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

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

AMENDMENT AND COMPILATION OF  
CHAPTER 3-40  
HAWAII ADMINISTRATIVE RULES

SUMMARY

1. §§3-40-1, 3-40-2, 3-40-3, 3-40-4, 3-40-5 and 3-40-6 are amended.
2. Chapter 40 is compiled.

Simultaneous Amendment and  
Compilation of Chapter 40 Ramseyer Format

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Title 3-40,  
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 3-40, Hawaii Administrative Rules, entitled "Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 40

RULES GOVERNING PUBLIC USE OF THE LAND SURVEY  
DIVISION MAPS, DESCRIPTIONS, AND RECORDS, AND SCHEDULE  
OF FEES FOR SERVICES, MAPS, AND OTHER RECORD DATA

- §3-40-1 Purpose and applicability
- §3-40-2 Definitions
- §3-40-3 Public use of land survey division maps, descriptions, documents, and other material
- §3-40-4 Conduct
- §3-40-5 Certification of authenticity
- §3-40-6 Fees for maps and services

Historical Note: Chapter 40 of Title 3 is based on rules governing the Fee Schedule of the Division of Land Survey, and includes the rules governing the Public Use of State Survey Records. [Eff 11/20/64; R 6/1/81]

**§3-40-1 Purpose and applicability.** (a) The purpose of these rules is to prescribe the procedures for the use of public records, maps, and other materials in the custody of the land survey division, department of accounting and general services, and the fees for reproduction and special services.

(b) These rules shall apply to all persons using the records and other materials in the custody of the land survey division, including employees of the State of Hawaii or its political subdivisions. [Eff 6/1/81; am and comp 8/30/97; comp] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

**§3-40-2 Definitions.** As used in these rules, unless the context specifically or otherwise indicates, the following definitions apply:

"Calculation books" means books used by individual members of the staff of the land survey division to perform calculations and other functions related to job assignments.

"CSF No. \_\_\_\_" means copy surveys furnished of all maps and descriptions prepared from the inception of the office of the surveyor general and continuing to the present land survey division, that have been assigned numbered designations.

"Field book registered no. \_\_\_\_" means books used by the surveyors to record field data obtained from surveys performed by government surveyors or private surveyors for the government that have been assigned numbered designations.

"\_\_\_\_ File carton no. \_\_\_\_" means a special carton for each respective island that is used to store and identify maps and descriptions of government subdivisions such as homestead subdivisions, houselots, agricultural lots, and industrial lease lots, that has been assigned numbered designations.

"\_\_\_\_ File folder no. \_\_\_\_" means a special file folder for each respective island that is used to store and identify maps and descriptions of government subdivisions such as houselots, agricultural lots, and industrial lots that has been assigned numbered designations.

"File Plan" means a plan of land prepared in the form of a file plan that is accepted for recordation by the registrar of the state bureau of conveyances in sections 502-17, 502-18, and 502-19, HRS.

"Folder no. \_\_\_\_" means a folder used by the division to file correspondence, job requests, and other documents.

"HSS Plat \_\_\_\_" means Hawaii state survey plat maps usually twenty-one inches by thirty-two inches in size that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division since statehood.

"HTS Plat \_\_\_\_" means Hawaii territory plat maps usually twenty-one inches by thirty-two inches in size that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division during territorial status.

"Land court" means the land court of the State as defined in chapter 501, HRS.

"Land survey division" is a division of the department of accounting and general services located in room 210 of Kalanimoku building, 1151 Punchbowl Street, Honolulu, and its contents.

~~["HSS Plat \_\_\_\_" means Hawaii state survey plat maps usually twenty one inches by thirty two inches in size that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division since statehood.~~

~~"HTS Plat \_\_\_\_" means Hawaii territory plat maps usually twenty one inches by thirty two inches in size that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division during territorial status.]~~

"Registered map no. \_\_\_\_" means official government survey maps and maps from private sources that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division from 1871 to present.

[Eff 6/1/81; am and comp 8/30/97; comp] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

**§3-40-3 Public use of land survey division maps, descriptions, documents, and other material.** (a) All persons shall be serviced by authorized members of the staff of the land survey division. Admittance to the storage vault shall be restricted to authorized personnel only.

(b) The use of maps, records, and other material in fragile condition shall be regulated at the discretion of the state land surveyor.

(c) All persons including land survey division staff members shall exercise all possible care to prevent damage to items being used.

(d) No person shall remove any maps, records, and other material from the land survey division premises. Only the state land surveyor or the assistant state land surveyor is authorized to waive this rule.

~~[(e) The printing of reproducible media, such as sepia, xerox vellum, or mylar, of registered maps, plat maps, land court maps, or file plan maps is not permitted.]~~ [Eff 6/1/81; am and comp 8/30/97; comp]  
(Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

**§3-40-4 Conduct.** (a) No person shall handle maps, folders, field books, or other material without proper authorization.

(b) Eating or drinking while handling or viewing any material or documents is prohibited. [Eff 6/1/81; comp 8/30/97; comp] (Auth: HRS §§26-6, 26-38)  
(Imp: HRS §§26-6, 26-38)

**§3-40-5 Certification of authenticity.** Except as provided in section 3-40-3, certified copies of maps and descriptions, documents, and other materials in the custody of the land survey division may be made. The state land surveyor, assistant state land surveyor, or a

land survey division staff member designated in writing by the comptroller or the state land surveyor are authorized to sign the certification. [Eff 6/1/81; am and comp 8/30/97; comp] (Auth: HRS §92-21) (Imp: HRS §92-21)

**§3-40-6 Fees for maps and services.** (a) The following fees shall be charged for ~~{dialzo and other}~~ reproductions of maps, descriptions, field notes and correspondence that are under the custody of the land survey division. Completed reproductions shall not be released unless all fees due are paid in full.

- (1) For a ~~{dialzo blueiline}~~ copy of a plan of land, ~~{ \$3 for the first square foot plus fifteen cents for each additional square foot or fraction thereof based on the size of the plan, effective July 1, 1997; \$4.50 for the first square foot plus fifteen cents per additional square foot, effective January 1, 1998; }~~ \$6 for the first square foot plus fifteen cents per additional square foot ~~{, effective January 1, 1999};~~
- (2) For a ~~{Xerographic}~~ copy of any record up to ~~{eight and one half}~~ eleven inches by ~~{thirteen}~~ seventeen inches, \$1 per page;
- (3) For a scanned copy of any maps, descriptions, field notes or correspondence recorded on a compact disc or digital versatile disc, \$2 per disc;
- ~~{(3)}~~ (4) Certification of only those products under the custody of the land survey division will be provided at ~~{ \$1.50 per certification, effective July 1, 1997; }~~ \$2 per certification ~~{, effective January 1, 1998};~~
- ~~{(4)}~~ (5) Other reproductions including maps having no reproducible media or use of other reproduction materials shall be accommodated only by special arrangement.

(b) The following ~~{Fees}~~ fees shall be charged for services ~~{relating}~~ related to the ~~{discharge of duties as set forth by the land court of the State}~~ shall be at the current rate as established by rule 107 of the rules of the land court} checking and processing of land court maps, referred by the land court for check and report. Completed maps shall not be released unless all fees due are paid in full.

- (1) For verifying and checking map on the ground, for lots of one acre or less, \$125.00; an addition of \$5.00 an acre or fraction thereof for all areas over one acre and up to one hundred acres; an addition of \$2.50 an acre or fraction thereof for all areas over one hundred acres and up to one thousand acres; and addition of \$1.25 an acre or fraction thereof for all areas over one thousand acres;
- (2) Any expense incurred for air transportation, rental of ground transportation, and per diem for the survey crew shall be charged to the applicant;
- (3) For checking survey and map as to form and mathematical correctness but not on the ground, \$15.00 an hour;
- (4) For processing subdivisions and designation of easements of registered land, and for checking same as to form and mathematical correctness but not on the ground, \$15.00 an hour.

(c) Fees charged for services related to the checking and processing of file ~~{plan maps}~~ plans submitted to the bureau of conveyances for recordation shall be ~~{at the current rate as established by rule 107 of the rules of the land court}~~ \$15.00 an hour. Completed maps shall not be released unless all fees due are paid in full.

(d) Whenever applicable by statute, the above fees will not be charged to federal, state, or county governments." [Eff 6/1/81; am and comp ]  
(Auth: HRS §§92-21, 501-218, 502-17) (Imp: HRS §§92-21, 501-218, 502-17)

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

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

4. These amendments to and the compilation of chapter 3-40, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing is a copy 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.

\_\_\_\_\_  
Curt Otaguro, State Comptroller  
Department of Accounting and  
General Services

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 40

RULES GOVERNING PUBLIC USE OF THE LAND SURVEY  
DIVISION MAPS, DESCRIPTIONS, AND RECORDS, AND SCHEDULE  
OF FEES FOR SERVICES, MAPS, AND OTHER RECORD DATA

- §3-40-1 Purpose and applicability
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- §3-40-5 Certification of authenticity
- §3-40-6 Fees for maps and services

Historical Note: Chapter 40 of Title 3 is based on rules governing the Fee Schedule of the Division of Land Survey, and includes the rules governing the Public Use of State Survey Records. [Eff. 11/20/64; R JUNE 01 1981]

§3-40-1 Purpose and applicability. (a) The purpose of these rules is to prescribe the procedures for the use of public records, maps, and other materials in the custody of the land survey division, department of accounting and general services, and the fees for reproduction and special services.

(b) These rules shall apply to all persons using the records and other materials in the custody of the land survey division, including employees of the State of Hawaii or its political subdivisions. [Eff. 6/1/81; am and comp August 30, 1997] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

§3-40-2 Definitions. As used in these rules, unless the context specifically or otherwise indicates, the following definitions apply:

"Calculation books" means books used by individual members of the staff of the land survey division to perform calculations and other functions related to job assignments.

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"File Plan" means a plan of land prepared in the form of a file plan that is accepted for recordation by the registrar of the state bureau of conveyances in sections 502-17, 502-18, and 502-19, HRS.

"Folder no. \_\_\_\_" means a folder used by the division to file correspondence, job requests, and other documents.

"Land court" means the land court of the State as defined in chapter 501, HRS.

"Land survey division" is a division of the department of accounting and general services located in room 210 of Kalanimoku building, 1151 Punchbowl Street, Honolulu, and its contents.

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"HTS Plat \_\_\_\_" means Hawaii territory plat maps usually twenty-one inches by thirty-two inches in size that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division during territorial status.

"Registered map no. \_\_\_\_" means official government survey maps and maps from private sources that have been assigned numbered designations indicating official acceptance as maps in the custody of the land survey division from 1871 to present.

[Eff. 6/1/81; am and comp August 30, 1997] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

§3-40-3 Public use of land survey division maps, descriptions, documents, and other material. (a) All persons shall be serviced by authorized members of the staff of the land survey division. Admittance to the storage vault shall be restricted to authorized personnel only.

(b) The use of maps, records, and other material in fragile condition shall be regulated at the discretion of the state land surveyor.

(c) All persons including land survey division staff members shall exercise all possible care to prevent damage to items being used.

(d) No person shall remove any maps, records, and other material from the land survey division premises. Only the state land surveyor or the assistant state land surveyor is authorized to waive this rule.

(e) The printing of reproducible media, such as sepia, xerox vellum, or mylar, of registered maps, plat maps, land court maps, or file plan maps is not permitted. [Eff. 6/1/81; am and comp August 30, 1997] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

§3-40-4 Conduct. (a) No person shall handle maps, folders, field books, or other material without proper authorization.

(b) Eating or drinking while handling or viewing any material or documents is prohibited. [Eff. 6/1/81; comp August 30, 1997] (Auth: HRS §§26-6, 26-38) (Imp: HRS §§26-6, 26-38)

§3-40-5 Certification of authenticity. Except as provided in section 3-40-3, certified copies of maps and descriptions, documents, and other materials in the custody of the land survey division may be made. The state land surveyor, assistant state land surveyor, or a land survey division staff member designated in writing by the comptroller or the state land surveyor are authorized to sign the certification. [Eff. 6/1/81; am and comp August 30, 1997] (Auth: HRS §92-21) (Imp: HRS §92-21)

§3-40-6 Fees for maps and services.

(a) The following fees shall be charged for diazo and other reproductions of maps, descriptions, field notes and correspondence that are under the custody of the land survey division.

- (1) For a diazo blueline copy of a plan of land, \$3 for the first square foot plus fifteen cents for each additional square foot or fraction thereof based on the size of the plan, effective July 1, 1997; \$4.50 for the first square foot plus fifteen cents per additional square foot, effective January 1, 1998; \$6 for the first square foot plus fifteen cents per additional square foot, effective January 1, 1999;
- (2) Xerographic copy of any record up to eight and one-half inches by thirteen inches, \$1 per page;

- (3) Certification of only those products under the custody of the land survey division will be provided at \$1.50 per certification, effective July 1, 1997; \$2 per certification, effective January 1, 1998;
- (4) Other reproductions including maps having no reproducible media or use of other reproduction materials shall be accommodated only by special arrangement.

(b) Fees charged for services relating to the discharge of duties as set forth by the land court of the State shall be at the current rate as established by rule 107 of the rules of the land court.

(c) Fees charged for services related to the checking and processing of file plan maps submitted to the bureau of conveyances for recordation shall be at the current rate as established by rule 107 of the rules of the land court. Completed maps shall not be released unless all fees due are paid in full.

(d) Whenever applicable by statute, the above fees will not be charged to federal, state, or county governments. [Eff. 6/1/81; am and comp August 30, 1997]  
(Auth: HRS §§92-21, 501-218, 502-17) (Imp: HRS §§92-21, 501-218, 502-17)

Chapter 40, Title 3, Administrative Rules, were adopted on \_\_\_\_\_, following a public hearing held on 5/15/97 after public notice was given in Honolulu Advertiser on April 3, 1997 and in Maui News, Garden Island, West Hawaii Today and Hawaii Tribune-Herald, Ltd., on April 8, 1997.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Sam Callejo  
Sam Callejo  
Comptroller

APPROVED:

/s/ Benjamin J. Cayetano  
BENJAMIN J. CAYETANO  
GOVERNOR  
STATE OF HAWAII

Dated: 8/17/97

APPROVED AS TO FORM:

/s/ Pat Ohara  
Deputy Attorney General

August 20, 1997  
Filed

**IV. New Business – Before Public Hearing**  
**C. Discussion and Action on the Proposed  
Amendments to Section 5A-6.4 of the  
Kauai County Code, Real Property Tax  
Classification Rules, promulgated by the  
County of Kauai Department of Finance**

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

Date: 6/24/2021

Department or Agency: County of Kauai Department of Finance

Administrative Rule Title and Chapter: Real Property Tax Classification Rules

Chapter Name: Section 5A-6.4 of the Kauai County Code

Contact Person/Title: Mike Hubbard, Real Property Tax Manager

E-mail: mhubbard@kauai.gov Phone: 241-4228

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.

The proposed rule changes further clarify "use" categories that define tax classifications/tax rates for all properties within the County of Kauai. For small businesses, these rules will define tax classifications based on the type of operations they conduct.

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.

For businesses that operate on parcels that also have residential dwellings, they may be required to submit annual long term leases to remain at a lower tax rate. This would impact properties valued at over \$1.3M.

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.).

Tax Classification is determined by actual use. The County Council then assigns a tax rate to each tax classification based on budgetary needs.

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.

The County of Kauai does not stand to generate any revenue from the revisions to these administrative rules. These changes represent clarifications and updates according to newly passed and or revised ordinances.

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.  
These revisions should help clarify what types of operations fall in certain tax classifications.

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.  
N/A

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

- 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.

N/A

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.

N/A

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.  
Our tax on use requires us to assign the tax classification according to its actual use. When multiple uses exist the use with the highest tax rate is assigned. This is done on all properties within the County of Kauai.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
Section 5A-6.4 of the Kauai County Code
- 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](mailto: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>

**COUNTY OF KAUA`I DEPARTMENT OF FINANCE**

Pursuant to the authority granted to the Director of Finance under the Kaua`i Code Section 5A-11.2, the Director proposes to amend the Department of Finance Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on August 2, 2021 via the Microsoft Teams online platform at 9:00 a.m., or soon thereafter.

**DEPARTMENT OF FINANCE  
COUNTY OF KAUA`I  
REAL PROPERTY ASSESSMENT DIVISION  
REAL PROPERTY TAX CLASSIFICATION RULES**

**Administrative Rules of the Director of Finance Relating to Real Property Tax Rate Classifications under Section 5A-6.4 of the Kaua`i County Code 1987, as amended.**

§RP-12-1 **Purpose.** These rules implement the provisions of Section 5A-6.4 of the Kaua`i County Code (“K.C.C.”) relating to tax rate classification. These rules are further intended to ensure that the referenced provisions are applied in a uniform and equitable manner. These rules and any definitions in these rules apply only to K.C.C. § 5A-6.4.

§RP-12-2 **Authority.** These rules are promulgated pursuant to K.C.C. § 5A-1.2(j) under the Director of Finance’s authority to effectuate the purpose of K.C.C. § 5A-6.4.

§RP-12-3 **Retroactive effective date.** These rules shall be effective and applied retroactively to the furthest extent allowable by law.

§RP-12-4 **Definitions.** As used in these rules, except as otherwise required by context:

“Actual use” means how the owner uses the property as of the date of assessment.

“Definite established uses” includes categories of actual uses included in a general class, but the general class is not limited to the included definite established uses.

“Home office” means a portion of the taxpayers’ property dedicated to work-related activities but is not advertised or operated as a place of business.

“Household” means a single person or a number of related or unrelated people who reside in a living unit.

“Living unit” means an apartment, condominium, house, portion of a house, or structure ~~[occupied by a household.]~~ designed or intended for occupancy by a person(s).

“Long term rental” means a residential rental agreement for a period of at least one hundred and eighty days. ~~[This also includes month to month tenancy, if it is the same tenant for at least one hundred and eighty days.]~~ Rental agreements must be signed by the owner, signature by the owner’s agent is not sufficient.

“Owner” is defined in K.C.C. § 5A-7.1 and K.C.C. § 5A-1.1.

“Place of business” means a structure where a person engages in a trade or business evidenced by customer parking, client traffic, advertising, or signage.

“Principal residence” means the primary location that a person inhabits. Criteria for determination of a principal residence are outlined in the Department of Finance Home and Related Exemption Rules Section RP-10.4.

“Productive” means producing a benefit or income, which depend on the physical attributes, locational attributes, legal entitlements, or improvements.

“Short term rental” means a residential rental agreement for a period of less than one hundred and eighty days.

§RP-12-5 **Procedure.** Real property shall be classified into a general class provided in K.C.C. § 5A-6.4 for tax rate purposes. Assignment to a general class is based on the actual use of the property on October 1<sup>st</sup> preceding each tax year.

§RP-12-6 **Clarification of general classes.** The general classes are defined and definite established uses for tax classification are provided. The definite established uses provided are not exhaustive. If a property’s actual use is included in the definite established uses, the property shall be assigned to that class. If a property’s actual use is not found in the definite established uses, or a definite established use is not provided, the definitions as well as definite established uses are to be read together to properly classify a property.

(a) “Residential” includes use as a residence

(1) Definite established uses: long-term rental, second home exclusively used by the owner(s), vacant residential structures, ~~[and]~~ or a part time residence not occupied as a ~~[principle]~~ principal residence.

(b) “Vacation rental” includes the renting out or exchange of an apartment, condominium, living unit or house on a temporary basis to a person(s) as an alternative to a hotel for a period of less than one hundred-eighty consecutive days.

(1) A property subject to the Hawai’i Transient Accommodation Tax, other than those classified as Hotel & Resort, will be considered a vacation rental.

(2) Advertising of any sort which offers a property or portion of a property as a vacation rental or short term rental shall constitute prima facie evidence of the operation of a vacation rental.

(3) Engaging or advertising on Home Exchange websites.

(c) “Commercial” includes the use of the property to generate income, monetary gain or economic benefit.

(1) Definite established uses: golf course, retail space, commercial office space, shopping centers, strip malls, hospital facilities, medical offices, dental offices, restaurants, theatres, fitness centers, churches excluding those defined in Kaua'i County Code 5A-11.10(b)(3) and (b)(4), schools, recreational enterprises ~~[conducted for profit]~~, amusement enterprises ~~[conducted for profit]~~, ceremonial enterprises ~~[conducted for profit]~~, places where commodities or services are offered for sale, ag tourism, and spa facilities.

(2) The retail sale of value-added products ~~[grown and]~~ sold on agricultural lands does ~~[not]~~ constitute a commercial use~~[-unless a commercial use permit is granted]~~. However, the retail sale of any ~~[other product constitutes commercial use.]~~ raw fruits or vegetables grown and harvested on the subject property of it's associated farms does not constitute commercial use.

(3) Commercial use does not include a home office as defined in these rules.

(d) “Industrial” includes pertaining to manufacturing or processing, including the performance of mechanical or chemical operations.

(1) Definite established uses: manufacturing facilities, warehouse space, auto repair, paint or body shops, equipment baseyards, chemical production, chemical storage, mini-storage space, energy production facilities, communication towers, commercial kitchens, agricultural campuses, and processing and packing facilities.

(e) “Agricultural” includes the science or practice of farming, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products.

(1) Definite established uses: farming or plant cultivation, ranching livestock, beekeeping, dairy farming, forestry, aquaculture, plant nurseries, horticulture structures, equestrian buildings, ~~[agricultural production facility, agricultural packaging facility,]~~ and permitted farm worker housing.

(f) “Conservation” is a classification reserved for vacant properties zoned within a conservation state or county land use district.

(g) “Hotel and Resort” includes an establishment providing rooms and amenities for transient tenants as a place where people go for rest, recreation, or sport.

(1) Definite established uses: hotel operations, resorts and amenities, motels, and timeshare units.

(h) "Homestead" means a property which is used exclusively as the owner's principal residence, provided that the owner has applied for and has been granted a home exemption according to K.C.C. § 5A-11.4.

(1) Criteria for qualification:

(A) The property must be the owner's principal residence occupying the home for more than two hundred seventy (270) calendar days (the calendar year shall begin on the date of assessment, October 1, and end on September 30 of the following year).

~~[(B) Submittal of a State of Hawai'i Resident Income Tax Return, or any other sufficient documentation approved by the Director of Finance, with a reported address in the State of Hawai'i.~~

~~(i) Sufficient documentation may include the documents referred to in Section RP-10.4, Home and Related Exemption Rules.~~

~~(ii) If the owner is not required to file an Income Tax Return, a notarized affidavit must be filed indicating the owner's principle address and indicating the dates of residency in the County of Kaua'i.~~

~~(iii) Non-resident and part-year resident State of Hawai'i income tax returns do not qualify for the home exemption.]~~

(B) The owner files an income tax return as a resident of the State of Hawai'i with a reported address within the County of Kaua'i the year prior to the effective date of the exemption. Non-resident and part-year resident State of Hawai'i income tax returns do not qualify.

(C) Presentation of a valid Hawai'i Driver's License, Hawai'i State Identification, or Resident aliens possessing a valid resident alien card claiming residency only in Hawai'i with an address on Kaua`i.

(D) Is stationed in the County under military orders of the United States.

(2) Properties that have multiple living units must have owner-occupants with qualified home use exemptions and long-term affordable rental occupants in the other living units to be eligible.

(3) Principal residence properties that have either agriculturally dedicated lands or licensed day cares located on the same property and no other additional uses may be eligible.

(4) A home office, defined in these rules, may be included in a homestead.

(i) “Residential Investor” is a classification for ~~residential~~ properties that do not qualify for the home exemption, are improved with a dwelling unit(s), not vacant land, and have an assessed value of ~~[two million dollars (\$2,000,000.00)]~~ one million three hundred thousand dollars (\$1,300,000.00) or more.

(1) This class does not include a property where all living units are rented on a long term rental basis. In order for property to be excluded from the Residential Investor tax class based on all living units being rented on a long term rental basis, each of the following conditions are required:

(A) The rental/lease agreement cannot expire on or before October 1<sup>st</sup> preceding each tax year. Those submitting rental/lease agreements expiring October 31 or before must provide a renewal agreement not later than November 15.

(B) Owners must not rent any of the living units to themselves personally, or via a related corporation, co-partnership, or company.

(C) Tenants must be the age 18 years or older.

(D) Renters/lessees must occupy the property as their principal residence.

(E) Owners whose property is currently classified as Residential Investor and who seek a lower tax rate based on all living units being rented on a long term rental basis must submit an application to the real property division by September 30 before the relevant tax year for a lower tax rate, and the application must include as an attachment a long-term lease for each living unit.

(j) “Commercialized Home Use” is applicable to parcels utilized for multiple purposes, one of which is use as the taxpayer’s principal residence as of the date of assessment, provided that the taxpayer has been granted a home use exemption on the property pursuant to K.C.C. § 5A-11.4.

§RP-12-7 **Vacant land.** Vacant land shall be classified as zoned until actual use is established. If the property has multiple zonings, then an assessment is made for each zoning. Once actual use is established, the tax classification will be assigned to the entire parcel.

(a) “Vacant land” means unimproved land~~[, or a portion of the property verified by a special use permit,]~~ that lacks the essential appurtenant improvements required to make it productive.

(b) The following general classes are zonings for vacant land and actual uses: residential, commercial, industrial, agricultural, and hotel and resort.

§RP-12-8 **Partially Complete.** A partially complete property shall be classified as zoned until actual use of the improvements has been established.

(a) "Partially complete" means a property, that shall be added to the assessment list pursuant to K.C.C. § 5A-8.1(e), where active construction exists, but has not yet been completed establishing the actual use. This includes structures with completion between twenty percent (20%) and sixty nine percent (69%). Completion percentage is determined by the "Appraisal and Component Rating Worksheet for Incomplete Buildings" incorporated into these rules by reference. This worksheet is available from the Real Property Assessment Division.

(b) At seventy percent (70%) completion, actual use may be established. Once actual use is established, the tax classification will be assigned to the entire parcel.

(c) Pursuant to K.C.C. § 5A-8.1(e), the Assessor may conduct a site inspection to determine whether a building is twenty percent (20%) complete or more.

§RP-12-9 **Criteria to change tax classification.** The following proof must be submitted, if applicable, to the Real Property Assessment Division by September 30<sup>th</sup> of the year prior to the desired change.

(a) Cessation of all previous use on the property.

(b) Removal of all signage indicating the previous use of the property.

(c) Removal of all advertisements, referencing the previous use of the property.

~~[(d) A copy of the County of Kaua'i Planning Department's closing letter or email acknowledging compliance with any use violations.]~~

(d) Removal of all special permits, tax licenses, use licenses or entitlements granted to the property. If applicable, acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.

(e) A newly completed Use Survey indicating current actual use(s).

(f) ~~[Affidavit]~~ Written statement or letter from the owner describing the current use(s) of the property and the last known date of prior use, or last booking date.

~~[(g) Additional requirements to change from a "Vacation Rental" to a different class.~~

~~(1) Acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.~~

~~(2) An affidavit indicating the last pre-paid or reserved booking of the vacation or short term rental use on the property.~~

~~(3) Proof of cancellation of Transient Accommodations Tax License.~~

~~(4) A copy of a current long term lease and most recent general excise tax license filing.]~~

The Department of Finance reserves the right to audit records to ensure compliance.

§RP-12-10 **Appeal**. The owner may appeal the property's tax rate classification as in the case of an appeal from an assessment, as provided in K.C.C. § 5A-6.4(g).

§RP-12-11 **Severability**. If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

**IV. New Business – Before Public Hearing**  
**D. Discussion and Action on the Proposed**  
**Amendments to HAR Title 5 Chapter**  
**5-11, Notaries Public, promulgated by**  
**Department of the Attorney General**

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

Date: 5/14/2021

Department or Agency: Department of the Attorney General

Administrative Rule Title and Chapter: Department of Attorney General Title 5 Chapter 5-11

Chapter Name: Notaries Public

Contact Person/Title: Dean Soma, Deputy Attorney General

E-mail: Dean.A.Soma@hawaii.gov Phone: 808-586-0817

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: Once the hearing notice is published, it will be available on the Lt. Gov.'s website.

**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.  
Mobile notaries and other small businesses employing notary publics would have to train their notaries regarding the new rules and changes in record retention.
  
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.  
The only change in fines are an additional \$25 for failure to update status changes. Indirect costs are possible recordkeeping changes as the new rules require the notaries to retain their journals for a minimum of 10 years.

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.  
Proposed \$25 fine for failure to update status changes.
  - c. Reason for the new or increased fee or fine.  
Notifies the Attorney General of any changes in status that would affect the notary's ability to continue to perform as a notary public.
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).  
Fine is consistent with other fines under HAR §5-11-46
- 
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.  
Assuming that 25% of notaries public will also apply to become remote online notaries public, the Department of the Attorney General expects to collect approximately \$50,000 in new application, renewal, commission and exam fees. The moneys are expected to be used for online services, additional equipment, and costs associated with testing and training.

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.  
Because of the additional costs, remote online notaries public are allowed to charge \$25 for any notarial acts performed for a remotely located individual.
  
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.  
None
  
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.  
Notaries public wanting to become remote online notaries public as well as the business utilizing them such as financial institutions and title companies will benefit. Also, remote online notarization allows for social distancing to prevent spread of diseases for the safety of both notaries and signers.
  
7. How the agency involved small business in the development of the proposed rules.  
Once finalized, the Department of the Attorney General will post it to its website as well as emailing all current notaries public of proposed rules for comment. The public including small business owners will have the opportunity to give testimonies at hearing.
  - 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.  
Not yet, but will consider any recommendations when received.



**RECEIVED**

By SBRRB at 9:47 am, Jun 21, 2021

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11  
Hawaii Administrative Rules

July 1, 2021

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

"HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 5-11

NOTARIES PUBLIC

Subchapter 1 General provisions

§5-11-1	Purpose
<u>§5-11-1.5</u>	<u>Definitions</u>
§5-11-2	Commission required to act as a notary public
§5-11-3	Conduct
§5-11-4	Powers
<u>§5-11-4.5</u>	<u>Prohibited acts</u>
§5-11-5	[ <del>Official</del> ] Notary seal
§5-11-6	Official signature
§5-11-7	Acceptable forms of identification of signers
§5-11-8	Acknowledgments; jurats

§5-11-9	<del>[Record book; suspension for failure to deposit]</del> <u>Journal</u>
§5-11-10	Notification and filing of names, addresses, and changes; failure to notify
<u>§5-11-10.5</u>	<u>Notification of status change</u>
§5-11-11	<del>[Display of commission; hours of business]</del> Repealed
§5-11-12	Term of commission
§5-11-13	<del>[Forfeited Commission]</del> Repealed
§5-11-14	<del>[Suspended Commission]</del> Repealed
§5-11-15	<del>[Revoked Commission]</del> Repealed
§5-11-16	Resignation of commission
§5-11-17	Surrender of notary public commission certificate <del>[,]</del> and <u>notary seal[, and record book, journal]</u> ; retention of journal; failure to comply
§5-11-18	Loss, misplacement, or theft of notary public certificate, <u>notary seal, or [record book] journal</u>

#### Subchapter 2 Applications

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

#### Subchapter 3 Examinations

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

#### Subchapter 4 Disciplinary Sanctions

§5-11-39	Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions
<u>§5-11-40</u>	<u>Forfeited commission</u>



§5-11-1

<u>§5-11-72</u>	<u>technology</u> <u>Electronic signature and</u> <u>electronic notary seal; electronic</u> <u>stamping device; electronic</u> <u>notarial certificate</u>
<u>§5-11-73</u>	<u>Retention and repositories of</u> <u>electronic journal and audiovisual</u> <u>recording</u>

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§5-11-1 Purpose.** This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the [~~provision~~] provisions thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-8)

**§5-11-1.5 Definitions.** As used in this chapter, unless the context requires otherwise:

"Affirmation" or "oath" means a solemn pledge made orally or in writing by a person to attest to the truth of the person's statement.

"Appear personally" means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange proof of the signer's signature and identity with that person; or
- (2) Interacting with a remotely located individual by means of communication

technology that complies with the provisions of section 456-23, HRS, and this chapter.

"Conviction" means a formal judgment entered by a court based on a verdict or plea of guilty or a plea of nolo contendere.

"Department" means the department of the attorney general.

"Electronic notary seal" or "electronic seal" means an electronic image that contains information attached to or logically associated with an electronic record and that contains the notary public's name, the notary public's commission number, and the words "notary public" and "State of Hawaii".

"Electronic signature" has the same meaning as in section 456-1.6, HRS.

"Identity proofing" has the same meaning as in section 456-23, HRS.

"Notarial act" has the same meaning as in section 456-1.6, HRS.

"Notary public" has the same meaning as in section 456-1.6, HRS.

"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Remote online notary public" has the same meaning as in section 456-23, HRS.

"Signature" has the same meaning as in section 456-1.6, HRS.

"Stamping device" has the same meaning as in section 456-1.6, HRS. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23)  
(Imp: HRS §§456-1, 456-2, 456-13, 456-22, 456-23, 456-24, 456-25)

**§5-11-2 Commission required to act as a notary public.** No person shall act as a notary public, [~~or~~] advertise or represent oneself as a notary public, or

§5-11-3

perform notarial acts, without a current commission [~~previously~~] obtained from the attorney general. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-26)

**§5-11-3 Conduct.** Every notary public shall perform [~~notary public duties~~] notarial acts in accordance with chapter 456, HRS, this chapter, [~~and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these may be amended.~~] other laws in Hawaii, and official guidelines (e.g., Notary Manual) that pertain to notarial acts and shall follow recognized industry best practice standards that do not conflict with Hawaii law. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-7)

**§5-11-4 Powers.** Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff 5/5/08; comp 3/12/15; comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19, 456-23)

**§5-11-4.5 Prohibited acts.** (a) A notary public shall not do any of the following:

- (1) Refuse to perform a lawful and proper notarial act because of the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics;

advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;

- (2) Base the charging of a fee for performing a notarial act or the amount of the fee on the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (3) Notarize the notary public's own signature;
- (4) Perform a notarial act if the notary public has an actual and apparent conflict of interest regarding the transaction in question;
- (5) Deliver a signed notarial certificate to another person and authorize that person to attach the certificate to a document outside of the notary public's presence; or
- (6) Provide legal advice, unless the notary public is an attorney licensed to practice law in this State.

(b) Nothing contained in this section shall be construed to limit or deny the enforcement of any provision of chapters 456 and 502, HRS, or this chapter.

(c) Nothing contained in subsection (a)(2) shall be construed to prohibit reducing or waiving a fee at the notary public's discretion, provided that doing so is not done for an unlawful or discriminatory purpose.

[Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-1.5, 456-2, 456-9, 456-17, 456-22, 456-23, 456-24, 456-26)

**§5-11-5 [Official] Notary seal.** (a) A notary public shall obtain and keep ~~[an official]~~ a rubber stamp notary seal ~~[of one type, either an engraved seal or a rubber stamp facsimile seal, or]~~ which, when stamped or impressed upon a tangible document, shall ~~[be inscribed]~~ clearly show the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii". The notary public shall not possess more than one rubber stamp notary seal at a time.

(b) The notary public shall authenticate all of the notary public's ~~[official]~~ notarial acts, attestations, certifications, and instruments with the notary public's [official] notary seal[-] contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

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

(d) The notary public shall safeguard and maintain sole control of the notary seal.

~~[(d)]~~ (e) The notary public shall surrender the rubber stamp notary [public's] seal to the attorney general within ninety days of resignation[-, removal from office,] from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal. Failure to comply with this requirement may result in ~~[a]~~ an administrative fine [not more than] of \$200. [Eff 5/5/08; am and comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-23)

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

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

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-3, 456-23)

**§5-11-7 Acceptable forms of identification of signers.** [~~No acknowledgment, jurat, or other instrument shall be taken,~~] A notary public shall not perform a notarial act unless [the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.] there is proof of the signer's signature and identity as defined in section 456-1.6, HRS, or as otherwise provided in sections 5-11-69 and 5-11-70. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-15, 456-20, 456-22)

**§5-11-8 Acknowledgments; jurats.** Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public[-]

contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the ~~[official stamp or]~~ notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed~~[, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document]~~. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

**~~§5-11-9 [Record book; suspension for failure to deposit.]~~ Journal.** (a) A notary public shall ~~[record all of the notary public's transactions, as prescribed in chapter 456, HRS.]~~ create, maintain, and retain a journal in which the notary public chronicles all notarial acts performed by the notary public in accordance with the requirements of section 456-15, HRS, and this chapter.

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

(c) The pages of the ~~[record book]~~ tangible journal shall be consecutively numbered.

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

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

(f) The notary public shall ~~[deposit]~~ retain the

notary public's [~~record book with the attorney general within ninety days of the end date of the notary public's commission.~~] journal for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the journal upon resignation from, or revocation, abandonment, or suspension of the notary public's commission, or the expiration of a commission without renewal. At any time, the journal shall be subject to an audit pursuant to section 456-15, HRS. Failure to comply with this requirement[~~, after notice to the notary and opportunity to be heard, shall cause the notary's commission to be suspended until the attorney general receives the notary record books for the prior commission term.~~ ~~In addition, the failure to deposit notary record books]~~ may result in [a] an administrative fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-15)

**§5-11-10 Notification and filing of names, addresses, and changes; failure to notify.** (a) Each notary public shall file with the attorney general the notary public's name, employer, residence and business addresses, [~~and~~] telephone numbers, email address, and occupation [~~with the attorney general,~~] and shall notify the attorney general of any change, in writing, within thirty days of the change.

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

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

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

(d) Failure to provide [~~written~~] timely written notification to the attorney general of any change shall subject the notary public to a \$25 administrative fine. Failure to provide [~~written~~] timely written notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary public to a \$50 administrative fine. [Eff 5/5/08; am and comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

**§5-11-10.5 Notification of status change.** (a) Each notary public or the notary public's representative or guardian shall notify the attorney general in writing of an adjudication of the notary public's incompetency within thirty days of the adjudication.

(b) Each notary public shall notify the attorney general in writing of a criminal conviction against the notary public of any felony, or a misdemeanor related to the qualifications, functions, or duties of the notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.

(c) Each notary public shall notify the attorney general in writing of any professional disciplinary decision issued against the notary public in this or another jurisdiction within thirty days of the disciplinary decision.

(d) Failure to provide timely written notification to the attorney general of any change, as prescribed under this section, shall subject the notary public to an administrative fine of \$25 per violation. [Eff and comp ] (Auth:

HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

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

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

~~(c) This section shall not apply to notaries in government service.] [Eff 5/5/08; comp 03/12/15; R ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

**§5-11-12 Term of commission.** The term of [office] commission of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of [office,] commission, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24, 456-26)

~~[§ 5-11-13. **Forfeited Commission.**—(a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal~~

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

~~(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission.] [Eff 5/5/08; comp 03/12/15; R ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

~~[**§ 5-11-14. Suspended Commission.**— No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited.] [Eff 5/5/08; comp 03/12/15; R ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

~~[**§ 5-11-15. Revoked Commission.**— A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants.] [Eff 5/5/08; comp 03/12/15; R ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

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

commission, and shall:

(1) Surrender the notary public's commission certificate~~[,]~~ and rubber stamp notary seal~~[, and notarial record books]~~ as provided in ~~[section]~~ sections 5-11-5(e) and 5-11-17(a)~~[,]~~ and provide to the attorney general the location of the journal as provided in section 5-11-9(f); and

(2) Cease conducting all notarial services.

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

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

[Eff 5/5/08; comp 3/12/15; am and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-15, 456-24)

**§5-11-17 Surrender of notary public commission certificate~~[,]~~ and notary seal~~[, and record book, journal]~~; retention of journal; failure to comply.**

(a) Within ninety days of resignation~~[, removal from office,]~~ from, or revocation or abandonment of, a commission, or the expiration of a ~~[term of office]~~ commission without renewal, the notary public shall:

(1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;

(2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and

(3) ~~[Deposit]~~ Retain the notary public's ~~[record book with]~~ journal and inform the attorney general~~[,]~~ of the location of the journal.

(b) Upon the death of ~~[the]~~ a current notary public, the notary public's employer ~~[or]~~, personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection ~~[(a)-]~~ (a)(1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

~~[(e)]~~ (d) Failure to comply with subsection (a)(2) may result in [a] an administrative fine of not more than \$200. Failure to comply with subsection (a)(3) or (c) may result in [a] an administrative fine of no[te] less than \$50 and no[te] more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. [Complete] Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission. [Eff 5/5/08; am and comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-7, 456-15, 456-24)

**§5-11-18 Loss, misplacement, or theft of notary public certificate, notary seal, or ~~[record book-]~~ journal.** Within ten days after loss, misplacement, or theft of the notary public's ~~[official]~~ notary seal or ~~[notarial record book]~~ journal or both, a notary public shall ~~[deliver]~~ transmit written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. Failure to comply with this section shall result in an an

[\$25] administrative fine[-] of \$20. [Eff 5/5/08; am  
and comp 3/12/15; am and comp ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp:  
HRS §§456-3, 456-9, 456-15)

SUBCHAPTER 2

APPLICATIONS

**§5-11-21 Application for notary public**

**commission.** (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
- (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
- (3) A letter of justification from the applicant's employer[-] or, if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. [~~The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.~~]

(b) The application may require the applicant to provide the following:

- (1) The applicant's legal name;
- (2) Verification that the applicant is at least

- eighteen years of age;
- (3) The applicant's current residence, business, ~~[and]~~ mailing, and email addresses;
  - (4) The date and place of ~~[any]~~ a conviction of [a penal crime]; any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;
  - (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; ~~[and]~~
  - (6) Proof of the applicant's identity by a current government-issued photo identification; and
  - (7) Proof that the applicant is a resident of the State;
  - (8) Proof that the applicant has executed an official surety bond that has been approved by a judge of the circuit court;
  - (9) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

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

~~[(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State.] [Eff 5/5/08; comp~~

3/12/15; am and comp ] (Auth: HRS  
§§28-10.8, 456-1.5, 456-2, 456-5, 456-8, 456-23)  
(Imp: HRS §§456-1, 456-9, 456-18, 456-24)

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

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

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

[Eff 5/5/08; comp 3/12/15; am and comp  
] (Auth: HRS §§28-10.8, 456-1.5,  
456-8, 456-22) (Imp: HRS §§28-10.8, 91-13.5, 456-8,  
456-24)

**§5-11-23 Application for renewal of notary public commission.** (a) Each notary public shall be responsible for timely renewing the notary public's

commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general [~~before or on the notary public's current date of~~] within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

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

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

~~[(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State.]~~ [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

### SUBCHAPTER 3

### EXAMINATIONS

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

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary public

examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than forty-eight hours before the examination.

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

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

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

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission.

[Eff 5/5/08; am and comp 3/12/15; am and comp  
] (Auth: HRS §§28-10.8, 456-1.5,  
456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

**§5-11-33 Examination subject matter.** The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of [~~notary public duties,~~] notarial acts,

and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

#### SUBCHAPTER 4

#### DISCIPLINARY SANCTIONS

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

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;

- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (9) Procuring a commission through fraud, misrepresentation, or deceit;
- (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
- (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- ~~[(12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;~~
- ~~-(13) Violating any condition or limitation upon which a conditional or temporary commission was issued;]~~
- [~~(14)~~] (12) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
- [~~(15)~~] (13) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a

notary public commission to be unfit or an improper person to hold a commission;

- [~~(16)~~] (14) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
- [~~(17)~~] (15) Criminal conviction, whether by nolo contendere or otherwise, of [~~a crime~~] any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public~~]~~ or involving theft, fraud, dishonesty, or false statement;
- [~~(18)~~] (16) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in this jurisdiction or another jurisdiction within thirty days of the disciplinary decision; and
- [~~(19)~~] (17) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff 5/5/08; am and comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-40 Forfeited commission.** (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's

forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-41 Suspended commission.** A notary public commission may be suspended by the attorney general for a period not exceeding ten years. A person whose commission has been suspended pursuant to section 5-11-39 may apply for reinstatement of the commission upon strict compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-42 Revoked commission.** A person whose commission is revoked pursuant to section 5-11-39 may apply for a new commission, unless the revocation is permanent, after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

## SUBCHAPTER 5

### FEEES AND ADMINISTRATIVE FINES

**§5-11-46 Fees and administrative fines. (a)**

~~[Notwithstanding any law to the contrary,]~~ Pursuant to section 456-9, HRS, the attorney general shall charge and collect the following fees, ~~[and administrative fines,]~~ which shall be nonrefundable:

- (1) Application for ~~[commission of]~~ notary public commission, \$20;
- (2) Application for renewal of notary public commission, \$20;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue notary ~~[record books,]~~ public journals, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or business address, telephone number, or judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5 if the manual is to be mailed;
- (12) Certification of each notarial transaction from a notary public's journal in the disposition of the attorney general, \$5 per notarial transaction;
- (13) Copying, per printed page, 25 cents;
- (14) Replacement commission certificate, \$10;
- (15) Request to reschedule examination more than forty-eight hours before the examination, \$15;
- (16) Request to reschedule examination less than forty-eight hours before the examination, \$20;
- (17) Administrative fee to process returned documents from the court, \$15;
- (18) Application for remote online notary public commission, \$20;

- (19) Application for renewal of remote online notary public commission, \$20;
- (20) Issuance of remote online notary public commission, \$100;
- (21) Renewal of remote online notary public commission, \$100;
- (22) Administrative fee to process and catalogue audiovisual recordings, \$10; and
- (23) Any other fees or charges referenced in chapter 456, HRS, or this chapter.

(b) The attorney general may impose and collect the following administrative fines for each occurrence of the following:

- ~~[+11)]~~ (1) Failure to timely notify the attorney general of change of any item specified in ~~[paragraph (10),]~~ section 5-11-10, \$25 per occurrence;
- ~~[+12)]~~ (2) Failure to timely notify the attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
- ~~[+13)]~~ (3) Failure to timely notify the attorney general of loss, misplacement, or theft of the notary public's ~~[official]~~ notary seal or ~~[record book,]~~ journal, ~~[\$25;]~~ \$20;
- ~~[(14)]~~ ~~Notary public manual, \$3 if the manual is picked up at the notary public office or \$5.00 if the manual is to be mailed;~~
- ~~(15)~~ ~~Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction;~~ ~~(16)~~ ~~Copying, per printed page, 25 cents;~~
- ~~(17)~~ ~~Replacement commission certificate, \$10;~~
- ~~(18)~~ ~~Request to reschedule examination more than forty-eight hours before the examination, \$15;~~
- ~~(19)~~ ~~Request to reschedule examination less than forty-eight hours before the examination, \$20;~~
- ~~+(20)]~~ (4) Failure to appear at the examination without request or notification to

reschedule examination received prior to the time of the examination, \$25; ~~and~~

- ~~(21)~~ (5) Failure to ~~pick-up~~ pick up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
- (6) Failure to surrender the notary public's rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (7) Failure to surrender the notary public's commission certificate to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (8) Failure to destroy or disable the remote online notary public's electronic stamping device and to submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal that the electronic stamping device was destroyed or disabled, \$200;
- (9) Possessing more than one rubber stamp notary seal at a time, \$200;
- (10) Failure to retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal, no less than \$50 and no more than \$500;
- (11) Failure to comply with the audit or inspection of the notary public's journal by the attorney general, no less than \$50 and no more than \$500;
- (12) Failure to inform the attorney general of the location of the notary public's journal, no less than \$50 and no more than \$500;

- (13) Failure to transmit the notary public's journal to the attorney general or a repository approved by the attorney general upon the notary public's death, no less than \$50 and no more than \$500;
- (14) Failure to timely notify the attorney general of the notary public's status change as required by section 5-11-10.5, \$25; and
- (15) Any other administrative fines referenced in chapter 456, HRS, or this chapter.

~~[(b)]~~ (c) All fees and administrative fines prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.

(d) All unpaid fees and administrative fines shall constitute a debt due and owing to the State.

[Eff 5/5/08; am and comp 3/12/15; am and comp  
] (Auth: HRS §§28-10.8, 456-1.5,  
456-8, 456-23) (Imp: HRS §§456-9, 456-24)

## SUBCHAPTER 6

### PRACTICE AND PROCEDURE

#### **§5-11-51 Administrative practice and procedure.**

The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff 5/5/08; comp 3/12/15; comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-1)

**§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action.** In the event an application for commission or

renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff 5/5/08; comp 3/12/15; comp ] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-53 Demand for a hearing.** Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with the attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff 5/5/08; comp 3/12/15; am and comp ] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-54 Proceedings upon demand for a hearing.** If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff 5/5/08; comp 3/12/15; comp ] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§91-13.1, 456-1, 456-24)

**§5-11-55 Exceptions.** If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an

exception to that requirement if the attorney general determines such action to be in the best interest of the State. [Eff 3/12/15; comp 3/12/15; comp ] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-24)

SUBCHAPTER 7

REMOTE ONLINE NOTARIZATION

**§5-11-61 Authority to perform remote online notarization.** No person shall perform notarial acts for remotely located individuals or advertise or represent oneself as a notary public who is able to do so, without a current commission as a remote online notary public obtained from the attorney general. [Eff and comp ] (Auth: HRS §§28-10.88, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-62 Application for a remote online notary public commission.** (a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under section 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant

intends to use to perform remote online notarization;

- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.

(c) If, during the term of a remote online notary public's commission, the remote online notary public intends to use the technologies or devices of a vendor or person other than those identified in the application submitted under subsection (b), the remote online notary public shall notify the attorney general identifying such other business or other person as required by this section. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

**§5-11-63 Action on application for remote online notary public commission.** (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission as an online notary public:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and

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

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application and the abandoned application may be destroyed by the attorney general.  
[Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-64 Remote online notary public examination.** No remote online notary public commission shall be issued to any notary public unless the notary public pays the examination fee and takes and passes an examination specific to notarization of remotely located individuals as prescribed by the attorney general and pursuant to the requirements of section 5-11-32. [Eff and comp ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-65 Remote online notary public commission.** The attorney general shall issue a certificate commissioning a notary public to perform remote online notarization, provided that no remote online notary public commission shall be in effect, nor shall a notary public perform remote online notarization

unless, in addition to the requirements of sections 5-11-62 and 5-11-64, the notary public:

- (1) Files a literal or photostatic copy of the notary public's remote online notary public commission issued by the attorney general with the clerk of the circuit court of the circuit in which the remote online notary public resides within thirty days of the receipt of the commission; and
- (2) Submits to the attorney general a tangible copy of the notary public's electronic seal and electronic signature. [Eff and comp  
] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

**§5-11-66 Term of commission as remote online notary public.** A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission. [Eff and comp  
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

**§5-11-67 Application for renewal of remote online notary public commission.** (a) Each remote online notary public shall be responsible for timely renewing the remote online notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application to perform remote online notarial acts received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

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

(c) The failure to timely renew a commission as a remote online notary public, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited. [Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

**§5-11-68 Means of performing a remote online notarial act.**

(a) A remote online notary public located in the State may perform a notarial act for remotely located individuals only if the remotely located individual personally appears before the remote online notary public at the time of the notarization.

(b) A remotely located individual may comply with the requirement to appear personally before a remote online notary public by appearing before the remote online notary public by means of communication technology. [Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §465-23)

**§5-11-69 Identity proofing.** (a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the remotely located individual's identity credential against trusted third-person data sources, bind the remotely located individual's identity to the remotely located individual following successful knowledge-based authentication, and permit the remote online notary public visually to compare

the identity credential and the remotely located individual.

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

- (1) Credential analysis. The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:
  - (A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;
  - (B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;
  - (C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
  - (D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and
- (2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

- (A) The remotely located individual shall answer a quiz consisting of a minimum of five questions related to the remotely located individual's personal history or identity formulated from public or private data sources;
- (B) Each question shall have a minimum of five possible answer choices;
- (C) At least eighty per cent of the questions shall be answered correctly;
- (D) All questions shall be answered within two minutes;
- (E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four hours;
- (F) During a retake of the quiz, a minimum of forty per cent of the prior questions shall be replaced;
- (G) If the remotely located individual fails the second attempt, the remotely located individual is not allowed to retry with the same remote online notary public within twenty-four hours of the second failed attempt; and
- (H) The remote online notary public shall not be able to see or record the questions or answers. [Eff and comp  
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

**§5-11-70 Other methods of identity verification.**

A remote online notary public has satisfactory evidence of the identity of a remotely located individual if the remote online notary public has personal knowledge, as defined in paragraph (1), of the identity of the remotely located individual or if the remote online notary public has satisfactory evidence of the identity of the remotely located

individual by oath or affirmation of a credible witness, as defined in paragraph (2), appearing before the remote online notary public.

- (1) Personal knowledge. A remote online notary public has personal knowledge of the identity of the remotely located individual appearing before the remote online notary public if the remotely located individual is personally known to the remote online notary public through dealings sufficient to provide reasonable certainty that the remotely located individual has the identity claimed; or
- (2) Credible witness. To be a credible witness, the witness shall have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The remote online notary public shall have personal knowledge of the credible witness or shall have verified the identity of the credible witness under section 5-11-69. A credible witness may be a remotely located individual if the remote online notary public, credible witness, and remotely located individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. [Eff and comp ]  
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

**§5-11-71 Standards for communication technology.**

(a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:

- (1) Provides continuous synchronous audiovisual feeds;
- (2) Provides sufficient video resolution and

- audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;
- (3) Provides sufficient captured-image resolution for identity proofing;
  - (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
  - (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
  - (6) Ensures that any change to or tampering with an electronic record before or after the electronic notary seal has been affixed and the remote online notarial act has been completed is evident;
  - (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
  - (8) Provides a means of electronically affixing the notary public's notary seal, signature, and certification to the notarized document;
  - (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
  - (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process under section 5-11-69 or 5-11-70 from the beginning; and
  - (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
    - (A) The live transmission of the



of the notary public, and the words "notary public" and "State of Hawaii" and utilizes tamper-evident technology.

(b) The remote online notary public shall authenticate all of the notary public's notarial acts, attestations, certifications, and instruments with the notary public's electronic notary seal, using an electronic stamping device, contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.

(d) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic signature, electronic notary seal, and electronic notarial certificate.

(e) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(f) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(g) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal

to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled. Failure to comply with this section may result in an administrative fine of \$200.  
[Eff and comp ] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

**§5-11-73 Retention and repositories of electronic journal and audiovisual recording.** (a) In addition to the tangible journal required of all notaries public pursuant to section 456-15, HRS, a remote online notary public shall retain an electronic journal as required under section 456-15, HRS, and this chapter and any audiovisual recording created under section 456-23, HRS, in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software. An electronic journal kept by the remote online notary public and the audiovisual recording created pursuant to this subchapter are not subject to the requirements of section 5-11-9.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person

knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements of chapter 456, HRS, and this chapter and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process.

(d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository under chapter 456, HRS. The contract shall:

- (1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements of chapter 456, HRS, and this chapter, even if the contract is terminated; or
- (2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.(e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department as required under section 456-15, HRS.

(f) The remote online notary public shall retain the remote online notary public's electronic journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the

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attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

(g) The failure to comply with this section may result in an administrative fine of no less than \$50 and no more than \$500." [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-23, 456-24)

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

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

4. These amendments to and compilation of chapter 5-11, 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.

\_\_\_\_\_  
CLARE E. CONNORS  
Attorney General

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

## **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**

#### **1. Board's Fiscal Budgets**

#### **2. Review and Update of Board Members**

#### **"Discussion Leader Assignments" for State and County Agencies' Hawaii Administrative Rule Review**

SBRRB Budget Records  
**ACTUAL Monthly Expenses**  
**FY 20-21**

7/1/2020 - 7/31/2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - Mailed Orientation Manual to board member Taryn Rodighiero						\$ 15.05	
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15.05	
<b>Total Monthly Expense</b>							<b>\$ 15.05</b>

8/1/2020 - 8/31/2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - Office Max/Depot Purchased Printer INK for Jet'aime home office printer						\$ 169.49	
SBRRB - HP Direct Purchase of Printer for Jetaime home office						\$ 191.71	
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 361.20	
<b>Total Monthly Expense</b>							<b>\$ 361.20</b>

9/1/2020 - 9/30/2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>

Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - Postage Stamps							
SBRRB							
Sub-Total	\$ -		\$ -	\$ -	\$ -	\$ -	
<b>Total Monthly Expense</b>							<b>\$ -</b>

10/1/2020 - 10/31/2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - Printer INK						\$ 220.82	
SBRRB - Postage Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 220.82	
<b>Total Monthly Expense</b>							<b>\$ 220.82</b>

11/1/2020 - 11/30/2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - Office Supplies						\$ 32.98	
SBRRB - COLOR Printer						\$ 340.31	
SBRRB - Batteries						\$ 170.72	
SBRRB - Printer TONER						\$ 297.82	
SBRRB - Steno Notebooks						\$ 26.70	
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 868.53	

Total Monthly Expense	<b>\$ 868.53</b>
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12/1/2020 - 12/31-2020

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - Postage for SBRRB ANNUAL Report						\$ 4.20	
SBRRB - Stamps							
Sub-Total		\$ -	\$ -	\$ -	\$ -	\$ 4.20	
<b>Total Monthly Expense</b>							<b>\$ 4.20</b>

1/1/2021 - 1/31-2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - WIRELESS Mouse						\$ 17.99	
SBRRB - Shipping Labels						\$ 14.49	
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32.48	
<b>Total Monthly Expense</b>							<b>\$ 32.48</b>

2/1/2021 - 2/28/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							

William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total Monthly Expense</b>							<b>\$ -</b>

3/1/2021 - 3/31/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total Monthly Expense</b>							<b>\$ -</b>

4/1/2021 - 4/30/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	<b>TOTAL</b>
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Monthly Expense</b>							<b>\$ -</b>

5/1/2021 - 5/31/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - Webinar						\$ 10.00	
SBRRB - PBN Subscription				\$ 136.13			
SBRRB - Stamps						\$ 110.00	
SBRRB - Supplies						\$ 32.32	
Sub-Total	\$ -	\$ -	\$ -	\$ 136.13	\$ -	\$ 152.32	
<b>Total Monthly Expense</b>							<b>\$ 288.45</b>

6/1/2021 - 6/30/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
SBRRB - Supplies							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total Monthly Expense</b>							<b>\$ -</b>

Monthly Expenses for 7/2020 - 6/2021

Months	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
July	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15.05	\$ 15.05
August	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 361.20	\$ 361.20
September	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
October	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 220.82	\$ 220.82
November	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 868.53	\$ 868.53

December	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4.20	\$ 4.20
January	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32.48	\$ 32.48
February	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
March	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
April	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
May	\$ -	\$ -	\$ -	\$ 136.13	\$ -	\$ 152.32	\$ 288.45
June	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Expenses</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 136.13</b>	<b>\$ -</b>	<b>\$ 1,654.60</b>	<b>\$ 1,790.73</b>
							<b>\$ 1,790.73</b>

# DISCUSSION LEADER ASSIGNMENTS

(SBRRB / SBRRB / Members / DiscussionLeaderAssignments 2020)

## **1. Office of the Governor** ..... <http://governor.hawaii.gov>

Address: Governor David Y. Ige  
Executive Chambers  
State Capitol  
Honolulu, HI 96813

Phone: (808) 586-0034  
Fax: (808) 586-0006

**Discussion Leader: Robert Cundiff**  
**Back-up Discussion Leader: Garth Yamanaka**

## **2. Office of the Lieutenant Governor** ..... <http://ltgov.hawaii.gov>

Address: Lieutenant Governor Josh Green  
State Capitol, Fifth Floor  
Honolulu, HI 96813

Phone: **Oahu/** (808) 586-0255  
**Maui/** 984-2400 ext. 60255  
**Hawaii/** 974-4000 ext. 60255  
**Kauai/** 274-3141 ext. 60255  
**Molokai/Lanai/** 1(800) 468-4644 ext. 60255  
Fax: (808) 586-0231

**Discussion Leader: Garth Yamanaka**  
**Back-up Discussion Leader: Robert Cundiff**

## **3. Department of Accounting & General Services** ..... <http://ags.hawaii.gov>

Address: Curt T. Otaguro, Comptroller  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

Phone: (808) 586-0400  
Fax: (808) 586-0775  
Email: dags@hawaii.gov

**Discussion Leader: Mark Ritchie**  
**Back-up Discussion Leader: Mary Albitz**

## **4. Department of Agriculture** ..... <http://hdoa.hawaii.gov>

Address: Phyllis Shimabukuro-Geiser,  
Chairperson  
Board of Agriculture  
1428 South King Street

Honolulu, HI 96814  
Phone: (808) 973-9550  
Fax: (808) 973-9613  
Email: hdoa.info@hawaii.gov

**Discussion Leader: Will Lydgate**  
**Back-up Discussion Leader: James Kimo Lee**

## **5. Department of the Attorney General** ..... <http://ag.hawaii.gov>

Address: Clare Connors, Attorney General  
Hale Auhau  
425 Queen Street  
Honolulu, HI 96813

Phone: (808) 586-1282  
Fax: (808) 586-1239

**Discussion Leader: Will Lydgate**  
**Back-up Discussion Leader: Robert Cundiff**

**6. Department of Budget & Finance ..... <http://budget.hawaii.gov>**

Address: Craig Hirai, Director Phone: (808) 586-1518  
P.O. Box 150 Fax: (808) 586-1976  
Honolulu, HI 96810 Email: HI.BudgetandFinance@hawaii.gov

**Discussion Leader: Mark Ritchie**  
**Back-up Discussion Leader: Garth Yamanaka**

**7. Public Utilities Commission..... <http://puc.hawaii.gov>**

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020  
Kekuanaoa Building Fax: (808)586-2066  
465 South King Street, Room 103 Email: puc@hawaii.gov  
Honolulu, HI 96813

**Discussion Leader: Mark Ritchie**  
**Back-up Discussion Leader: Jonathan Shick**

**8. Department of Business, Eco Dev. & Tourism..... <http://dbedt.hawaii.gov>**

Address: Michael McCartney, Director Phone: (808) 586-2355  
P.O. Box 2359 Fax: (808) 586-2377  
Honolulu, HI 96804 Email: dbedt.director@hawaii.gov

**Discussion Leader: Robert Cundiff**  
**Back-up Discussion Leader: Will Lydgate**

**9. Department of Commerce & Consumer Affairs..... <http://cca.hawaii.gov>**

Address: Catherine P. Awakuni Colón, Director Phone: (808) 586-2850  
335 Merchant Street Fax: (808) 586-2856  
Honolulu, HI 96813 Email: dcca@dcca.hawaii.gov

**Discussion Leader: Nancy Atmospera-Walch**  
**Back-up Discussion Leader: Taryn Rodighiero**

**10. Department of Defense..... <http://dod.hawaii.gov>**

Address: Brigadier General Kenneth Hara, Phone: (808) 733-4246  
Office of the Adjutant General Fax: (808) 733-4499  
3949 Diamond Head Road  
Honolulu, HI 96816

**Discussion Leader: Jonathan Shick**  
**Back-up Discussion Leader: Mark Ritchie**

**11. Department of Education..... <http://hawaiipublicschools.org>**

Address: Christina Kishimoto, Superintendent  
1390 Miller Street  
Honolulu, HI 96813

Phone: (808) 586-3230  
Fax: (808) 586-3314  
Email: doe\_info@hawaiidoe.org

**Discussion Leader: Taryn Rodighiero**  
**Back-up Discussion Leader: Harris Nakamoto**

**12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>**

Address: William J. Aila, Jr., Chairperson  
P.O. Box 1879  
Honolulu, HI 96805

Phone: (808) 620-9501  
Fax: (808) 620-9529  
Email: dhhl.hawaii@gmail.com

**Discussion Leader: James Kimo Lee**  
**Back-up Discussion Leader: Garth Yamanaka**

**13. Department of Health..... <http://health.hawaii.gov>**

Address: Dr. Elizabeth Char, MD, Director  
1250 Punchbowl Street  
Honolulu, HI 96813

Phone: (808) 586-4410  
Fax: (808) 586-4368  
Email: webmail@doh.hawaii.gov

**Discussion Leader: Harris Nakamoto**  
**Back-up Discussion Leader: Nancy Atmospera-Walch**

**14. Department of Human Resources Development..... <http://hrd.hawaii.gov>**

Address: Ryker Wada, Director  
235 South Beretania Street, Suite 1400  
Honolulu, HI 96813

Phone: (808) 587-1100  
Fax: (808) 587-1106  
Email: dhrd@hawaii.gov

**Discussion Leader: Harris Nakamoto**  
**Back-up Discussion Leader: Mary Albitz**

**15. Department of Human Services..... <http://humanservices.hawaii.gov>**

Address: Cathy Betts, Director  
P.O. Box 339  
Honolulu, HI 96809-0339

Phone: (808) 586-4993  
Fax: (808) 586-4890  
Email: dhs@dhs.hawaii.gov

**Discussion Leader: Harris Nakamoto**  
**Back-up Discussion Leader: Nancy Atmospera-Walch**

**16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>**

Address: Anne Perreira-Eustaquio, Director  
830 Punchbowl Street  
Honolulu, HI 96813  
Phone: (808) 586-8844  
Fax: (808) 586-9099  
Email: dlr.director@hawaii.gov

**Discussion Leader: Mary Albitz**  
**Back-up Discussion Leader: Harris Nakamoto**

**17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>**

Address: Suzanne Case, Chairperson  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813  
Phone: (808) 587-0401  
Fax: (808) 587-0390  
E-mail: dlnr@hawaii.gov

**Discussion Leader: Taryn Rodighiero**  
**Back-up Discussion Leader: Jonathan Shick**

**18. Department of Public Safety..... <http://dps.hawaii.gov>**

Address: Max N. Otani, Director  
919 Ala Moana Boulevard, 4<sup>th</sup> Floor  
Honolulu, HI 96814  
Phone: (808) 587-1288  
Fax: (808) 587-1282  
Email: psd.office.of.the.director@hawaii.gov

**Discussion Leader: Jonathan Shick**  
**Back-up Discussion Leader: William Lydgate**

**19. Department of Taxation..... <http://tax.Hawaii.gov>**

Address: Isaac Choy, Interim Director  
P.O. Box 259  
Honolulu, HI 96809-0259  
Phone: (808) 587-1540  
Fax: (808) 587-1560  
Email: Tax.Directors.Office@hawaii.gov

**Discussion Leader: Garth Yamanaka**  
**Back-up Discussion Leader: Will Lydgate**

**20. Department of Transportation..... <http://hidot.hawaii.gov>**

Address: Jade Butay, Director  
AliiAIMoku Building  
869 Punchbowl Street, Room 509  
Honolulu, HI 96813  
Phone: (808) 587-2150  
Fax: (808) 587-2167

**Discussion Leader: James Kimo Lee**  
**Back-up Discussion Leader: Jonathan Shick**

**21. University of Hawaii..... <http://www.hawaii.edu>**

Address: David Lassner, President  
Bachman Hall, Room 202  
2444 Dole Street  
Honolulu, HI 96822

Phone: (808) 956-7651  
Email: david@hawaii.edu

Address: Lee Putnam, Chair, Board of Regents  
Bachman Hall, Room 209  
2444 Dole Street  
Honolulu, HI 96822

Phone: (808) 956-8213  
Fax: (808) 956-5156  
Email: bor@hawaii.edu

**Discussion Leader: Nancy Atmospera-Walch**  
**Back-up Discussion Leader: Mark Ritchie**

**22. City and County of Honolulu..... <http://www.honolulu.gov/>**

Address: **Rick Blangiardi, Mayor**  
530 South King Street, Room 300  
Honolulu, HI 96813

Phone: (808) 768-4141

**Discussion Leader: Jonathan Shick**  
**Back-up Discussion Leader: Harris Nakamoto**

**23. County of Maui..... <https://www.mauicounty.gov/>**

Address: **Michael P. Victorino, Mayor**  
200 S. High St.  
Kalana O Maui Bldg 9th Fl.  
Wailuku, HI 96793

Phone: (808) 270-7855

**Discussion Leader: Mary Albitz**  
**Back-up Discussion Leader: James Kimo Lee**

**24. County of Hawai'i..... <https://www.hawaiicounty.gov/>**

Address: **Mitch Roth, Mayor**

Phone: (808) 961-8211

**East Hawai'i**  
25 Aupuni Street  
Hilo, HI 96720

**West Hawai'i**  
74-5044 Ane Keohokalole Highway  
Bldg C  
Kailua-Kona, HI 96740

Phone: (808) 323-4444

**Discussion Leader: Garth Yamanaka**  
**Back-up Discussion Leader: James Kimo Lee**

25. County of Kaua'i.....<https://www.kauai.gov/Mayor>

Address: **Derek S.K. Kawakami, Mayor**  
4444 Rice St., Suite 235  
Lihue, HI 96766

Phone: (808) 241-4900  
Email:mayor@kauai.gov

**Discussion Leader: William Lydgate**  
**Back-up Discussion Leader: Taryn Rodighiero**