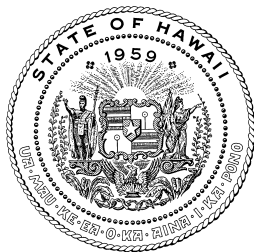


Small Business Regulatory Review Board Meeting

June 17, 2021

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

AGENDA

Thursday, June 17, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

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. 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, June 16, 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 May 20, 2021 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of Hawaii Administrative Rules (HAR) Title 17 Chapter 798.3, **Child Care Payments**, promulgated by Department of Human Services (DHS) – **Discussion Leader – Mark Ritchie**
- 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 – **Discussion Leader – Mark Ritchie**

- 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 – **Discussion Leader – Mark Ritchie**

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 – **Discussion Leader – Taryn Rodighiero**

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 Administrative Rules (HRS)

VI. Election of Board Officers

- A. Discussion and Action on the following:
 - a. Chairperson, pursuant to Section 201M-5(c), HRS
 - b. Vice Chair
 - c. Second Vice Chair

VII. Next Meeting: Thursday, July 15, 2021 at 10:00 a.m.

VIII. Adjournment

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

II. Approval of May 20, 2021 Meeting Minutes

Small Business Regulatory Review Board

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

May 20, 2021

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

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka, 2nd
Vice Chair
- William Lydgate
- Taryn Rodighiero

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn
Alison Kato

II. **APPROVAL OF April 15, 2021 MINUTES**

Mr. Lee motioned to accept the April 15, 2021 meeting minutes as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

Chair Cundiff welcomed the Board's newly assigned deputy attorney general Ms. Alison Kato; the Board is looking forward to working with Ms. Kato.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 219, Parking for Persons with Disabilities, promulgated by Department of Health (DOH)

Discussion leader Mr. Nakamoto stated that these rules are after public hearing, and asked Mr. Bryan Mick, Program & Policy Development Unit Staff Coordinator from DOH's Disability and Communication Access Board, to provide a brief overview of the key points and any relevant information from the public hearing, which was held on April 8, 2021.

Mr. Mick reminded the members that the four changes having an impact on small businesses were: 1) exempting parking spaces reserved for people with disabilities in employee parking facilities from the signage requirements where such parking spaces are assigned to specific employees with disabilities; 2) exempting temporary parking spaces reserved for persons with disabilities or temporary access aisles from the "striping"

requirements; 3) posting a “No Parking in Access Aisle” sign to identify the access aisle in parking lots with four or less parking spaces; and 4) creating a new parking permit due to the possibility of less revenue from the loss of parking expenses as well as the installation of signage should there be no signs in the parking area.

Prior to the hearing, DOH reached out to the Chamber of Commerce of Hawaii and Retail Merchants Association by providing them with a copy of the hearing notice and a summary of the proposed amendments that would affect small businesses.

Nine people attended the public hearing; three testifiers at the hearing were in support of the rule changes and two written testimonies in support were received after the hearing. Chair Cundiff expressed appreciation from this Board for the work that was performed by DOH with regards to the outreach of the stakeholders.

Mr. Nakamoto motioned to forward the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 56 Nonpoint Source Pollution Control, promulgated by DOH

Discussion leader Mr. Nakamoto thanked Mr. Matthew Kurano, Environmental Health Specialist at DOH’s Clean Water Branch, for attending today’s meeting and asked that he provide an overview of the rule changes and what had occurred at the public hearing.

Mr. Kurano stated that the proposed rules are to control water pollution for nonindustrial sources and to ensure that Hawaii’s waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

He reminded the members that prior to the public hearing this Board requested that DOH attempt to work closely with the stakeholders. The public notice was publicized in December 2020 and a hearing was held on February 1, 2021. In between these dates, DOH informally reached out to a variety of stakeholders - the University of Hawaii agricultural services, active community participants, and the NGO (non-governmental organizations) community, which includes law firms that represent plaintiffs with alleged violations.

At the public hearing, eight parties consisting of individuals as well as organizations, provided testimonies supporting the amendments; however, some of the testifiers requested clarification to parts of the rules. While this resulted in no substantive changes to the rules, it prompted DOH to include language to some of the sections to help clarify and describe definitions and rationale for the changes.

Chair Cundiff noted that the information provided to this Board is extremely thorough and thought-out. Mr. Kurano responded that educating the stakeholders for compliance assistance is beneficial in the long run as the rules are meant for perpetuity.

Mr. Nakamoto motioned to forward the proposed amendments to the Governor for adoption. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, as follows, promulgated by DOH

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

Discussion leader Mr. Nakamoto explained that one of the changes connected to these proposals is a new expiration date; he requested that DOH representatives provide additional changes to the rules.

Mr. Darryl Lum, Supervisor at DOH's Clean Water Branch Engineering Section, explained that the biggest change to Appendix B, MSGP, is that Hawaii is switching to and following the EPA's approach for handling storm water discharge. The prior industrial storm water permit was handled in such a way that the storm water was hard to assess compliance. The EPA now requires numerous measures with benchmark monitoring and corrective actions, which is believed to be a more effective method and approach to protecting the state's water quality; also, commentary received from the outreach efforts of stakeholders regarding this approach was positive.

The biggest change for Appendix E, Authorizing Discharges of Once Through Cooling Water Less than One (1) Million Gallons Per Day, allows for field test kits for chlorine testing. This will help resolve an issue with the chlorine testing times. Currently, federal regulations require 15 minutes which means that when a sample of water is taken it will need to be prepared and go through the chain of custody to the lab within 15 minutes. Thus, the proposed field test kits will help ease the present time crunch to comply with the rules.

The biggest change for Appendix F, Authorizing Discharges of Hydrotesting Water and for Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering is to the affluent limitations. This is expected to simplify compliance requirements and help the dischargers with their on-site personnel when there are no online narrative requirements so that someone on-site will immediately see there is a problem and will not have to wait for the samples to come back from the laboratories. This change will also help to make things much simpler for enforcement personnel in terms of reporting requirements.

The biggest change for Appendix K, Small Municipal Separate Storm Sewer Systems, which came about because of a federal court case, requires the permitting agencies to follow a two-step process. The first process is comprehensive and includes all the permit requirements. The second is a two-step process whereby requirements must be done

through public notice. Mr. Lum added that stakeholder outreach was held for this proposal a number of years ago and everyone preferred the two-step process.

Mr. Alex Wong, Program Manager, added that every five years DOH's Clean Water Branch will come back to this Board for approval, which is meant to streamline the overall processes. Chair Cundiff commented that the fact sheets provided by DOH outlining the reasons and rationale for the changes were very helpful.

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

V. LEGISLATIVE MATTERS

A. Discussion on the following Legislative Matters

a. Senate Bill 1034, SD1, HD2, CD1

This measure authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law. It also amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology.

Chair Cundiff explained that this measure was tracked throughout the legislative process and passed. In summary, it will allow this Board to use interactive technology, such as Zoom, to conduct board meetings. While the changes allow board members to be present at meetings through interactive conference technology, the location is not needed to be disclosed on the agenda nor is it required to be made available to the meetings' attendees.

While the Governor has yet to sign this measure, it does not take effect until January 1, 2022. Therefore, this Board will continue to conduct its monthly meetings as it has been for the remaining of the year under the presumption that the Governor's proclamations will continue to suspend the Sunshine Law.

VI. 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

a. Discussion of a proposed digital orientation manual for the board

Chair Cundiff reminded the members that DBEDT staff emailed to the board members a link with four sections depicting a draft of the Board's proposed digital orientation manual. He appreciated staff for putting this together and noted that it is an incredible resource for new members coming on board through the orientation process as well as serving as a great tool for existing board members. Mr. Ritchie concurred and stated that this manual would be a model for other boards and commissions.

Once finalized, the manual will be added to the Board's website under the Member page, which would also be available to the public. A discussion about whether or not to include the members' resumes ensued. DBEDT staff offered to provide an edited bio/summary of each board member for their review and approval.

Mr. Ritchie motioned to accept the proposed digital orientation manual provided that resumes of the members may, instead, include short bios. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

b. Update on the Board's Budget

There is currently nothing new to share on the Board's 2022 budget.

VII. NEXT MEETING - Thursday, June 17, 2021 at 10:00 a.m.

VIII. ADJOURNMENT – Mr. Shick motioned to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 10:54 a.m.

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 DHS

RECEIVED
By SBRRB at 3:27 pm, Jun 04, 2021

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

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

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.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:
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

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

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Child Care Payments

(Attachment 1)

- V. In 2018, DHS held about 6 different listening sessions to review the possible policies that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care and Development Block Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

In July 2017, DHS sent letters to all child care subsidy families using exempt home-based, non-relative child care providers to inform both the families and their providers about the federal requirements and the coming changes that will be adopted for exempt home-based, relative and non-relative child care providers to complete health and safety requirements.

DHS did not receive any specific feedback from subsidy families or their exempt home-based, relative and non-relative child care providers from the July 2017 letters.

In 2015, the department held about 6 different listening sessions to review the various requirements of the federal CCDBG Act of 2014 and sought input as to what and how to implement the health and safety requirements for exempt child care providers that care for children whose families receive child care subsidies from DHS. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the listening sessions.

- V.a. Early childhood and community advocates supported the department's recommendations of moving to 12 month eligibility periods, increasing the child care payment rates, and reducing the out-of-pocket family co-payments/contributions toward their cost of child care, as well as increasing the health and safety requirements for exempt home-based, non-relative child care providers who care for children whose families receive child care subsidy assistance from the department.
- VI.1. The Public Notice was published in the newspapers statewide on Monday, October 5, 2020 to inform the public of the opportunity to provide their comments on the proposed rule chapter at the public hearing scheduled for November 6, 2020. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Child Care Payments

- VI.2 Written testimonies were submitted; and comments were in support of the proposed rules. Other comments suggested change to the date of eligibility for child care services shall be the date the child care services are scheduled to begin within sixty days after eligibility determination; change to priority applications to reflect homeless and enrolled in activities that support job readiness , but not limited to substance use or mental health treatment, or domestic violence programs; change to allow up to six months for the caretaker to resume an allowable activity; increase FCC, accredited FCC and accredited FCC caring for infant and toddler rates; sleep time up to 8 hours before or after the parent works a night shift, study time or travel time as eligible hours for care and to meet nationally recognized standards for nutrition, sugary drinks, active play and screen time
- VI.3 Suggested changes that could not be included at this time have been noted by the department and will be further reviewed for consideration for possible amendments in the future. The department currently is non-compliant with federal law and regulations and must adopt the proposed rules to be able to come into compliance.

Mr. Ahu added that there are still concerns relating to COVID-19 involving HIOSH's limited resources and the current restrictions for neighbor island travel. Due to the resignation of three inspectors, extended timeframes for inspections on neighbor islands were implemented. In the meantime, HIOSH will attempt to continue the work schedule as usual while keeping staff morale up.

Chair Cundiff noted that it was difficult to determine what changes were made to the rules since the last stakeholder meeting. Mr. Ahu responded that most of the agreed upon changes as a result of the stakeholder meeting were operational in nature. These changes are expected to improve upon HIOSH's efficiencies, which were deemed worthy in relation to the amount of the fee increases; the fees will be the same as presented during last month's meeting.

Chair Cundiff commended Mr. Ahu for the great amount of information presented in the packets. He and Vice Chair Albitz also thanked him for understanding the purpose of partaking in stakeholder meetings, which appears to have been used very wisely and productively. Mr. Ahu thanked the Board for its suggestion to meet prior to submitting the rules for public hearing.

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

C. Discussion and Action on Proposed New Chapters to HAR Title 17, as follows, promulgated by Department of Human Services (DHS)

1. Repeal of HAR Chapter 798.2 Child Care Services and Approval of New HAR Chapter 798.3 Child Care Payments

Discussion leader, Mr. Nakamoto, stated that he recently met with DHS representatives to go over the key areas of the rules and the purpose of the proposed changes; he introduced Ms. Dana Balansag, Child Care Program Administrator from DHS's Benefit, Employment & Support Service Division.

Ms. Balansag explained that although Chapter 798.3 is new, it is substantially based on Chapter 798.2, which is being repealed. The new rules will comply with the federal law, Child Care Development Block Grant Act of 2014 (CCDBG). CCDBG is expected to improve upon the provisions of protecting the health and safety of childcare. It was noted that the federal government has allocated approximately \$20 to \$29 million to Hawaii for this program.

CCDBG helps support Hawaii's statewide childcare licensing program by regulating 900 licensed and registered childcare facilities and homes. It also provides annual childcare subsidy programs to over 3,000 low-income, working families, and provides over 5,000 children access to quality childcare options. Overall, the federal funds provide support and services to promote and ensure healthy childcare for these families and their children.

The 2014 Act made significant changes to CCDGB in order to strengthen the protection of childcare nationwide for parents to make informative choices. The program further assists in child development, provides equal access and stable childcare for eligible children, and enhances the quality of childcare and early childhood workforce.

Chapter 798.3 will bring Hawaii into compliance with the federal requirements; Hawaii was notified that it is currently not in compliance. The new chapter will also implement the health care subsidy eligibility period to 12 months instead of the current six months and may continue up to 3 more months when parents provide information relating to eligible activities such as job training and school attendance.

Regarding the small business impact, Ms. Balansag stated that the unregulated childcare providers, totaling approximately 400, may be more impacted than the regulated providers. In terms of outreach, since 2015, DHS has had many sessions with the childcare community and offers quarterly advisory meetings to more than 100 childcare providers. In addition, DHS has created a health and safety manual guide along with ongoing training.

Chair Cundiff noted that these rules are a long time coming and commended DHS for its great job and hard work in implementing the proposed rules by allowing the stakeholders to work with DHS to help identify areas that were needed to be improved upon.

Mr. Nakamoto made a motion for the proposed new rules to proceed to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

2. Approval of Proposed New HAR Chapter 800, Requirements for Listing of Exempt Center-Based Providers

Ms. Balansag explained that exempt centers include sites that offer childcare services such as school campuses and military bases. The proposed rules align with CCDBG, which provide protections to the health and safety of children in childcare centers. Exempt center-based providers who meet the rules' specific requirements are eligible to provide childcare for a child whose family receives a childcare subsidy from DHS.

Exempt providers have the option of choosing any type of training topics DHS has identified that issues a certificate and is appropriate to childcare and to the ages of children served. They may also complete annual health and safety training by signing on for no-cost training classes offered by DHS contract agencies.

Several informational sessions during 2018 and 2019 were held with childcare providers. Also, discussions were held at quarterly childcare advisory committee meetings from 2014 to 2019 to review and discuss the proposed new rules; noted was that no concerns were brought up by the stakeholders at these meetings.

Mr. Nakamoto made a motion to move the proposed new rules to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

3. Approval of New HAR Chapter 801 Background Checks

Ms. Balansag explained that the proposed new chapter is based on requirements set forth by the CCDBG Act of 2014, 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.

The proposed rule ensures the safety of children in DHS licensed and registered family childcare homes, preschools, infant and toddler centers, before and after school facilities, license exempt centers, and homes by verifying that individuals who work with children or who have unsupervised access to children do not have background history records that pose a risk to children in care.

Ms. Balansag added that individuals will be required to have comprehensive background checks and be cleared in order to be left unsupervised with children. Searches of national and local databases for criminal, sex offender, child abuse and neglect, and adult abuse records will be conducted using the individual's fingerprints and personal identifying information.

An assessment of the background checks may take some time to complete to clear an individual when there is a criminal record, sex offender history, child abuse and neglect record, or adult abuse record. Centers and homes must ensure that there are enough staff that are cleared to work with children so that the staff-to-child ratio requirements are met.

Individuals who have completed the national and state fingerprint checks and have been cleared may begin working or volunteering in DHS licensed and registered family childcare homes, preschools, infant and toddler centers, before-and-after school facilities and exempt centers on a provisional basis while under the supervision of an individual who has completed and cleared all of the comprehensive background checks.

Discussion sessions were held with licensed and license exempt childcare centers between 2016 through the current period in order to solicit feedback on the background check processes. Chair Cundiff thanked Ms. Balansag and her team for the concise and informative information and wished them best of luck in the upcoming public hearings.

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

IV. ADMINISTATIVE MATTERS

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

Mr. Ritchie stated that in terms of outreach, during this time of the COVID pandemic, it is not easy for DBEDT to provide enough outreach services. However, materials on this Board are always included when outreach is performed when all the general programs are discussed by DBEDT. He asked that if any members have any "outside-the-box" ideas besides ZOOM meetings, to let him know.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

BESSD 20.C0502

May 19, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: *by* PANKAJ BHANOT *CB*
DIRECTOR

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED REPEAL OF CHAPTER 17-798.2 AND
ADOPTION OF CHAPTER 17-798.3 HAWAII ADMINISTRATIVE RULES, RELATING
TO CHILD CARE PAYMENTS

In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed repeal of Chapter 17-798.2 and adoption to Chapter 17-798.3 relating to Child Care Payments. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:

James W Walther
Deputy Attorney General

7/10/20
Date

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-798.3

Hawaii Administrative Rules

May 19, 2020

1. Chapter 17-798.3, Hawaii Administrative Rules, entitled "Child Care Payments" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 798.3

CHILD CARE PAYMENTS

Subchapter 1 General Provisions

§17-798.3-1 Purpose
§17-798.3-2 Definitions

798.3-1

- §17-798.3-3 Confidentiality
- §17-798.3-4 Geographical location
- §17-798.3-5 Scope
- §17-798.3-6 Application process
- §17-798.3-7 Priority applications
- §17-798.3-8 Notice of application disposition
- §17-798.3-9 Eligibility requirements
- §17-798.3-10 Income considered in eligibility determination
- §17-798.3-11 Excluded monthly income
- §17-798.3-12 Child care rates
- §17-798.3-13 Child care payments
- §17-798.3-14 Method of computing family unit's co-payment
- §17-798.3-15 Method of computing the need for care
- §17-798.3-16 Method of computing the child care payment
- §17-798.3-17 Mandatory reporting
- §17-798.3-18 Re-determination of eligibility and payment amount
- §17-798.3-19 Denial, reduction, suspension, or termination of child care
- §17-798.3-20 Notice of adverse action
- §17-798.3-21 Administrative appeal requests
- §17-798.3-22 Underpayments and overpayments
- §17-798.3-23 Termination for insufficient funds
- §17-798.3-24 Waitlist
- §§17-798.3-25 to 17-798.3-34 (Reserved)

Subchapter 2 Transitional Child Care Payments

- §17-798.3-35 Purpose
- §17-798.3-36 Eligibility requirements
- §§17-798.3-37 to 17-798.3-49 (Reserved)

Subchapter 3 General Requirements for Exempt Providers

§17-798.3-50 Purpose
§17-798.3-51 General requirements
§§17-798.3-52 to 17-798.3-59 (Reserved)

Subchapter 4 Health Requirements For Exempt Providers

§17-798.3-60 Purpose
§17-798.3-61 Drinking water provisions
§17-798.3-62 Handwashing
§17-798.3-63 Toilet and handwashing facilities
§17-798.3-64 Handling of diapers or training underpants
§17-798.3-65 Food preparation and protection
§17-798.3-66 Evidence of child's health
§17-798.3-67 Children who become ill
§17-798.3-67.01 Administration of medication.
§17-798.3-68 Provider's health standards
§17-798.3-69 Personal health habits of provider and staff
§§17-798.3-70 to 17-798.3-79 (Reserved)

Subchapter 5 Safety Requirements For Exempt Providers

§17-798.3-80 Purpose
§17-798.3-81 Supervision
§17-798.3-82 Managing children's behavior
§17-798.3-83 Maximum number of children
§17-798.3-84 Disaster plan for emergencies
§17-798.3-85 Sleeping areas for children in care
§17-798.3-86 Environmental hazards
§17-798.3-87 Emergency care provisions
§17-798.3-88 Transportation provisions
§17-798.3-89 Background check for exempt providers

Historical Note: Chapter 17-798.3 is based substantially upon chapter 17-798.2, Child Care Services [Eff 03/08/08; am 01/22/10; am and comp 12/31/17; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-798.3-1 Purpose. The purpose of this subchapter is to establish the rules governing the administration and implementation of the child care block grant authorized under 42 U.S.C. §9858 and 42 U.S.C. §618. This subchapter includes eligibility requirements, benefit amount, and method of determining child care payments for the department's federal child care subsidy program. [Eff]
(Auth: HRS §346-14) (Imp: HRS §346-14, 45 C.F.R. §98.1)

§17-798.3-2 Definitions. As used in this chapter:

"Accredited" means a group child care center, group child care home, or family child care home, that is certified by the National Association for the Education of Young Children (NAEYC), the National Early Childhood Program Accreditation (NECPA), or the National Association for Family Child Care (NAFCC) to meet accreditation standards.

"Activity" means employment, education, or vocational or employment training.

"Adequate notice" means a written notice that includes:

- (1) A statement of the action the agency has taken or intends to take;
- (2) The reason for the intended action;

- (3) The specific departmental rules supporting the intended action;
- (4) The name and telephone number of the person in the department to contact for additional information;
- (5) The family unit's right to request an informal review, an administrative appeal, or both; and
- (6) Information on the availability of free legal representation, if applicable.

"After-school care" means child care provided after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Application" means the action by which an individual indicates on a form prescribed by the department a request to receive child care payments.

"Attending" means enrolled and participating in a job training or educational program as defined by the institution, agency, or business that sponsors the program.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before-school care" means a child care provided before the start of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Benefit month" means the calendar month for which the caretaker is eligible for a child care payment.

"Budget month" means the calendar month(s) from which the child care expense, hours of approved activity and child care need, and income of the family unit are used to compute the payment amount that the family unit shall receive in the payment month.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Caretaker" means an adult, or an emancipated minor, who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, permanent custodian, step-parent, or relative who is related to the child by blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes minor teen parents who are birth parents to the child but cannot apply for child care payments themselves and must have an adult apply on their behalf.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

"Child care" means those situations in which a person or child care facility has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from and in the absence of the child's caretaker, for any part of a twenty-four hour day. Child care may be provided out of the child's home by relatives or non-relatives, in the child's home by relatives or non-relatives, in a family child care home, in a group child care home, in a group child care center, or in an exempt center-based facility.

"Child care facility" means the same as under section 346-151, Hawaii Revised Statutes (HRS).

"Child protective services" means social services provided by the department pursuant to chapter 17-1610, to children who reside with their family unit and are:

- (1) confirmed to have been abused or neglected,
or
- (2) confirmed to have been threatened with abuse
or neglect.

"Citizen or national of the United States of America" means a citizen of the United States and shall include:

- (1) The fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands; and
- (2) Nationals from American Samoa and Swain's Island.

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Co-payment" means the family unit's share of the child care expense which is the difference between the maximum payment amount allowed for the type and amount of care up to the department's child care payment rate maximum, and the amount the family unit is determined to be eligible for by the department.

"Corrective payment" means a payment issued by the department in an amount equal to the difference between what a caretaker is entitled to receive by regulation and the amount they actually received.

"Department" means the department of human services or its designee.

"Educational program" means a curriculum that has been established by an institution, agency, or business for the purpose of the development of skills or academic study necessary for an identified occupation.

"Eligibility period" means a period established by the department, not less than 12 months, during which the household may be eligible for child care payments if it meets all of the eligibility requirements.

"Employed" means the caretaker is engaged in a legal activity in exchange for wages or salary for which the appropriate tax withholding and reporting are made.

"Essential person" means a needy person designated by the caretaker to be included in the TANF household that receives a public-funded financial assistance payment, who is ineligible in the person's own right for TANF, who is designated by the caretaker as being essential to the caretaker's well-being, and

who performs a service that would not otherwise be performed or that would otherwise have to be purchased if the person did not live in the TANF household.

"Exempt after-school care" means child care provided by a before and after-school care facility legally-exempt in accordance with chapter 17-800, after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools.

"Exempt before-school care" means child care provided by a before and after-school care facility legally-exempt in accordance with chapter 17-800, after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools.

"Exempt provider" means a person or facility providing legally-exempt child care, in accordance with section 346-152, HRS. It also includes all adult household members when child care is provided in a private residence that is not the child's residence, all staff employed at a child care facility, any volunteers or substitutes who provide care for children for ten hours or more per week, and any other individuals who have unsupervised access to children in care.

- "Experiencing homelessness" means the following:
- (1) Lack a fixed, regular, and adequate nighttime residence;
 - (2) Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason, are living in motels, hotels, or camping grounds due to the lack of alternative adequate accommodations, are in emergency or transitional shelters, are abandoned in hospitals;
 - (3) Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

- (4) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train station, or similar settings; or
- (5) Are migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965).

"Extended filing period" means the additional ten days that households are allowed to submit required information or missing verification to justify continued child care eligibility. See section 17-798.3-18(a)(1)(C).

"Family child care home" means any private residence at which care is provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"Family unit" means the caretakers and their minor children who reside together in the same household and whose needs and income are considered in determining eligibility for, and the amount of, child care payment.

"Federal fiscal year" means a period beginning October 1 and ending September 30.

"Federal Poverty Guidelines" or "FPG" means the poverty guidelines for Hawaii that are established in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and cited in the Child Care and Development Fund Plan for State of Hawaii that is approved by the Administration for Children and Families, U.S. Department of Health and Human Services, pursuant to C.F.R. §§98.14 to 98.18.

"First-to-Work" or "FTW" means the work programs administered by the department for recipients of TANF.

"Full-time care" means child care provided for eighty-seven hours and more per month, except for before-school and after-school care.

"Gross income" means all non-excluded earned and unearned income as specified in this chapter.

"Group child care center" means a facility, other than a private home, at which care is provided, as defined in section 346-151, HRS. The term may include

nurseries; preschools; parent cooperatives; drop-in child care centers; before-school and after-school programs; holiday, intersession and summer care for eligible school age children; or other similar care settings that are established to provide group care to a child for any part of a twenty-four hour day and is license-exempt or licensed by the department. For the purposes of this chapter, group child care center shall also include "infant and toddler center" in which child care is provided to children ages six weeks to thirty-six months of age in a group child care center care or group child care home and is licensed under chapter 17-895.

"Group child care home" means a facility which may be an extended or modified private home, at which care is provided to seven to twelve children, as defined in section 346-151, HRS.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than the natural parents at the time of the child's birth or early childhood. The child is given outright and the natural parents renounce all claims to the child. The natural parents cannot reclaim the child except for the death or serious injury of the hanai parents

"Hawaiian-medium center-based care" means any group child care center, as defined in section 346-151, HRS, with programs taught solely in the Hawaiian language that promote fluency in the Hawaiian language and is licensed by the department in accordance with section 346-162, HRS.

"Home-based child care" means department-registered family child care home providers, and legally-exempt care providers, including care by relatives, in any private residence.

"In-home care" means child care provided only to the eligible children in the family unit by an exempt provider in the home of the eligible children who require care in the absence of their caretakers due to a qualifying child care reason.

"Infant" means a child six weeks old up to and including twelve months old.

"Intersession care" means child care provided at breaks during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary, middle, or secondary schools, including summer care and holidays.

"Job training" or "vocational or employment training" means an organized training program (including community college and university education) established by an institution, agency, or business for the purpose of the development of skills or academic study necessary for an identified occupation.

"Legally-exempt care" or "exempt care" means child care which is exempt from licensure or registration by the department under section 346-152, HRS.

"Limited English proficiency" or "LEP" means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

"Minor" means a person under eighteen years old.

"Monthly gross income limit" means eighty-five per cent of the State Median Income for a family of the same size.

"Net value" means the value of the assets after subtracting all liabilities.

"Non-recurring lump sum" means income that is not normally repeated or a cumulative amount received or available to be received by an individual. Educational loans, grants or scholarships shall not be considered as non-recurring lump sums.

"Overpayment" means the amount of payments issued to a caretaker for a benefit month that is in excess of the amount which the caretaker is eligible to receive. It also includes payments that are not used for their intended purpose.

"Part-time care" means child care provided for less than eighty-seven hours per month, except for

before-school and after-school care when it is provided for less than 45 hours per month.

"Payment month" means the calendar month in which the child care payment is issued.

"Physical or mental incapacity" means a physical or mental condition that prevents a child from doing self-care, as determined by a State-licensed physician or psychologist.

"Physician" means an individual licensed by the State for the practice of medicine.

"Power of attorney" means a legal instrument authorizing another to act as one's agent or attorney-in-fact.

"Preschool" means a department-licensed group child care center or group child care home that provides services for children ages two years to six years old.

"Primary residence" means the single residence designated as the child's home.

"Prospective budgeting" means computation of the child care payment based on the worker's best estimate of the child care expense, child care need, and caretakers' activity hours and gross income that will exist in a calendar month. The best estimate shall be based on the worker's reasonable projection of future circumstances based on the family unit's past and current month's circumstances.

"Provider" means any individual eighteen years and older, caregiver, facility, agency, or organization, including exempt center-based providers, and their adult employees, including volunteers and substitutes, who provide direct care, supervision, and guidance to children apart from and in the absence of the child's caretaker for part of a twenty-four hour day. Providers are regulated by the department to provide child care or are legally exempt from child care licensure or registration by the department under §346-152, HRS.

"Relative" means related by blood, marriage, adoption, or hanai.

"Report month" means the calendar month that the simplified report form is due.

"Reside with" means an eligible child living in a home or family setting with the child's eligible caretaker.

"Responsible household member" means a reliable adult, included in the household, who can provide accurate information about the household's circumstances.

"Restored benefits" means the child care benefit issued to a caretaker whenever benefits for a prior period are not issued because of an error by the department.

"School age" means the chronological age of a child who is eligible to enroll in elementary, middle, or secondary schools.

"Self-employed" means an individual:

- (1) Is not subject to discharge from his or her job by another person;
- (2) Reports income to the Internal Revenue Service and the State as a self-employed person;
- (3) Meets social security requirements as a self-employed person and pays employer's and employee's share of social security taxes; and
- (4) Is not considered an employee of an agency or organization.

The individual must also generate income equivalent to twenty hours per week multiplied by 4.3333 weeks multiplied by State minimum wage at the time of eligibility and redetermination as having an eligible employment activity as self-employed.

"Simplified reporting" means the reporting requirement for caretakers who receive child care payments to provide information in the report month to determine continued eligibility as specified in section 17-798.3-18, and report changes as specified in section 17-798.3-17 that occur during the eligibility period.

"Simplified report form" means the report that a caretaker is required to complete for eligibility re-determination.

"State fiscal year" means a period beginning July 1 and ending June 30.

"State Median Income" means the official guidelines issued yearly in the Federal Register by the Secretary of Health and Human Services, Administration for Children and Families under the authority of 42 U.S.C. §8621, the Omnibus Budget Reconciliation Act of 1981. States are given discretion by the United States Department of Health and Human Services (DHHS) to utilize a median income from any particular year, if not from the current year, as long as the states indicate in their Child Care Development Fund (CCDF) State Plan the year used and the dates on which eligibility limits became or will become effective.

"Temporarily absent" means a period of up to ninety days when the caretaker is not residing in the home with the child as a result of employment or job training commitments.

"Temporary Assistance for Needy Families" or "TANF" means the federal and state financial assistance and non-assistance programs administered by the department under 42 U.S.C. §§601-619 and section 346-14, HRS.

"Temporary change in activity" means a period of less than three months when the caretaker ceases to participate in any of the allowable activities specified under section 17-798.3-9(b)(3).

"Timely notice" means when the department mails a notice of adverse action at least ten calendar days prior to the effective date of the action.

"Toddler" means a child over twelve months old up to and including twenty-four months old.

"Transitional child care" means a program designed to provide child care payments for eligible families that terminated TANF financial assistance or non-assistance payments sponsored by the department to enable them to maintain self-sufficiency.

"Underpayment" means the amount of payments issued to a caretaker for a benefit month that is less than the amount which the caretaker was eligible to receive.

"Very low income" means gross income less than one hundred percent of the Federal Poverty Guidelines. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-151)

§17-798.3-3 Confidentiality. Requirements for confidentiality shall be as provided in chapter 17-601. [Eff] (Auth: HRS §§346-10 and 346-14; 45 C.F.R. §205.50) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 1391.3)

§17-798.3-4 Geographical location. All department-administered child care programs outlined in this chapter may be made available to eligible clients on a statewide basis. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-5 Scope. (a) Child care payments shall be for child care services that include, but are not limited to:

- (1) Supervision to assure the child's safety, comfort, and health;
- (2) Personal care as appropriate to the child's age and developmental maturity;
- (3) Activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
- (4) Health and nutritional services; and
- (5) Provision of child care by providers as defined in section 17-798.3-2.

(b) Child care payments shall not be allowed for educational services including, but not limited to:

- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day, unless the child is out of school due to illness;
 - (2) Services for which a child receives academic credit toward graduation;
 - (3) Any instructional services that supplants or duplicates the academic program of any public or private school which is established for the purpose of compliance with the school attendance law of Hawaii; or
 - (4) Services that provide specialized training or skill development to children, as indicated in section 346-152(a)(5), HRS.
- (c) Child care payments shall only be used for services described in subsection (a). [Eff
] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-6 Application process. (a) A request for child care payments shall be submitted on an application form prescribed by the department when required by a specific departmental program.

(b) The form shall be dated and signed by the caretaker under penalty of law that all the information needed to establish eligibility for child care payments, as stated on the form, is true and correct; provided that for child care payments needed for the care of a child of a minor parent, except for emancipated minors, the adult caretaker for the minor parent shall apply for child care payments.

(c) The caretaker shall submit copies of documents for verification of the information provided to establish eligibility of the program; provided that caretakers who are experiencing homelessness shall be subject to section 17-798.3-9(d)(4)(C).

(d) Only one caretaker shall be allowed to apply for child care payments when children reside in different households because of joint or shared custody.

(e) The date of application shall be the date the signed and dated application form is received by the department.

(f) The caretaker shall participate in a child care application interview to establish eligibility of the family unit for payments. The program staff shall arrange the interview as soon as possible but no later than thirty days after receipt of the signed and dated application form and supporting documentary evidence.

(g) The date of eligibility for child care payments shall be one of the following:

- (1) The date of application, provided that the interview has been completed and the eligibility requirements in section 17-798.3-9 are met from the date of application;
- (2) The date the child care payments are scheduled to begin within thirty days after the eligibility conditions in section 17-798.3-9 are met; or
- (3) The date of the authorized activity or program component in the FTW programs. [Eff
] (Auth: HRS §346-14)
(Imp: HRS §346-14)

§17-798.3-7 Priority applications. (a) As appropriate for the respective subchapters, when multiple applications are received simultaneously, the criteria for the priority applications shall be in the following order from the highest priority to lowest:

- (1) Child protective services reasons as referenced in section 17-798.3-9(a)(5);
- (2) Transitional child care as referenced in section 17-798.3-36;
- (3) Receiving TANF benefits and at risk of loss of any activity under section 17-798.3-9(b)(3);
- (4) Very low income family units that are:
 - (A) At risk of job termination because of child care related problems;

- (B) Employed and homeless;
- (C) Employed and have LEP; or
- (D) Not employed but have a written offer of employment that is scheduled to start within two weeks; and
- (5) Other family units that are employed, enrolled in and attending an educational program, or are in job, vocational, or employment training.

(b) Family units with the least amount of monthly income for the corresponding family unit size shall be given first consideration in the groups identified in paragraphs (2), (3), (4), and (5) in this section. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14; 45 C.F.R. §§98.20 and 98.44)

§17-798.3-8 Notice of application disposition.

(a) The department shall provide written notice to caretakers about the status of their applications for child care payments.

(b) The caretaker shall be sent a written notice that contains a statement of the action taken, the reasons for the action, the specific rules supporting the action, and the right to appeal the action of the department through established administrative appeals procedures. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-9 Eligibility requirements. (a)

Depending upon availability of funds, all children eligible for child care payments shall reside with the eligible caretaker and be:

- (1) A citizen or national of the United States of America;
- (2) A qualified alien, as defined under this chapter. The caretaker shall furnish documentation of the alien status of any

child declared to be a qualified alien. A child who is a qualified alien is not eligible for child care assistance for a period of five years beginning on the date of the child's entry into the United States with qualified alien status. Exception: The five-year prohibition from receiving assistance does not apply to a qualified alien who is:

- (A) Admitted to the United States as a refugee;
 - (B) Granted asylum;
 - (C) Lawfully admitted for permanent residence;
 - (D) An alien whose deportation is being withheld; and
 - (E) A Cuban Haitian entrant under the Refugee Education Assistance Act of 1980; described at 8 U.S.C. Section 1613; and
- (3) Under age thirteen years; or
 - (4) Thirteen through seventeen years of age with a physical or mental incapacity that prevents the child from doing self-care; or
 - (5) Receiving child protective services for family supervision, and the need for child care is specified in the family unit's or child's case plan as ordered by the court.
- (b) A caretaker shall be eligible for child care payments, provided the caretaker:
- (1) Has a monthly gross income verified through documentation that does not exceed eighty-five percent of the State Median Income, as established in the current federally approved Child Care Development Fund State Plan, for a family of the same size, using the Income Eligibility Limits as established in Exhibit II, dated January 2, 2020, attached at the end of this chapter, except for:
 - (A) Caretakers who are foster parents (or resource caregivers) licensed or

- certified by the department, or an organization under the authority of the department, who need child care for a foster child in their care; or
- (B) Family units receiving child protective services for family supervision and the need for child care is specified in the family unit's or child's case plan as ordered by the court;
- (2) Has net value of assets that total less than \$1,000,000 for the household, including net value of real property, as certified by the caretaker, excluding:
 - (A) Any equity value in the real property which is the usual residence of the household; and
 - (B) Any equity for one vehicle; and
- (3) Meets one of the following conditions:
 - (A) Is engaged in employment in exchange for wages, salary, income, or in-kind income;
 - (B) Has a written offer of employment that is scheduled to start within two weeks and employment commences as scheduled;
 - (C) Meets the definition of self-employed and generates the minimum income level in accordance with section 17-798.3-2;
 - (D) Is enrolled in and attends an educational program or job training, vocational, or employment training. This includes the break time between classes for the day, for up to four hours per day;
 - (E) Is participating in the FTW program or a treatment program as required by section 17-656.1-10, except for a participant in the Food Stamp Employment and Training program, and the FTW participant is involved in the required activities written in the FTW employment or individualized service plan;

- (F) Is receiving child protective services for family supervision and the need for child care is specified in the family unit's case plan as ordered by the court;
- (G) Is in a two-parent family unit where one of the caretakers is in an activity specified under section 17-798.3-9(b)(3) and the other caretaker is determined to have a disability which prevents the caretaker from providing care for their own child. Proof of permanent disability and inability to provide care of the caretaker's own eligible child shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist. The written report shall be submitted every twelve months;
- (H) Is an emancipated minor caretaker under age eighteen years who meets any eligibility condition cited in section 17-798.3-9(b)(3)(A) through (G), and retains custody of his or her own child; or
- (I) Is a minor parent of a child and both minor parent and child are residing in the home of an adult caretaker, the adult caretaker shall apply on behalf of the minor parent and the minor parent is participating in any activity under section 17-798.3-9(b)(3)(A) through (G);
- (4) Is a resident of the State; and
- (5) Establishes a reasonable relationship between the time during which each caretaker participates in an activity as specified under section 17-798.3-9(b)(3) and the time during which child care is needed.
- (c) A child care provider:
 - (1) Shall meet the following conditions in order for child care

- payments to be authorized:
- (A) Be a child care provider licensed by or registered with the department; or
 - (B) Be an exempt provider listed with the department, providing group child care in accordance with section 17-800; or
 - (C) Be providing home-based child care, including in-home care, and is complying with the health and safety requirements as established in subchapters 3, 4 and 5; and
- (2) Shall submit a written statement to the department that shall attest to:
- (A) The provider's willingness to provide care;
 - (B) The provider's willingness to allow a caretaker unlimited access to the caretaker's child, including written records concerning the caretaker's child, during normal hours of provider operation or whenever children are in the care of the provider;
 - (C) Rate that will be charged;
 - (D) Mailing address, child care facility address and telephone number;
 - (E) Assurance that the child care facility's premises is safe from hazards.
- (3) Shall not be one of the following:
- (A) Parents, biological or legal;
 - (B) Step-parents living in the household;
 - (C) Guardians or permanent custodians;
 - (D) Members of the family unit that receives government assistance, including essential persons;
 - (E) Providers who are not in compliance with State or county regulatory requirements;
 - (F) Individuals under the age of eighteen years;
 - (G) Individuals determined by the department to pose a risk to the health

- and safety of the child;
- (G) A sibling of the child needing care who resides in the same home as the child;
or
- (I) A caretaker.
- (d) The department shall:
 - (1) Verify that the child and caretaker meet the eligibility requirements as described in this chapter;
 - (2) Verify the identity of the caretaker through readily available documentary evidence including, but not limited to:
 - (A) Birth certificate;
 - (B) Passport;
 - (C) Church record of birth or baptism;
 - (D) School or employment records or identification;
 - (E) Motor vehicle operator's license;
 - (F) An official document that shows the individual's photograph;
 - (3) Establish that the child care provider selected by the caretaker is following the provisions of section 17-798.3-9(c);
 - (4) Allow, at the department's option, for presumptively eligible payments when:
 - (A) An exempt provider selected by the caretaker meets the requirements of 17-798.3-51(c)(1) through (7)(A); provided that payments shall end upon failure to complete the monitoring inspection visit pursuant to section 17-798.3-51(c)(8), the start of an investigation by the department pursuant to 17-798.3-51(e), or failure to comply with the requirements under subchapters 3, 4 and 5, or chapter 17-801, and such payments shall not be considered an overpayment under section 17-798.3-22(b); or
 - (B) Foster children who do not have documentation to support verification of section 17-798.3-9(a), pending

- (C) Children experiencing homelessness who do not have the documentation to support verification of sections 17-798.3-9(a) and (b), pending receipt of the documentation within two months from application date; provided that payments shall end after two months and the caretaker failed to comply with this subparagraph, and payments shall not be considered an overpayment under section 17-798.3-22(b).
- (5) Authorize the initial and subsequent monthly child care payments based on sections 17-798.3-9, 17-798.3-10, 17-798.3-12, 17-798.3-13, 17-798.3-14, 17-798.3-15, 17-798.3-16, 17-798.3-17, 17-798.3-18, 17-798.3-19, 17-798.3-20, 17-798.3-22, 17-798.3-23, and 17-798.3-36, subchapters 3, 4, and 5, and chapter 17-801;
- (6) Review eligibility no less than every twelve months or whenever changes that affect eligibility are reported in accordance with section 17-798.3-17; and
- (7) Track and monitor appropriateness and utilization of child care and payments.
[Eff _____] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5, 45 C.F.R. §§98.20, 98.30, 98.31 and 98.41)

individual counted in the family unit shall be used to determine income eligibility of the family unit, except for individuals identified in subparagraphs 17-798.3-9(b) (1) (A) and (B), by using one of the following:

- (1) The average of the prior two months gross income for existing employment;
- (2) The monthly gross income received in the prior month for existing employment;
- (3) The monthly gross income that is anticipated to be received from prospective or new employment.
 - (A) Weekly gross income anticipated to be received shall be converted to a monthly gross income by multiplying the weekly income by 4.3333.
 - (B) Bi-weekly gross income anticipated to be received shall be converted to monthly income by multiplying the bi-weekly income by 2.1667.
 - (C) Semi-monthly income anticipated to be received shall be converted to monthly income by multiplying the semi-monthly income by 2; or
- (4) Gross income from the caretaker's business or self-employment, such as selling real estate, or engaging in fishing and farming, which provide irregular income over a period of six months, may be averaged to determine the monthly income for the budget month; or
- (b) Monthly gross income means monthly sums of income received from sources such as but not limited to:
 - (1) Gross income (before deductions are made for items such as, but not limited to, taxes, union dues, bonds, and pensions) from:
 - (A) Wages;
 - (B) Salary;
 - (C) Armed forces pay, excluding basic

- housing allowance;
- (D) Commissions;
- (E) Tips;
- (F) Piece-rate payments; or
- (G) Cash bonuses earned;
- (2) Social security pensions and survivors' benefits (prior to deductions for medical insurance) including:
 - (A) Railroad retirement insurance checks from the U.S. government; and
 - (B) Permanent disability insurance payments made by the Social Security Administration;
- (3) Unemployment insurance benefits such as:
 - (A) Compensation received from government unemployment insurance agencies or private insurance companies during periods of unemployment; and
 - (B) Any strike benefits received from union funds;
- (4) Worker's compensation benefits and temporary disability insurance benefits:
 - (A) Worker's compensation benefits include compensation received from private or public insurance companies for injuries incurred at work;
 - (B) Temporary disability insurance benefits include compensation received from private or public insurance companies for short-term disabilities resulting from off-the-job sickness or injury; and
 - (C) The cost of the insurance shall have been paid by the employer and not by the employee, and the benefits are made to individuals who continue to be considered employees of the company;
- (5) Pensions and annuities, including pensions or retirement benefits paid to a retired person or the person's survivors by a former employer or by a union, either directly or by an insurance company;

- (6) Veteran's pensions and other benefits, which include:
 - (A) Money paid periodically by the Veteran's Administration to:
 - (i) Survivors of deceased veterans; or
 - (ii) Disabled members of the armed forces;
 - (B) Subsistence allowances paid to veterans for:
 - (i) Education; or
 - (ii) On-the-job training; and
 - (C) Refunds paid to former members of the armed forces as GI insurance premiums;
- (7) An allotment of a member of the armed forces;
- (8) Alimony;
- (9) Child support, including support or maintenance for or on behalf of a son or daughter who is over eighteen years of age;
- (10) Public assistance payments from another state prior to any reduction of the monthly assistance payment due to overpayment recovery;
- (11) Hawaii public assistance payments prior to any reduction of the monthly assistance payment due to overpayment recovery in accordance with chapter 17-683;
- (12) Adoption assistance payments;
- (13) Dividends from stockholdings or memberships in associations;
- (14) Periodic interest on savings or bonds;
- (15) Income from estates or trust funds;
- (16) Income from rental of property after business expenses;
- (17) Royalties;
- (18) Income received from self-employed activities:
 - (A) To be considered self-employed, the individual shall meet the definition of self-employed as established under this chapter and generate the required income at the time of eligibility and

in each subsequent month. This must be considered first as monthly earned income when determining eligibility for child care payments as a self-employed person.

- (B) Income received from non-farm self-employed activities means the gross receipts minus expenses for an individual's own business, professional enterprise, or partnerships.
 - (i) Gross receipts shall include the value of all goods sold and services rendered.
 - (ii) Expenses shall include the costs of goods purchased, rent, heat, light, power, wages and salaries paid, business taxes, and other similar costs.
 - (iii) The value of salable merchandise consumed by the proprietors of retail stores shall be included as part of net income.
 - (iv) Items such as depreciation, personal, business and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, and state or federal taxes paid shall not be deducted as business expenses. Personal expenses such as lunches and transportation to and from work shall not be deducted as business expenses.
- (C) Income received from farm self-employed activities means the gross receipts minus operating expenses from the operation of a farm by a person on the person's own account, as an owner, renter, or sharecropper.
 - (i) Gross receipts shall include the

- value of all products sold,
government crop loans, money
received from the rental of farm
equipment to others, and
incidental receipts from the sale
of wood, sand, gravel, and
similar items;
- (ii) Operating expenses shall include
the cost of feed, fertilizer,
seed, and other farming supplies,
cash wages paid to farmhands,
cash rent, interest on farm
mortgages, farm building repairs,
farm taxes (not state and federal
income taxes), and other similar
expenses;
- (iii) The value of fuel, foods, or
other farm products used for
family living shall not be
included as part of net income;
- (iv) Items such as depreciation,
personal, business and
entertainment expenses,
transportation, or state and
federal taxes paid shall not be
deducted as business expenses.
Personal expenses such as lunches
and transportation to and from
work shall not be deducted as
business expenses;
- (19) Free rent converted to a cost compensation
when it is exchanged for an activity instead
of wages or salary. The department shall
determine this by multiplying the State
minimum wage multiplied by forty hours a
week multiplied by 4.3333 weeks. When work
is less than forty hours a week, use the
actual number of hours worked in the month
multiplied by State minimum wage. [Eff
] (Auth: HRS §346-14) (Imp:
HRS §346-14)

§17-798.3-11 Excluded monthly income. The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments:

- (1) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self-employed activity income;
- (2) Withdrawals of bank deposits;
- (3) Loans;
- (4) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (5) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
 - (A) Income tax refunds, rebates, or credits;
 - (B) Retroactive lump sum social security, SSI, public assistance, or unemployment compensation benefits;
 - (C) Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
 - (D) Lump sum inheritances or insurance payments;
- (6) Refunds of security deposits on rental property or utilities;
- (7) Capital gains;
- (8) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break;
- (9) Loans, grants, and scholarships obtained and used under conditions that prohibit use for

- current living expenses;
- (10) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
 - (11) Home produce utilized for home consumption;
 - (12) The value of an allotment under the Food Stamp Act of 1977, as amended, 7 U.S.C. §2017;
 - (13) The value of USDA donated or surplus foods;
 - (14) The value of supplemental food assistance under the Child Nutrition Act of 1966, 42 U.S.C. §§1771-1789, and the special food service program for children under the National School Lunch Act, as amended, 42 U.S.C. §§1751-1769;
 - (15) Benefits received from the special supplemental food program for women, infants, and children (WIC), 42 U.S.C. §1771;
 - (16) Allowances and payments to participants in programs, other than on-the-job training, under the Workforce Investment Act (WIA) of 1998, 20 U.S.C. §9201;
 - (17) The earned income of individuals participating in on-the-job training programs under the Work Investment Act (WIA) of 1998, 20 U.S.C. §9201, who are between 18 and 19 years of age and under the parental control of another household member;
 - (18) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
 - (19) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
 - (20) Payments or allowances made under any federal, state, or local laws for the purpose of energy assistance;

- (21) Assistance or relief payments received as a result of a disaster or emergency as declared by the federal, state, or county government;
 - (22) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange, Pub. L. No. 101-201;
 - (23) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4636;
 - (24) Payments received under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
 - (25) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older Americans Act of 1965, 42 U.S.C. §3001; Pub. L. No. 100-175;
 - (26) Payments to volunteers derived from the volunteer's participation in the following programs authorized by the Domestic Volunteer Service Act of 1973, 42 U.S.C. §§5011, 4951-4958:
 - (A) Foster grandparent program;
 - (B) Senior companion program; and
 - (C) Volunteers in service to America (VISTA) and AmeriCorps programs;
 - (27) Military re-enlistment bonus;
 - (28) Foster board payments;
 - (29) Permanency assistance or guardianship assistance payments;
 - (30) Any other payments made in accordance with state and federal laws that preclude the payments from being counted as income.
- [Eff _____] (Auth: HRS §346-14)
(Imp: HRS §346-14)

§17-798.3-12 Child care rates. (a) Child care rates shall be established based on:

- (1) Types of care:
 - (A) Registered family child care;
 - (B) Registered family child care infant toddler care;
 - (C) Accredited registered family child care;
 - (D) Accredited registered family child care infant toddler care;
 - (E) Legally exempt relative, non-relative, and center-based care;
 - (F) Legally exempt relative and non-relative infant toddler care;
 - (G) Licensed group child care center and group child care home;
 - (H) Accredited group child care center;
 - (I) Hawaiian medium center-based care;
 - (J) Licensed infant toddler center;
 - (K) Licensed school-age care, including before-school care or after-school care;
 - (L) Licensed school-age care for intercession, summer care, or breaks during the school year;
 - (M) Legally exempt before and after school care; and
- (2) Need for care, as established under section 17-798.3-15:
 - (A) Full-time care; or
 - (B) Part-time care.

(b) The rates are established in Exhibit I, dated January 2, 2020, attached at the end of this chapter. [Eff _____] (Auth: HRS §346-14) (Imp: §346-14; 45 C.F.R. §98.42)

§17-798.3-13 Child care payments. (a) The amount issued by the department may not exceed the

maximum monthly department allowance, except when the caretaker cannot continue to use the child care provider due to an action by the department, and the caretaker paid for child care but the provider is unwilling to refund the amount to the caretaker.

(b) Child care payments include:

- (1) A one-time only payment in a state fiscal year for registration fees, which may also include supply and activity fees, required by the facility, not to exceed \$125.00; and
- (2) Monthly cost of child care per child, as paid, but not to exceed the child care rates specified in section 17-798.3-12. For the exception in section 17-798.3-13(a), a second payment up to the maximum full-time rate specified in section 17-798.3-12 for the new provider shall be allowed; and
- (3) Only one child care provider per eligible child needing child care payments shall be authorized by the department for each eligible child, even if the caretaker uses more than one child care provider for any eligible child. The caretaker shall determine which child care provider shall be utilized for child care payments authorized under this chapter, provided that the child care provider meets the requirements under this chapter.

(c) The department shall issue to and receive from the caretaker a signed and completed designated form for each child care provider chosen by the caretaker, to verify the cost of child care for the eligible child needing child care payment, the name and address of the provider, and provider information to establish that the child care provider meets the requirements as specified in section 17-798.3-9(c), and subchapters 3, 4, and 5 for an exempt provider.

(d) A family unit's child care expense may be partially paid by another public-funded source, except for payment made under chapter 17-799 or 42 U.S.C. §9858.

(e) Child care payments may be provided through monies issued one month at a time and paid to the caretaker; provided that a caretaker may choose to have the child care payment forwarded by the department as a direct deposit from the caretaker's account to the child care provider's direct payment account recorded with the department. [Eff

] (Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43)

§17-798.3-14 Method of computing family unit's co-payment. The following steps shall be used to compute the family unit's co-payment:

- (1) Determine the monthly gross income for the family unit;
- (2) Identify the family unit size;
- (3) Determine the family unit's co-payment tier based on the co-payment tier established in Exhibit II, dated January 2, 2020, attached at the end of this chapter; and
- (4) Multiply the family unit's co-payment tier by the monthly gross income for the family unit. [Eff] (Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43)

§17-798.3-15 Method of computing the need for care. The following shall be used to compute the need for care for each eligible child in the family unit needing child care payments:

- (1) Counting the hours the caretaker is engaged in the allowable activity except for:
 - (A) Individuals identified in section 17-798.3-9(b) (3) (F), the child care need

- shall be based on the number of hours of child care specified in the court-ordered service plan; or
- (B) When in the case of a family unit, with two caretakers, both caretakers' activity hours shall be the same overlapping hours; and
- (2) The hours of care that the eligible child needing child care payment is attending the child care facility; and
- (3) Comparing the hours of child care needed determined by paragraphs (1) and (2), and choosing the lesser amount. [Eff]
(Auth: HRS §§346-14, 346-63) (Imp: HRS §§346-14, 346-63; 45 C.F.R. §§98.41, 98.42 and 98.43)

§17-798.3-16 Method of computing the child care payment. (a) The following shall be used to compute the child care payment:

- (1) The caretaker's relationship to the child who resides with the caretaker, and the age of the child who needs care;
- (2) The child care provider;
- (3) The need for care as established under section 17-798.3-15; and
- (4) The cost of child care and the child care rate determined under section 17-798.3-12 for the type of child care selected and authorized for each eligible child needing child care payment, and choosing the lesser amount.
- (b) Subtracting the family unit's co-payment calculated under section 17-798.3-14 from the amount determined in subsection (a), provided that:
- (1) A portion of the family unit's co-payment shall be waived when an eligible child needing child care payment is attending an accredited group child care center, a

Hawaiian-medium center-based facility, a licensed infant and toddler child care center, licensed group child care center, or licensed group child care home;

- (2) The portion waived pursuant to paragraph (1) shall not exceed the child care cost or up to one hundred United States dollars, whichever is less, per child that is attending an accredited group child care center, a Hawaiian-medium center-based facility, a licensed infant and toddler child care center, licensed group child care center, or licensed group child care home; and
- (3) When the computed child care payment amounts for eligible children needing child care payments and who are not attending child care facilities described in paragraph (1) are less than the remaining balance of the family unit co-payment, the department shall not collect any unrecovered co-payment amount.

(c) The caretaker shall be responsible for any child care costs in excess of the child care payment computed under this section.

(d) The caretaker shall be responsible to pay the family unit's co-payment share of the child care cost directly to the provider.

(e) The department shall project the family unit's eligibility and monthly payments prospectively for the eligibility period.

- (1) The initial payment shall be calculated from the date of eligibility to the end of the month, which may be for less than a full month, and shall be considered the first month of the eligibility period.
- (2) When changes are reported during the eligibility period, the monthly payments shall be prospectively calculated for the remainder of the eligibility period. (Eff
] (Auth: HRS §346-14) (Imp:
HRS §346-14; 45 C.F.R. §98.20)

§17-798.3-17 Mandatory reporting. (a) A caretaker who is a recipient of child care payments shall report changes to the department within ten calendar days of the change for the following:

- (1) Monthly gross income and the source of the household income exceeds eighty-five percent of the State Median Income for a family unit of the same size, except for:
 - (A) Department-licensed foster parents with approved activities that need child care; or
 - (B) Family units as specified under section 17-798.3-9(b)(3)(F).
- (2) Address changes, including:
 - (A) Place of residence; and
 - (B) Mailing address;
- (3) Household composition changes;
- (4) Marital status changes;
- (5) Ending, changing, or starting services with a child care provider;
- (6) Changes to provider's contact telephone number or address where care is being provided;
- (7) When there is a new adult household member at the home-based child care exempt provider;
- (8) Changes in the cost of care;
- (9) Changes in the child care type;
- (10) Loss of activity:
 - (A) Except for family units as specified under section 17-798.3-9(b)(3)(F); or
 - (B) When a caretaker reports a temporary change in activity, the department shall allow up to three months for the caretaker to resume participating in an activity allowable under section 17-798.3-9(b)(3). A temporary change in activity shall include:
 - (i) Any time-limited absence from work

- for an employed caretaker due to such reasons as the need to care for a family member or an illness. Verification of the need for temporary care of an immediate family member or an illness of an employed caretaker and duration of care, shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist.
- (ii) Any interruption in work for a seasonal worker who is not working;
 - (iii) Any student holiday or break for a caretaker participating in a training or educational program;
 - (iv) Any reduction in work, training, or education hours, as long as the caretaker is still working or attending a training or educational program; or
 - (v) Any other cessation of work or attendance at a training or educational program that does not exceed three months;
- (C) If a caretaker does not resume an activity allowable under section 17-798.3-9(b) (3) within three months from the date of the loss of the prior allowable activity(ies), child care payments shall be terminated in accordance with section 17-798.3-19;
- (11) Closure of the child protective services family supervision case for family units as specified under section 17-798.3-9(b) (3) (F).
- (b) Changes may be reported in writing, in person, or by telephone, and shall be supported by verifying documentation.
- (c) When changes are reported pursuant to this section, the department shall take action on the reported changes and calculate payments for the

balance of the eligibility period, after timely and adequate notice, as follows:

- (1) Changes that are reported within ten calendar days of the occurrence shall be implemented in the first month following the month in which the change was reported;
 - (2) Changes that are reported after ten calendar days of the occurrence, that result in a higher payment, shall be implemented in the second month following the month in which the change was reported;
 - (3) Changes that are reported that result in a lower payment, due to a lower cost of care or selection of a child care type that has a lower maximum payment rate, shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence; and
 - (4) Changes that are reported as referenced in subsection (a) related to the child care provider selected by the caretaker, shall be implemented by adjusting the child care payments when the child care provider is determined to meet the conditions of section 17-798.3-9(c) and subchapters 3, 4, and 5, in accordance with section 17-798.3-9(d).
- [Eff _____] (Auth: HRS §346-14)
(Imp: HRS §346-14)

§17-798.3-18 Re-determination of eligibility and payment amount. (a) Eligibility and payment amounts shall be reviewed at the end of every eligibility period.

- (1) The family unit shall submit a completed simplified report form including the verifying documentation required to determine the continued eligibility of the caretaker, child and provider.

- (A) The completed simplified report form must be received by the department by the due date printed on the simplified report form.
- (B) A simplified report form shall be considered incomplete when:
 - (i) It is not initialed and signed by the caretaker,
 - (ii) It omits information and documentation including, but not limited to, pay stubs, employment, training or education schedule, and child care receipts, that are necessary for the department to determine the family unit's eligibility, or to compute the family unit's child care payment amount; or
 - (iii) In situations where the caretaker is experiencing homelessness and is unable to provide verification for eligibility requirements other than sections 17-798.3-9(d) and 17-798.3-9(c), the caretaker may be presumptively eligible for child care payments for a period of two months while the caretaker secures the verification for the eligibility requirements, provided that the caretaker submits self-certification meeting the requirements for 17-798.3-9(b)(1) through (5). The verification submitted within the two months shall demonstrate eligibility requirements for 17-798.3-9(b)(1) through (5) from month of re-determination or start of child care, whichever is later.
- (C) If the caretaker fails to submit a simplified report form by the due date

noted on the simplified report form, or submits an incomplete form, the department shall provide a timely and adequate notice in accordance with section 17-798.3-20 that allows the caretaker an extended filing period.

- (i) When the caretaker submits a completed simplified report form within the extended filing period, child care payments shall be provided not later than ten days after the caretaker's normal benefits issuance date.
 - (ii) When the caretaker submits a completed simplified report form after the extended filing period, but before the end of the report month, child care payments shall be provided not later than thirty days after the receipt of the simplified report form.
 - (iii) When the extended filing period ends, and the simplified report form is not received by the department, or is received but is still incomplete, the department shall issue a notice that confirms the termination of child care payments.
- (2) The department shall require the caretaker to provide information on the simplified report form that shall include, but is not limited to, those items listed in paragraphs 17-798.3-17(a)(1) through (10), as well as activity hours; and
 - (3) Child care payments shall only be authorized for the next twelve months provided the caretaker has submitted the completed simplified report form and the required documentation to establish eligibility.
- (b) Re-determination of eligibility shall include determination that an exempt provider

conducting home-based child care, including in-home care, meets the requirements of section 17-798.3-9(c) and subchapters 3, 4, and 5:

- (1) Has current background checks and the results indicate the person does not pose a risk to children in care; in accordance with chapter 17-801;
- (2) Completed annual training, pursuant to sections 17-798.3-51(c)(7)(B) and (C), and
- (3) Completed monitoring inspection visits at least annually, pursuant to section 17-798.3-51(c)(8).

(c) At redetermination, when a caretaker reports a change in the status of the eligible activities from working, or participating in a training or education program, the department shall allow up to three months for the caretaker to resume working, or to attend an education or training program. If the caretaker does not resume an eligible activity within three months from the date of the loss of the eligible activity, child care payments shall be terminated in accordance with section 17-798.3-19.

(d) The department shall take action on any other reported changes that are verified to affect eligibility or payment amounts, in addition to those required under subsections (a) through (c) and sections 17-798.3-17 and 17-798.3-51, after timely and adequate notice. The department shall take action on the reported changes and calculate payments for the balance of the eligibility period as follows:

- (1) Changes that are reported within ten calendar days of the occurrence, that result in a higher payment, shall be implemented in the first month following the month in which the change was reported;
- (2) Changes that are reported after ten calendar days of the occurrence, and result in a higher payment, shall be implemented in the second month following the month in which the change was reported; and
- (3) Changes that are reported that result in a lower payment, due to a lower cost of care

or selection of a child care type that has a lower maximum payment rate, shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence.

(e) When a child turns two years old, kindergarten eligible, or thirteen years old, the child care payments may continue for the duration of the existing eligibility period; provided that no changes have occurred for eligible child for the child care provider, cost of child care, child care type, or address where care is being provided.

(f) Child care payments shall not be authorized for the chosen exempt child care provider until the requirements of section 17-798.3-9(c) and subchapters 3, 4 and 5 are met.

(g) At redetermination when a caretaker reports a change in the selected child care provider, the department shall follow section 17-798.3-9(d). [Eff
] (Auth: HRS §346-14) (Imp: HRS
§346-14)

§17-798.3-19 Denial, reduction, suspension, or termination of child care. (a) Child care payments may be denied, reduced, suspended, or terminated when:

- (1) The caretaker does not complete the process of application, determination of eligibility, or withdraws the application;
- (2) The caretaker does not sign and date the application form or simplified report form prescribed by the department;
- (3) The caretaker does not submit a completed application form or simplified report form prescribed by the department.
- (4) The caretaker does not submit verifying documentation requested by the department;
- (5) The child does not meet the eligibility requirements referenced in subsection 17-

- 798.3-9(a);
- (6) The caretaker does not meet the eligibility requirements referenced in subsection 17-798.3-9(b);
 - (7) The provider does not meet or comply with the eligibility requirements referenced in subsections 17-798.3-9(c) and subchapters 3, 4, and 5;
 - (8) Conditions initially present in the family unit situation have changed and child care is no longer needed;
 - (9) The family unit has not used authorized care;
 - (10) The child has absences that are unexcused for more than five consecutive days;
 - (11) The caretaker voluntarily requests discontinuance of child care payments;
 - (12) The caretaker and the child are unable to use child care and another service must be planned for;
 - (13) The family unit is no longer eligible for child care payments;
 - (14) The family unit cannot be located;
 - (15) The family unit fails to complete the process of re-determination of eligibility;
 - (16) The family unit fails to utilize child care payments in accordance with section 17-798.3-5(c) and does not reconcile the resulting overpayments in accordance with section 17-798.3-22;
 - (17) The department determines pursuant to section 17-798.3-23 that there are insufficient funds to maintain all children receiving care;
 - (18) A caretaker does not participate in any activity allowable under section 17-798.3-9(b)(3)(A) through (H) for a period in excess of three months from the date of loss of the prior allowable activity(ies); or
 - (19) The caretaker fails to provide the required eligibility documentation pursuant to sections 17-798.3-9(d)(4)(B) or (C), and two

months has passed from the date of presumptive eligibility.

(b) Child care payments may be suspended when the payment amount is determined to be zero:

- (1) When children are attending school and only need intersession or summer care;
- (2) The family unit's use of child care services does not begin within thirty days of submittal of the application for services; or
- (3) For a period not to exceed the remaining duration of the caretaker's most recent twelve month eligibility period when the designated provider does not meet the conditions set forth in subsection 17-798.3-9(c) and the family unit must find a different provider.

(c) Child care payments shall be suspended upon the start of an investigation by the department pursuant to 17-798.3-51(e) for the provider caring for an eligible child needing child care payments and payments shall not be retroactively paid for the period of suspension if the department determines that the provider poses a risk to children in care or that the provider is not complying with 17-798.3-9(c) or subchapters 3, 4, or 5. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-20 Notice of adverse action. (a) The department shall provide the caretaker with timely and adequate notice prior to taking adverse action to reduce, suspend, or terminate any child care payments specified in this chapter.

(b) A caretaker can submit verifying documentation for consideration by the department to reverse the proposed department action prior to the effective date of the action.

(c) Only adequate notice is required when the following occurs:

- (1) A caretaker is deceased;

- (2) A caretaker left the State;
- (3) A caretaker requests discontinuance of child care payments;
- (4) A caretaker fails to comply with mandatory report requirements of section 17-798.3-17;
- (5) A caretaker's whereabouts are unknown;
- (6) The department determines pursuant to section 17-798.3-23 that there are insufficient funds to maintain all children receiving care; or
- (7) An application for child care payments is denied. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-21 Administrative appeal requests.

(a) A caretaker may file a written request for an administrative appeal, in accordance with the provisions set forth in chapter 17-602.1, when the caretaker disagrees with the department's adverse action to deny, reduce, suspend, or terminate payment, or with the department's determination of an overpayment.

(b) Child care payments shall not continue during the appeal process. [Eff _____]
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-22 Underpayments and overpayments. (a)

Underpayments shall be processed as follows:

- (1) Prompt action shall be taken to correct any underpayment to a currently eligible caretaker who would have received a greater benefit if an error by the department had not occurred.
- (2) If a caretaker has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (3) Payments provided to the caretaker to correct

- an underpayment shall not be counted as income.
- (4) Corrective payments shall be made for any underpayment due a former recipient when child care assistance is restored.
 - (b) Overpayments shall be processed as follows:
 - (1) Failure to provide information, as specified in sections 17-798.3-12, 17-798.3-16, 17-798.3-17, and 17-798.3-18, or errors made by the department may affect the caretaker's eligibility and result in an overpayment, and excluding section 17-798.3-9(d) (4) (C).
 - (2) An overpayment made to a caretaker shall be recovered through:
 - (A) Repayment in cash, in full or in part, by the caretaker to the department; or
 - (B) A reduction of not less than ten percent in the amount payable to the caretaker in subsequent months until the entire amount of overpayment is recovered.
 - (3) An individual subject to recovery of an overpayment shall be provided adequate notice by the department including:
 - (A) The reasons, dates, and the amount of the alleged overpayment; and
 - (B) The proposed method by which the overpayment shall be recovered.
 - (4) An overpayment to an individual shall be recovered from the caretaker who was overpaid, from individuals who were members of the family unit when overpaid, or from a family unit which includes members of a previously overpaid family unit.
 - (5) A child care overpayment shall be recovered only from child care payments or TANF payments, provided the caretaker continues to receive such payments.
 - (6) Recovery of an overpayment to former recipients of child care payments shall be referred to the department's fiscal management office for collection action.

- (7) If a caretaker for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the department may refer debts exceeding twenty-five dollars to the comptroller of the State for tax setoff as specified in chapter 17-606. [Eff] (Auth: HRS §§346-14, 346-44) (Imp: HRS §§346-35, 346-44)

§17-798.3-23 Termination for insufficient funds.

(a) The department may, at its discretion, refuse to take new applications, reduce payments, or terminate payments when there are insufficient funds to pay child care payments at current amounts through the end of the State fiscal year.

(b) Refusal to take new applications, reducing payments, or terminating payments will first be accomplished in reverse priority from what is listed in section 17-798.3-7. Priority will further be determined within the categories set forth in section 17-798.3-7 by income, with higher income family units terminated first.

(c) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month are less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.

(d) When the department determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving payments in any given month or to take other necessary action to operate within the child care budget appropriation. A decision under this subsection shall be final and conclusive and not subject to an administrative appeal under section 17-798.3-21. [Eff]
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-24 Waitlist. (a) The department may implement a waitlist for child care subsidy payments whenever it determines that sufficient funding is not available to sustain payments for all of the applicants requesting assistance.

(b) The following are not subject to the waitlist:

- (1) A family unit who needs child care payments to comply with the First-To-Work (FTW) program participation requirements;
- (2) A family unit whose child is receiving child protective services, and the need for child care is specified in the family unit's case plan as ordered by the court; and
- (3) Former TANF participants who are eligible for Transitional Child Care pursuant to section 17-798.3-36.

(c) When the waitlist is in effect, the department shall prioritize applicants using the following:

- (1) Family units with gross incomes at or below 100% of the Federal Poverty Guideline (FPG) for a family of the same size shall be income-ranked by dividing their monthly gross income by the income limit for a family of the same size;
- (2) Family units with gross incomes above 100% of the FPG for a family of the same size shall be income-ranked by dividing their monthly gross income by the income limit for a family of the same size; and
- (3) Date an application is received by the department.

(d) Upon determining funds are available, the department shall select waitlisted family units by priority, as established in subsection (c), and provide notification of eligibility for program enrollment as established in section 17-798.3-8.

(e) Waitlisted family units selected for child

care payments shall meet all eligibility requirements as established in section 17-798.3-9 at the time of notification of eligibility for program enrollment; provided that if the waitlisted family unit is not eligible, the caretaker will be notified of the application denial.

(f) Eligibility for the initial payment shall be the later of:

- (1) The month that requirements of section 17-798.3-9 are verified by the department; or
- (2) The eligible child's first day in child care.

(g) Assignment of applicants to the waitlist shall be final and conclusive and not subject to an administrative appeal under section 17-798.3-21.

[Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§§17-798.3-25 to 17-798.3-34 (Reserved)

SUBCHAPTER 2

TRANSITIONAL CHILD CARE PAYMENTS

§17-798.3-35 Purpose. The purpose of this subchapter is to establish the eligibility requirements, benefits, and method of determining payment for transitional child care benefits.

[Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-798.3-36 Eligibility requirements. (a) The department may provide transitional child care

payments for a period of up to twelve consecutive months to a family unit that ceases to be eligible for TANF as a result of:

- (1) Increased hours of employment or increased income from employment;
- (2) New or increased income from child support; or
- (3) The caretaker voluntarily requesting TANF closure because the caretaker is currently employed.

(b) The family unit shall have received TANF benefits in the month immediately preceding the first month of ineligibility or termination.

(c) The family unit shall meet all the conditions specified in sections 17-798.3-9, 17-798.3-10, 17-798.3-11, 17-798.3-13, 17-798.3-14, 17-798.3-15 and 17-798.3-16.

(d) Eligibility for transitional child care payments shall begin from the date TANF eligibility ends or when the family unit applies for transitional child care payments, whichever is later.

(e) A family unit shall apply for transitional child care payments within twelve months of ending TANF for the reasons stated in subsection (a):

- (1) A family unit that applies for transitional child care payments prior to TANF eligibility ending may do so by request to the department without further application; and
- (2) A family unit that applies for transitional child care payments after TANF eligibility ends shall submit a form prescribed by the department pursuant to section 17-798.3-6.
[Eff] (Auth: HRS §346-14)
(Imp: HRS §346-14)

§§17-798.3-37 to 17-798.3-49 (Reserved)

SUBCHAPTER 3

GENERAL REQUIREMENTS FOR EXEMPT PROVIDERS

§17-798.3-50 Purpose. The purpose of this subchapter is to define the general requirements for exempt child care providers to be authorized to care for children whose families receive child care payments. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-51 General requirements. (a) The department shall verify that the exempt provider meets exemptions from sections 346-161 or 346-171, HRS, in accordance with section 346-152, HRS.

(b) An exempt provider shall be authorized to care for children whose families receive child care payments under this chapter when all requirements in subchapter 3, 4, and 5 are met.

(c) An exempt provider shall:

- (1) Be eighteen years old or older;
- (2) Afford caretakers unlimited access to their children, including written records concerning the caretakers' children, during normal hours of provider operation and whenever children are in the care of the provider;
- (3) Operate as an exempt provider in accordance with section 346-152, HRS;
- (4) Complete background checks in accordance with section 17-798.3-89 and chapter 17-801;
- (5) Have no known history of physical, psychological or psychiatric problems, or background, in accordance with chapter 17-801 that may adversely affect or interfere with the care of children;
- (6) Be free of physical or psychological

- conditions which may impair or limit the provider's ability to provide child care;
- (7) Satisfactorily complete and provide written evidence to the department to show completion of trainings as required by the department when caring for an eligible child under this chapter which includes but is not limited to:
- (A) An initial training in health and safety standards that is approved by the department prior to caring for an eligible child;
 - (B) Safe sleep training that is approved by the department on an annual basis when the provider starts caring for an eligible child who is less than one year of age, until no eligible children in care are less than one year of age; and
 - (C) A minimum of eight hours of training within one year of completion of the initial training as described in subparagraph (A), and completed annually thereafter, as prescribed by the department in at least two of the following topic areas:
 - (i) Physical care of the young child;
 - (ii) Care of the sick child;
 - (iii) Child nutrition;
 - (iv) Child growth and development;
 - (v) Children with special needs;
 - (vi) Learning activities and play;
 - (vii) Family engagement;
 - (viii) Managing challenging behaviors;
 - (ix) Prevention of child maltreatment and abuse;
 - (x) First aid and child cardiopulmonary resuscitation;
 - (xi) Physical environment;
 - (xii) Health and safety;
 - (xiii) Child care business or program management; or

- (xiv) Community resources; and
 - (xv) Training under section 17-798.3-51(c)(7)(B), when applicable;
- provided that an exempt provider who is the child's grandparent, great-grandparent, sibling living in a separate residence, aunt, or uncle is not subject to this paragraph;
- (8) Submit to initial and annual monitoring inspections where care is being provided, including in-home care, to ensure compliance with the requirements of subchapters 4 and 5 as follows:
 - (A) The department shall assess the qualifications of exempt providers and inspect the premises.
 - (B) All exempt providers shall cooperate with the department by providing access to the premises, records, staff, and household members.
 - (C) Failure to comply with reasonable requests may constitute grounds for the department to determine that the provider is not authorized to care for a child whose family unit receives child care payments;
- provided that an exempt provider who is the child's grandparent, great-grandparent, sibling living in a separate residence, aunt, or uncle is not subject to this paragraph;
- (9) Comply with section 17-798.3-66;
 - (10) Agree to report to the department, within one working day of occurrence, the death of a child or staff, and any illness or injury received at the provider that results in a child's hospitalization or emergency treatment;
 - (11) Report to the department within ten calendar days of occurrence, any of the following:
 - (A) Change in contact telephone number;
 - (B) Change in the address where the child

- care is being conducted; or
 - (C) Change in the staff or household members where care is being conducted;
 - (12) Agree to notify all parents of children in care when there are deficiencies in meeting requirements under subchapters 3, 4, or 5;
 - (13) Report any suspected child abuse or neglect in accordance with section 350-1.1, HRS;
 - (14) Have a written policy of expulsion of children which includes the following:
 - (A) The conditions under which a child may be expelled, if applicable;
 - (B) Sufficient timeframe before expulsion occurs to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in subparagraph (C);
 - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children or staff;
 - (15) Give parents and guardians a copy of the expulsion policy;
 - (16) Provide written notification to parents or guardians, any concerns that could lead to the child's expulsion; and
 - (17) When expulsion occurs, maintain a record of the conditions, parental notification, and action taken when applicable.
- (d) The eligible family using an exempt provider providing home-based child care, including in-home care, may be authorized to receive child care payments presumptively once the provider is in compliance with paragraphs (c) (1) to (c) (7) (A). Child care payments to the eligible family unit may be made retroactively in accordance with section 17-798.3-6(g).
- (e) If the department receives information that the exempt provider, including relatives excluded from paragraph 17-798.3-51(c) (8), is in violation of subchapters 3, 4 or 5, or that the provider is conducting child care in violation of section 346-152,

HRS, the department will conduct an investigation, including an inspection of the child care facility.

- (1) All exempt providers shall cooperate with the department by providing access to the premises, records, staff, and household members, including relatives excluded from paragraph 17-798.3-51 (c) (8).
- (2) Child care payments shall cease in accordance with sections 17-798.3-9(d) (4) (A) and 17-798.3-19(a) (7) until the department has completed its investigation and determined that the exempt provider is in compliance with section 346-152, HRS, or subchapters 3, 4 or 5. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§§17-798.3-52 to 17-798.3-59 (Reserved)

Subchapter 4

HEALTH REQUIREMENTS FOR EXEMPT PROVIDERS

§17-798.3-60 Purpose. The purpose of this subchapter is to define the health requirements for exempt providers to be authorized to care for children whose families are receiving child care payments.
[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-61 Drinking water provisions. The provider shall make available suitable drinking water to all children in care. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14;

§17-798.3-62 Handwashing. (a) The provider and children shall wash hands using water and soap:

- (1) Before and after eating or drinking;
- (2) Before and after preparing food or beverages;
- (3) Before and after diapering;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling any bodily fluids or items containing bodily fluids;
- (6) After handling pets or animals;
- (7) After outdoor play; and

(b) Paper towels or separate cloth towels for each child for drying hands after hand-washing.

[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-63 Toilet and handwashing facilities. Children shall have access to toilet and handwashing facilities that are clean and stocked with toilet paper and supplies required under section 17-798.3-62(b). [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-64 Handling of diapers or training underpants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is separate from eating and food preparation areas;
- (3) Discard soiled disposable diapers shall be

discarded in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.

- (4) Place soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach.
- (5) Soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-65 Food preparation and protection.

If the provider offers meals and snacks, the provider shall:

- (1) Designate areas for eating or drinking;
- (2) Clean food preparation areas before and after meals and snacks; and
- (3) Store food in a safe and sanitary manner.
[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 42 U.S.C. §§2002, 2005, 2014)

§17-798.3-66 Evidence of child's health. (a)

The provider shall obtain from the parent or guardian of each child entering child care, evidence of compliance with examinations and immunizations, in accordance with chapters 11-157 and 11-164.2 for tuberculosis clearance.

(b) The provider shall obtain from the parent or guardian, the health needs for each child, including any allergies, and maintain copies of the evidence.

(c) The provider shall not be required to obtain the evidence described in subsection (a) if the

provider has the following:

- (1) A written statement from the parent or guardian objecting to immunization of the child on the basis of their religion;
- (2) A written statement signed by the child's physician indicating that the child's medical condition contraindicates immunization; or
- (3) Is providing care in the eligible child's home and all children in care are part of the same family unit.

(d) The provider shall allow a grace period of three months from the child's first day in care, with the exception of chapter 11-164.2 for tuberculosis clearance, to obtain the evidence described in subsection (a) or (c) for:

- (1) Children experiencing homelessness; or
- (2) Children in foster care;

provided that the parents or guardians submit to the provider in writing that sets out the health needs for the child, including any allergies, at the time the child is placed in care.

(e) The provider shall be required to obtain the evidence described in subsection (a) and (b) if the provider is a relative specified in section 17-798.3-51(c)(7) and is caring for any other children unrelated to the caregiver. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-67 Children who become ill. The provider shall ensure a clean and safe resting space to isolate children who are ill while in care, and for an ill child less than one year of age the resting space shall be in accordance with section 17-798.2-85.

§17-798.3-67.01 Administration of medication.

- (a) When medication prescribed by a health care

professional is administered by the provider or provider's staff:

- (1) The child's parent or guardian shall give written permission to the provider to administer medication;
 - (2) The medication shall be kept in the original container bearing the prescription label which shows a current date, the health care professional's directions for use, and the child's name; and
- (b) When over the counter medication is administered by the provider or provider's staff:
- (1) The child's parent or guardian shall give written permission to the provider to administer medication;
 - (2) The child's parent, guardian, or a health care professional shall give written directions to the provider for the administration of the medication.
- (c) All medication shall be stored out of the reach of the children and shall be returned to parents or guardians when no longer in use. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-68 Provider's health standards. The provider and the provider's staff shall be free of communicable diseases, including tuberculosis. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-69 Personal health habits of provider and staff. The provider shall ensure:

- (1) No smoking (including electronic smoking devices) is allowed on the premises during child care hours of operation and nicotine products shall be stored out of the reach of children.

- (2) No alcoholic beverages shall be consumed prior to or during child care hours of operation or kept at the facility during child care hours of operation, provided that if it is a family home, alcoholic beverages may be kept on premises but shall be stored out of the reach of children.
- (3) Any medications shall not be consumed prior to or during child care hours of operation that impair or limit the provider's ability to provide child care, provided that if it is a family home, medications may be kept on premises but shall be stored out of the reach of children. [Eff _____]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§§17-798.3-70 to 17-798.3-79 (Reserved)

Subchapter 5

SAFETY REQUIREMENTS FOR EXEMPT PROVIDERS

§17-798.3-80 Purpose. The purpose of this subchapter is to define the safety requirements for exempt providers to be authorized to care for children whose families are receiving child care payments.
[Eff _____] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-81 Supervision. The provider or the provider's staff must be physically on-site and supervising the children in care at all times. Supervision means to be within sight or hearing

distance to provide for the needs of the children and to respond to an emergency. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-82 Managing children's behavior. (a)

The provider shall ensure an environment that promotes a child's well-being.

(b) The provider shall not use physical punishment as a means of disciplining or managing children's behavior, including but not limited to, spanking, pinching, slapping, or shaking.

(c) The provider shall not cause physical harm or neglect to the child. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-83 Maximum number of children. (a)

Exempt home-based providers and exempt in-home care providers shall:

- (1) Provide care to no more than six children at the same time during any part of a twenty-four hour day, including the provider's own children, except when the provider's children are six years of age or older.
- (2) Care at the same time for no more than two children under eighteen months of age, including the provider's own children under eighteen months of age.

(b) Notwithstanding subsection (a), exempt home-based providers meeting the exemption under section 346-152(a)(1), HRS, may be approved by the department to care for up to four children under eighteen months of age when the family unit has the same number of children of such ages, and the care is during the night-time hours, and the provider does not care for any other children at the same time, including the provider's own children,

(c) Notwithstanding subsection (a), exempt in-home care providers meeting the exemption under sections 346-152(a)(10), HRS, may be approved by the department to care for up to eight children, of which up to four children under eighteen months of age, of the same family unit when the family unit has the same number of children needing child care payments, and the provider does not care for any of the provider's own children at the same time. [Eff]
(Auth: HRS §§346-14, 346-152, and 346-152.5) (Imp: HRS §§346-14 and 346-152; 45 C.F.R Part 98)

§17-798.3-84 Disaster plan for emergencies. The provider shall have the following:

- (1) A smoke detector in the child care area which is properly installed and in proper working condition;
- (2) An unexpired ABC multi-purpose type fire extinguisher in the child care area, kept out of the reach of children;
- (3) An emergency exit plan which is posted in the child care area and practiced regularly with the children;
- (4) Emergency evacuation exits which are kept clear of obstructions;
- (5) A written disaster plan that is reviewed with the parent or guardian and covers emergencies, including fire, flood, natural disaster, evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodation of infants and toddlers, children with special needs, and children with chronic medical conditions.
[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-85 Sleeping areas for children in care. (a) For a child less than one year of age, the provider shall:

- (1) Ensure that areas where children sleep are kept ventilated and at a safe temperature;
- (2) Ensure that each child has a separate crib or playpen;
- (3) Ensure that cribs or playpens used for care have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the provider maintains a record of the repair;
- (4) Not allow for any other sleeping arrangement, including bed-sharing;
- (5) Place the child on his or her back to sleep, unless written instructions for an alternative sleep position are on file from one of the following:
 - (A) A physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.);
 - (B) A physician assistant (PA);
 - (C) An advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States; or
 - (D) A nurse practitioner (NP) licensed by the State of Hawaii.
- (6) Move the child to a crib or playpen for the remainder of the nap when the child falls asleep in a location or in equipment other than a crib or playpen;
- (7) Monitor and periodically check on a sleeping child;
- (8) Ensure that the crib or playpen has a clean, tightly-fitted sheet; and

- (9) Ensure that the crib or playpen does not have any bedding or toys placed in with a child.
- (b) For a child one year of age and older, the provider shall:
 - (1) Ensure that areas where children sleep are kept ventilated and at a safe temperature;
 - (2) Provide individual napping arrangements, where each child shall have his or her own mat, rug, cot, bed, or blanket. [Eff (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)]

§17-798.3-86 Environmental hazards. (a) The premises, in which child care is carried out, including both indoor and outdoor space, shall be lighted and ventilated at a safe temperature and shall not have environmental hazards.

(b) Accessible electrical outlets shall be covered with child-resistant outlet covers when children in care are not school-age.

(c) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured.

(d) Hazardous substances, including cleaning solutions, alcohol, and medication, are inaccessible to children and in a closed container clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(e) Establish and follow procedures for handling, storing, and disposing of biocontaminants, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids.

(f) All entrances and exits shall be secured.

(g) Children's access to traffic and other outdoor hazards shall be blocked.

(h) Stove tops and controls shall not be accessible to children without supervision by the provider or provider's staff.

(i) Hot water taps shall be inaccessible without

supervision by the provider or provider's staff.

(j) Sharp objects, household items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely.

(k) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place; provided that a law enforcement officer, who is trained and certified to carry a firearm and ammunition, shall not be subject to this subsection for a law enforcement agency-issued firearm when the officer is acting in an official or authorized capacity.

(1) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times, and the provider has written permission from the parents that the children are allowed to have contact with such pets, animals, and fowl.

(m) Indoor and outdoor structures and furnishings that have hazardous sharp edges, rust and splinters shall not be accessible to children.

(n) Swimming or wading pools that are part of the facility, equipment, or program, shall observe the following safety practices:

- (1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming pools are in use;
- (2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of subsection (n)(1). Children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and
- (3) Legible safety rules for the use of all types of pools, except for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by each provider responsible for the care of the children. [Eff _____]

(Auth: HRS §§346-14 and 346-152.5) (Imp:

HRS §346-14; 45 C.F.R Part 98)

§17-798.3-87 Emergency care provisions. The provider shall have the following:

- (1) Information on each child's emergency contact numbers for each parent or guardian;
- (2) Written permission from the parent or guardian of the child for the child to receive emergency care;
- (3) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in care.
- (4) An operating telephone that is available and is easily accessible to the provider;
- (5) A plan for accessing a telephone when not in the usual location where care is being provided;
- (6) A first aid kit that is adequately stocked, readily available, and accessible; and
- (7) A first aid kit, emergency contact phone numbers, and medical treatment release forms when going on trips. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-88 Transportation provisions. When the provider transports children in a personal vehicle, the provider shall:

- (1) Have written permission from the parent or guardian that each child is allowed to be transported by the provider in a personal vehicle;

- (2) Ensure that car seats and safety restraints are used as required by applicable laws;
 - (3) Ensure that children are secured in the back seat of the vehicle; and
 - (4) Ensure that children are never left unattended in vehicles, even with the air conditioning on or windows rolled down.
- [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

§17-798.3-89 Background check for exempt providers. (a) All exempt providers, any adult household members, regardless of whether they provide care, and current or prospective staff, including volunteers, shall be subject to and in compliance with chapter 17-801, prior to authorization of any child care subsidy payments, and annually thereafter in accordance with chapter 17-801, to ensure that they are of reputable and responsible character, are suitable to provide child care, and do not pose a risk to children in care.

(b) The department shall deny authorization for child care subsidy payment assistance to the family if the exempt provider, household member, or current or prospective staff are determined by the department to be not suitable to provide child care pursuant to chapter 17-801.

(c) The department shall deny child care subsidy payment assistance to the family using an exempt provider who does not comply with the request to exclude a staff or household member who is determined by the department to be not suitable to provide child care in accordance with chapter 17-801.

(d) A person who cannot be authorized to provide care for a family receiving child care subsidy payment assistance as a result of the background check done pursuant to chapter 17-801 may request an administrative hearing as provided in chapter 17-801."

[Eff] (Auth: HRS §§346-14 and 346-

§17-798.3-89

152.5) (Imp: HRS §346-14; 45 C.F.R Part 98)

CHILD CARE RATE TABLE

Type of Care	Full-Time Care	Part Time Care
Licensed Center-Based Infant/Toddler Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$1,733	\$1,733
NAEYC Accredited*, NECPA Accredited, or Hawaiian Medium Center-Based Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$980	\$980
Licensed Center-Based or Group Child Care Home	87 Monthly Hours or more	1-86 Monthly Hours
	\$795	\$795
NAFCC Accredited^ Family Child Care Home Infant/Toddler Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$750	\$750
NAFCC Accredited^ Family Child Care Home**	87 Monthly Hours or more	1-86 Monthly Hours
	\$700	\$700
Registered Family Child Care Home Infant/Toddler Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$650	\$362
Registered Family Child Care Home **	87 Monthly Hours or more	1-86 Monthly Hours
	\$600	\$334
Legally Exempt Relative and Non-Relative Infant/Toddler Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$400	\$223
Legally Exempt Relative, Non-Relative, and Center-Based Care **	87 Monthly Hours or more	1-86 Monthly Hours
	\$350	\$195
Licensed School-Age Intersession/Summer Care	87 Monthly Hours or more	1-86 Monthly Hours
	\$450	\$350
Licensed Before School Care / After School Care	45+ Monthly Hours	1-44 Monthly Hours
	\$155	\$86
Legally Exempt Before School Care / After School Care	45+ Monthly Hours	1-44 Monthly Hours
	\$120	\$61

* NAEYC refers to National Association for the Education of Young Children. NECPA refers to National Early Childhood Program Accreditation

^ NAFCC refers to National Association for Family Child Care Accreditation

**Summer and Intersession care rates are the same as the rates listed here. All Rates include an estimate of travel time.

Department of Human Services
Benefit, Employment and Support Services Division
January 2, 2020

EXHIBIT I

Child Care
Gross Income Eligibility Limits and Sliding Fee Scale

Family Size	Income Eligibility Limit	0-100% FPG	101%-115% FPG	116%-130% FPG	131%-145% FPG	146%-160% FPG	161%-175% FPG	176%-190% FPG	191%-205% FPG	206%-230% FPG	231% FPG – elig. limit
		0% family co-pay	1% family co-pay	2% family co-pay	3% family co-pay	4% family co-pay	5% family co-pay	6% family co-pay	7% family co-pay	8% family co-pay	9% family co-pay
1	3,632	1,198	1,377	1,557	1,737	1,916	2,096	2,276	2,455	2,755	3,632
2	4,749	1,621	1,864	2,107	2,350	2,593	2,836	3,079	3,323	3,728	4,749
3	5,867	2,045	2,351	2,658	2,965	3,272	3,578	3,885	4,192	4,703	5,867
4	6,985	2,468	2,838	3,208	3,578	3,948	4,319	4,689	5,059	5,676	6,985
5	8,102	2,891	3,324	3,758	4,191	4,625	5,059	5,492	5,926	6,649	8,102
6	9,220	3,315	3,812	4,309	4,806	5,304	5,801	6,298	6,795	7,624	9,220
7	9,429	3,738	4,298	4,859	5,420	5,980	6,541	7,102	7,662	8,597	9,429
8	9,639	4,161	4,785	5,409	6,033	6,657	7,281	7,905	8,530	9,570	9,639
9	9,848	4,585	5,272	5,960	6,648	7,336	8,023	8,711	9,399	9,848	-
10	10,058	5,008	5,759	6,510	7,261	8,012	8,764	9,515	10,058	-	-
11	10,267	5,431	6,245	7,060	7,874	8,689	9,504	10,267	-	-	-
12	10,477	5,855	6,733	7,611	8,489	9,368	10,246	10,477	-	-	-
13	10,687	6,278	7,219	8,161	9,103	10,044	10,687	-	-	-	-
14	10,896	6,701	7,706	8,711	9,716	10,721	10,896	-	-	-	-
15	11,106	7,125	8,193	9,262	10,331	11,106	-	-	-	-	-
For each add'l, add	209	423	486	549	613	209	-	-	-	-	-

Instructions:

1. Gross Income (GI) eligibility limit is at 85% of State Median Income (SMI).
2. Compare GI with Income Eligibility Limit to determine income eligibility.
3. If GI is less than or equal to the Income Eligibility Limit, find the largest reimbursement rate for which the income limit is greater than or equal to GI.

Department of Human Services
Benefit, Employment and Support Services Division
January 2, 2020

EXHIBIT II

2. The adoption of chapter 17-798.3, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.

PANKAJ BHANOT
Director of Human Services


APPROVED AS TO FORM:

Deputy Attorney General

2. The adoption of chapter 17-798.3, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.



 PANKAJ BHANOT
Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

III. Old Business — After Public Hearing

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

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

RECEIVED
By SBRRB at 3:28 pm, Jun 04, 2021

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-800

Chapter Name: Requirements For Listing Of Exempt Center-Based Providers

Contact Person/Title: Dana Balansag

Phone Number: 586-7187

E-mail Address: dbalansag@dhs.hawaii.gov **Date:** _____

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.

Refer to Attachment 1

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

Refer to Attachment 1

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

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

Refer to Attachment 1

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

Refer to Attachment 1

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

Refer to Attachment 1

4. The number of persons who:

(i) Attended the public hearing: 5

(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.

The testimonies that were provided were in support of the proposed rules.

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

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

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Requirements For Listing Of Exempt Center-Based Providers

(Attachment 1)

- V. In 2018, DHS held about 6 different listening sessions to review the possible policies that the department would be including in the rule chapter amendments to be in compliance with the federal Child Care and Development Block Grant (CCDBG) Act of 2014 and regulations. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

Between 2018 and 2020, the department has discussed with school-age providers about the health and safety requirements of the federal CCDBG Act of 2014. The department discussed with the school-age providers about recommendations for the number of hours for on-going training requirements for staff and considerations for the health and safety requirements as they pertain to older, school-age children that is developmentally appropriate to older children's cognitive growth and abilities.

In July 2017, DHS sent letters to all child care subsidy families using exempt home-based, non-relative child care providers to inform both the families and their providers about the federal requirements and the coming changes that will be adopted for exempt home-based, relative and non-relative child care providers to complete health and safety requirements.

DHS did not receive any specific feedback from subsidy families or their exempt home-based, relative and non-relative child care providers from the July 2017 letters.

In 2015, the department held about 6 different listening sessions to review the various requirements of the federal CCDBG Act of 2014 and sought input as to what and how to implement the health and safety requirements for exempt child care providers that care for children whose families receive child care subsidies from DHS. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, about the listening sessions.

- V.a. Child care businesses and operators were concerned about the number of hours required for the new on-going training requirement. Since some providers are exempt from licensure by or registration with DHS per the statute, DHS developed different requirements and higher payment rates for licensed and registered child care centers and homes than exempt centers and exempt homes. Providers also expressed concerns about the types of trainings that would be approved to meet the on-going training requirements. The department developed flexible rules to allow for community-based in-service trainings or online trainings to be able to count toward the on-going training requirements with supporting verification provided. The department did not establish

Post-Public Hearing Small Business Impact Statement
To The Small Business Regulatory Review Board
Requirements For Listing Of Exempt Center-Based Providers

more stringent training requirements or minimum qualifications for a trainer, since the on-going training requirement would be completely new.

- VI.1. The Public Notice was published in the newspapers statewide on Monday, October 5, 2020 to inform the public of the opportunity to provide their comments on the proposed rule chapter at the public hearing scheduled for November 6, 2020. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.
- VI.2. Testimonies submitted were in support of the proposed rules. Several suggested changes were to meet nationally recognized standards for nutrition, sugary drinks, active play and screen time; and to include child care payments not be allowed to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day unless the child is participating in virtual or distance learning; were not included at this time, but have been noted by the department and will be further reviewed for consideration for possible amendments in the future.
- VI.3. Some suggested changes were not able to be made at this time, but have been noted by the department and will be further reviewed for consideration for possible amendments in the future. Other suggested comments will be addressed through programmatic procedures. The department currently is non-compliant with federal law and regulations and must adopt the proposed rules to be able to come into compliance.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

BESSD 20.C0602

June 1, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT
DIRECTOR *PB*

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED ADOPTION OF CHAPTER 17-800 HAWAII
ADMINISTRATIVE RULES, RELATING TO LISTING OF EXEMPT CENTER-BASED
PROVIDERS

In accordance with Administrative Directive No. 18-02, we are submitting for your review and approval as to form the proposed adoption to Chapter 17-800 relating to Listing of Exempt Center-Based Providers. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:

James Walther
Deputy Attorney General

7/31/20
Date

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-800
Hawaii Administrative Rules

June 1, 2020

1. Chapter 17-800, Hawaii Administrative Rules, entitled "Requirements for Listing of Exempt Center-Based Providers" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 800

REQUIREMENTS FOR LISTING OF EXEMPT CENTER-BASED
PROVIDERS

Subchapter 1 Listing Procedures

- §17-800-1 Purpose
- §17-800-2 Definitions
- §17-800-3 Scope
- §17-800-4 Application, inspection, and
authorization for listing with the
department
- §17-800-5 Denial or removal from department's
listing, and hearings
- §§17-800-6 to 17-800-9(Reserved)

Subchapter 2 General Requirements

§17-800-10 General requirements

§§17-800-11 to 17-800-19 (Reserved)

Subchapter 3 Health Requirements

§17-800-20 Drinking water provisions

§17-800-21 Handwashing

§17-800-22 Toilet and handwashing facilities

§17-800-23 Handling of diapers or training
underpants

§17-800-24 Food preparation and protection

§17-800-25 Evidence of child's health

§17-800-26 Children who become ill

§17-800-26.01 Administration of medication

§17-800-27 Provider's health standards

§17-800-28 Personal health habits of provider and
staff

§§17-800-29 to 17-800-39 (Reserved)

Subchapter 4 Safety Requirements

§17-800-40 Supervision

§17-800-41 Managing children's behavior

§17-800-42 Group size and provider-child ratio

§17-800-43 Disaster plan for emergencies

§17-800-44 Sleeping areas for children in care

§17-800-45 Environmental hazards

§17-800-46 Emergency care provisions

§17-800-47 Transportation provisions

§17-800-48 Background checks for exempt center-
based providers

Historical Note: Chapter 17-800 is based
substantially upon chapter 17-798.3, Child Care
Services [Eff]

SUBCHAPTER 1

LISTING PROCEDURE

§17-800-1 Purpose. The purpose of this chapter is to establish the requirements for exempt center-based child care providers to be listed with the department so that child care payments may be authorized to families receiving child care payments under chapters 17-798.3 and 17-799. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-2 Definitions. As used in this chapter:
"After-school care" means child care provided after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Applicant" means an organization that is exempt from licensure or registration by the department under §346-152, Hawaii Revised Statutes (HRS) and is applying to be listed with the department.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before-school care" means a child care provided before the start of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Caretaker" means an adult or an emancipated minor, who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, permanent custodian, step-parent, or relative who is related to the child by

blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child but cannot apply for child care payments themselves and must have an adult apply on their behalf.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

"Child care" means those situations in which a person or child care facility has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent, guardian, or caretaker for any part of a twenty-four-hour day.

"Child care facility" means the same as under section 346-151, Hawaii Revised Statutes (HRS).

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Department" means the department of human services or its designee.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"Exempt center-based provider" means a facility providing legally-exempt child care, in accordance with section 346-152, HRS. It also includes all staff employed at a child care facility, any volunteers who provide care for children for ten hours or more per week, substitutes, and any other individuals who have unsupervised access to children in exempt center-based care.

"Facility" means the premises of the address on the application to be listed with the department, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and

outdoor areas.

"First aid kit" means materials and equipment, in one location in a suitable container, that is used for meeting medical emergencies. A first aid kit shall be of a type approved by the American Red Cross, American Medical Society, or the department of health.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"Ill" or "illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Infant" means a child newborn up to and including twelve months old.

"Legally-exempt care" or "exempt care" means child care which is exempt from licensure or registration by the department under §346-152, HRS.

"Physician" means an individual licensed by the state for the practice of medicine.

"Provider" means any individual eighteen years and older, caregiver, facility, agency, or organization, including exempt center-based providers, and their adult employees, including volunteers who provide care for ten hours or more per week, substitutes, or any other individual who provides direct care, supervision, and guidance to children apart from and in the absence of the child's parent, guardian, or caretaker for part of a twenty-four hour day. Providers are regulated by the department to provide child care or are legally exempt from child care licensure or registration by the department under section 346-152, HRS.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regularly" means the typical or normal pattern of the child care facility or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"School age" means the chronological age of a child who is eligible to enroll in grades kindergarten through sixth in public or private schools.

"Staff" or "staff member" means administrative, child care, office, maintenance, substitutes, and other support personnel who are employed by the child care facility, including volunteers and substitutes.

"State fiscal year" means a period beginning July 1 and ending June 30.

"Substitute" means a person who serves as a replacement caregiver for no more than ten consecutive working days in the same position when another caregiver is absent on an emergency or unplanned basis.

"Supervision" means to be within sight and hearing distance of the children to ensure the safety and protection of the children.

"Toddler" means a child over twelve months old up to and including twenty-four months old.

"Volunteer" means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff: 1/1/14] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-151 and 346-152.5)

§17-800-3 Scope. (a) An exempt center-based provider shall be on a listing with the department if the exempt center-based provider cares for a child whose family is authorized to receive child care payments under chapters 17-798.3 or 17-799.

(b) Child care payments shall be for child care at an exempt center that include, but are not limited

- §17-800-4 Application, inspection, and authorization for listing with the department.** (a) A completed application to be on a listing with the department shall be submitted by an exempt center-based provider and shall include the following:

- $800-7$

described in section 17-801-4, and as indicated in subparagraphs (A) and (B) below:

- (A) Applicants, employees, substitutes, volunteers, and new employees shall provide consents and complete background checks pursuant to section 17-801-4.
- (B) The department shall conduct the background checks in accordance with chapter 17-801 on all applicants and their employees, substitutes, volunteers, and new employees.

(b) The date of application to be on a listing with the department shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application to be on a listing with the department shall be issued no later than ninety days from the date the completed application, as defined in subsection (a), is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed authorized and the provider shall be placed on the department's listing of exempt center-based providers.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted.

(f) A provider shall be authorized for listing with the department if the provider is in compliance with this chapter.

(g) A provider shall be included in the department's listing unless removed from the department's listing pursuant to section 17-800-5 for up to one year at a time for new applicants and those providers on the listing for less than four consecutive years, and for two years for all other providers.

(h) A provider shall submit an application to be on the department's listing prior to the expiration of the listing period and the application is subject to the department's authorization. [Eff _____]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

§17-800-5 Denial or removal from department's listing, and hearings. (a) The conditions for denial or removal from the department's listing and the action taken by the department shall be as follows:

- (1) The department shall deny or remove a provider from the department's listing if an applicant or listed exempt center-based provider does not comply with the applicable statutes and rules of the department under this chapter;
- (2) The department may deny or remove a provider from the authorized listing if an applicant or listed exempt center-based provider does not cooperate with the department by providing access to its facilities, records, and staff members.

(b) The department shall give notice when the listing application is denied, or the exempt center-based provider is removed the department's listing. The notice shall:

- (1) Be written and sent by certified or registered mail addressed to the location shown on the listing application;
- (2) Contain a statement of the reason(s) for the proposed action and shall inform the exempt center-based provider of the right to appeal the decision to the director of the department in writing, no later than ten working days after the mailing of the notice of the proposed action;

(c) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for an administrative appeal hearing

before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application to be placed on the department's listing shall be denied or the exempt center-based provider shall be removed from the department's listing; and

(d) If no timely written appeal is made, processing of the application shall end or the exempt center-based provider shall be removed from the department's listing as of the termination of the ten working day period.

(e) The exempt center-based provider shall be immediately removed from being on the department's listing pending the completion of an investigation of a complaint allegation that the exempt center-based provider may pose a risk to the children in care, including but not limited to the following conditions:

- (1) Fails to terminate the employee, substitute, volunteer, or new employee who has a child abuse or neglect, adult abuse, criminal, or background check history and is determined to be not suitable to provide care in accordance with chapter 17-801;
- (2) Fails to exclude the employee, substitute, volunteer, or new employee who is the subject of an ongoing or pending criminal, child welfare, or department investigation in accordance with chapter 17-801;
- (3) Does not provide or require an employee, substitute, volunteer, or new employee to consent to conduct background checks in accordance with chapter 17-801;
- (4) Does not complete or require an employee, substitute, volunteer, or new employee to complete the health and safety trainings specified in section 17-800-10(b)(4); or
- (5) Allows conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include but are not limited to the existence of a health hazard on the premises, unsafe

facility conditions that cannot be immediately abated, or refusal to terminate an employee as specified in section 17-801-6.

(f) Upon immediate removal from the department's listing pursuant to subsection (e), the department shall:

- (1) Provide the exempt center-based provider written notice of the order by personal service or by certified or registered mail addressed to the provider's last known address;
- (2) Provide a statement of the reasons for the removal from the department's listing in the notice and inform the exempt center-based provider of the right to petition the department to reconsider the order within ten working days after mailing of the notice;
- (3) Give the exempt center-based provider reasonable notice upon receiving a written petition; and
- (4) Provide an opportunity for a prompt administrative appeal before a hearing officer with respect to the order of removal from the department's listing. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of removal shall be affirmed or reversed.

(g) Filing of a request for an administrative appeal does not permit the applicant to continue to be on the department's listing of exempt center-based providers authorized to care for a child whose family is authorized to receive child care payments under chapters 17-798.3 and 17-799.

(h) An applicant who was removed from the listing pursuant to this section, shall be unable to apply to be on the department's listing for:

- (1) A ninety-day period from the date that the exempt center-based provider was removed

§17-800-5

from the department's listing if the removal was their first offense; and

- (2) One year from the date that the exempt center-based provider was removed from the department's listing if the removal was their second offense.

(i) Child care payments to the family shall not continue during the exempt center-based provider's appeal process. The family may select another authorized provider in accordance with chapters 17-798.3 or 17-799. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

§§17-800-6 to 17-800-9 (Reserved)

SUBCHAPTER 2

GENERAL REQUIREMENTS

§17-800-10 General eligibility requirements.

(a) An exempt center-based provider who meets the requirements of this chapter and is on the department's listing may be authorized as a provider for a child whose family unit receives child care payments pursuant to chapters 17-798.3 or 17-799.

(b) In order to be on the department's listing, an exempt center-based provider shall meet the following requirements:

- (1) Afford caretakers unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever children are in the care of the provider;
- (2) Operate as an exempt center-based provider in accordance with section 346-152, HRS;

- (3) Complete background checks for all persons required in accordance with chapter 17-801;
- (4) Ensure that each caregiver, within forty-five days of hire, satisfactorily completes and provides written evidence to the department to show completion of trainings as required by the department which includes but is not limited to:
 - (A) An initial training in health and safety standards that is approved by the department prior to caring for an eligible child under chapters 17-798.3 or 17-799;
 - (B) Safe sleep training that is approved by the department prior to caring for an eligible child who is less than one year of age, until no children in care are less than one year of age, and on an annual basis; and
 - (C) A minimum of eight hours of training within one year of completion of the initial training as described in subparagraph (A), and completed annually thereafter, as prescribed by the department, in at least two of the following approved topic areas:
 - (i) Physical care of the young child;
 - (ii) Care of the sick child;
 - (iii) Child nutrition;
 - (iv) Child growth and development;
 - (v) Children with special needs;
 - (vi) Learning activities and play;
 - (vii) Family engagement;
 - (viii) Managing challenging behaviors;
 - (ix) Prevention of child maltreatment and abuse;
 - (x) First aid and child cardiopulmonary resuscitation;
 - (xi) Physical environment;
 - (xii) Health and safety;
 - (xiii) Child care business or program management; or

- (xiv) Community resources; and
 - (xv) Training under section 17-800-10(b)(4)(B), when applicable;
- (5) Submit to initial, annual, and on-going monitoring inspections where care is being provided, to ensure compliance with the requirements of subchapters 3 and 4 as follows:
 - (A) The department shall assess the qualifications of exempt center-based providers, the staff members, employees, volunteers, and substitutes and inspect the premises.
 - (B) All exempt center-based providers listed with the department shall cooperate with the department by providing access to the premises, records, and staff.
 - (C) Failure to comply with reasonable requests may constitute grounds for removal from the department's listing and for the department to determine that the exempt center-based provider is not authorized to care for an eligible child pursuant to chapters 17-798.3 or 17-799.
- (6) Agree to report to the department, within one working day of occurrence, the death of a child or staff, or any serious injury received at the exempt center-based provider facility that resulted in a child's hospitalization.
- (7) Report to the department within ten calendar days of occurrence, any of the following:
 - (A) Change in contact telephone number;
 - (B) Change in the address where the child care is being conducted; or
 - (C) Change in the staff, employees, substitutes, or volunteers who provide care to children.
- (8) Agree to notify all parents of children in care when there are deficiencies as

- determined by the department for requirements under subchapters 3 or 4;
- (9) Have procedures for reporting any suspected child abuse or neglect in accordance with section 350-1.1, HRS;
 - (10) Have a written policies and procedures for suspension and expulsion of children which includes the following:
 - (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in subparagraph (C)
 - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children or staff.
 - (D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion; and
 - (E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and
 - (F) Other policies which may be required by the department.
 - (11) Provider shall make available written policies for review by parents or guardians at the time of enrollment of a child.
 - (12) Provider shall notify parents or guardians and the department of any changes in the child care services it provides as follows:
 - (A) Written notification of changes in the services offered shall be provided to the department and to parents or guardians of children enrolled in the facility; and

§17-800-10

(B) Notification of any changes in service shall be made no later than thirty days before the date of the change and all changes shall be included in the facility's operating policies.

(c) All exempt center-based providers shall report any suspected child abuse or neglect in accordance with section 350-1.1, HRS.

(d) If the department receives information that the exempt center-based provider that is on the department's listing is in violation of subchapters 3 or 4, or that the provider is conducting child care in violation of section 346-152, HRS, the department will conduct an investigation, including an inspection of the child care facility. The exempt center-based provider shall immediately be removed from the department's listing in accordance with section 17-800-5(e) until the department has completed its investigation and determined the exempt center-based provider is in compliance with section 346-152, HRS, or subchapters 3 or 4 or any legal disposition is completed and the department has placed the exempt center-based provider on the department's listing. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§§17-800-11 to 17-800-19 (Reserved)

Subchapter 3

HEALTH REQUIREMENTS

§17-800-20 Drinking water provisions. The provider shall make available suitable drinking water to all children in care. [Eff] Auth:

HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-21 Handwashing. (a) The provider and children shall wash hands using water and soap:

- (1) Before and after eating or drinking;
- (2) Before and after preparing food or beverages;
- (3) Before and after diapering;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling any bodily fluids or items containing bodily fluids;
- (6) After handling pets or animals;
- (7) After outdoor play; and

(b) Paper towels or separate cloth towels shall be used for each child after hand washing.

[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-22 Toilet and handwashing facilities. Children shall have access to toilet and hand-washing facilities that are clean and stocked with toilet paper and supplies required under section 17-800-21(b). [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-23 Handling of diapers or training underpants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is

separate from eating and food preparation areas;

- (3) Discard soiled disposable diapers in a covered container. The covered container shall be kept away from eating, food storage, and food preparation areas and out of the children's reach.
- (4) Place soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach.
- (5) Soiled cloth diapers or cloth training underpants shall be given to the child's parent or guardian. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-24 Food preparation and protection. If the provider offers meals and snacks, the provider shall:

- (1) Designate areas for eating or drinking;
- (2) Clean food preparation areas before and after meals and snacks; and
- (3) Store food in a safe and sanitary manner.
[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-25 Evidence of child's health. (a) The provider shall obtain from the parent or guardian of each child by the child's first day entering child care, information about the health needs for each child, including any allergies, evidence of compliance with examinations, immunizations, and tuberculosis clearance, in accordance with chapters 11-157 and 11-164.2, and maintain copies of the information and

evidence.

(b) The provider shall not be required to obtain the evidence of immunizations described in subsection

(a) if the provider has the following:

- (1) A written statement from the parent or guardian objecting to immunization of the child on the basis of their religion; or
- (2) A written statement signed by the child's physician indicating that the child's medical condition contraindicates immunization.

(c) The provider shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) for the following:

- (1) Children experiencing homelessness; and
- (2) Children in foster care;

provided that the parents or guardians submit to the provider in writing that documents the tuberculosis screening as required pursuant to chapter 11-164.2 and the health needs for the child, including any allergies, at the time the child is placed in care.

[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-26 Children who become ill. The provider shall ensure a clean and safe resting space to isolate children who are ill while in care; provided that for an ill child less than one year of age the resting space shall be in accordance with section 17-800-44. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-26.01 Administration of medication. (a) When medication prescribed by a health care professional is administered by the provider or

§17-800-26.01

provider's staff:

- (1) The child's parent or guardian shall submit to the provider written permission from the child's parent or guardian to administer medication;
- (2) The medication shall be kept in the original container bearing the prescription label that shows a current date, the health care professional's directions for use, and the child's name; and
- (3) The medication shall be kept out of the reach of the children and shall be returned to parent or guardian when no longer in use.

(b) When over-the-counter medication is administered by the provider or provider's staff:

- (1) The child's parent or guardian shall submit to the provider written permission to administer medication; and
- (2) The child's parent, guardian, or health care provider shall submit to the provider written directions for the administration of the medication. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-27 Provider's health standards. The exempt center-based provider shall:

- (1) Be free of communicable diseases, including tuberculosis;
- (2) Be free of physical or psychological conditions which may impair or limit the provider's ability to provide child care.
[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-28 Personal health habits of provider

and staff. The exempt center-based provider shall ensure:

- (1) No smoking is allowed on the premises, including electronic smoking devices, during child care hours of operation, and nicotine products shall be stored out of the reach of children.
- (2) No alcoholic beverages shall be consumed prior to or during child care hours of operation or kept at the facility during child care hours.
- (3) Any medications that impair or limit the provider's or provider's staff ability to provide child care shall not be consumed prior to or during child care hours of operation. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5;45 C.F.R. Part 98)

§§17-800-29 to 17-800-39 (Reserved)

Subchapter 4

SAFETY REQUIREMENTS

§17-800-40 Supervision. The provider or the provider's staff must be physically on-site and supervising the children in care at all times. Supervision means to be within sight and hearing distance of the children to ensure the safety and protection of the children in care; provided that supervision may be within hearing distance for school-age children when using restroom facilities. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-41 Managing children's behavior. (a)

The provider shall ensure an environment that promotes a child's well-being.

(b) The provider and the provider's staff shall not use verbal, psychological, and physical punishment as a means of disciplining or managing children's behavior, including but not limited to, spanking, pinching, slapping, or shaking.

(c) The provider and the provider's staff shall not cause physical harm or neglect to any child. [Eff
] (Auth: HRS §§346-14 and 346-152.5)
(Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-42 Group sizes and provider-child ratios. (a) An exempt center-based provider shall maintain a maximum group size of:

(1) 40 children for school-age children attending kindergarten and above in a public or private elementary school;
(2) 32 children for four-year old children;
(3) 24 children for three-year old children;
(4) 16 children for two-year old children;
provided that exceptions shall be made for special events, such as but not limited to assemblies, performances, meal and snack time, and outdoor play area, and the staff-child ratios pursuant to subsection (b) shall be maintained during any such situations.

(b) An exempt center-based provider shall maintain the following minimum staff-child ratio for the ages of the children in care:

(1) 1:20 for school-age children attending kindergarten and above in a public or private elementary school;
(2) 1:16 for four-year old children;
(3) 1:12 for three-year old children; and
(4) 1:8 for two-year old children. [Eff

] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-43 Disaster plan for emergencies. The provider shall have the following:

- (1) Verification of fire inspection completed annually by the county fire prevention bureau and no deficiencies that remain uncorrected;
- (2) An unexpired ABC multi-purpose type fire extinguisher in the child care area, kept out of the reach of children when children in care are not school-age;
- (3) An emergency exit plan which is posted in the child care area and practiced regularly with the children;
- (4) Emergency evacuation exits which are kept clear of obstructions;
- (5) A written disaster plan to cover emergencies, including fire, flood, natural disaster, evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions; and
- (6) Mandatory emergency preparedness training for staff, employees, and volunteers. [Eff
] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-44 Sleeping areas for children in care.

(a) For a child less than one year of age, the provider shall ensure the following:

- (1) Areas where children sleep are kept

- ventilated and at a safe temperature;
- (2) That each child has a separate crib or playpen;
- (3) That cribs or playpens used for care have not been recalled by the United States consumer product safety commission; provided that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the provider maintains a record of the repair;
- (4) Not allowing for any other sleeping arrangement, including bed-sharing;
- (5) Placing the child on his or her back to sleep, unless written instructions for an alternative sleep position are on file from one of the following:
 - (A) A physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.);
 - (B) A physician assistant (PA);
 - (C) An advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States; or
 - (D) A nurse practitioner (NP) licensed by the State of Hawaii.
- (6) Moving the child to a crib or playpen for the remainder of the nap when the child falls asleep in a location or in equipment other than a crib or playpen;
- (7) Monitoring and periodically checking on a sleeping child;
- (8) The crib or playpen has a clean, tightly-fitted sheet; and
- (9) The crib or playpen does not have any bedding or toys placed in with a child.
- (b) For a child one year of age and older, the provider shall ensure the following:
 - (1) Areas where children sleep are kept ventilated and at a safe temperature;

- (2) Individual napping arrangements, where each child shall have his or her own mat, rug, cot, bed, or blanket. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-45 Environmental hazards. (a) The premises, both indoor and outdoor, in which child care is carried out shall be lighted and ventilated at a safe temperature and shall not have environmental hazards.

(b) Accessible electrical outlets shall be covered with child-resistant outlet covers when children in care are not school-age.

(c) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured.

(d) Hazardous substances, including cleaning solutions and medication, are inaccessible to children and in a closed container clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(e) The provider shall establish and follow procedures for handling, storing, and disposing of bio-contaminants, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids.

(f) All entrances and exits shall be secured or monitored for school-age children.

(g) Children's access to traffic and other outdoor hazards shall be blocked or controlled for school-age children.

(h) Stove tops and controls shall not be accessible to children when children are not school-age, or are supervised when used by children that are school-age.

(i) Hot water taps shall be inaccessible without supervision by the provider or provider's staff.

(j) Sharp objects, household items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely.

- (1) Information on each child's emergency contact numbers for each parent or guardian;
- (2) Written permission to allow the child to receive emergency care;
- (3) An operating telephone that is available and is easily accessible to the provider;
- (4) A plan for accessing a telephone when not in the usual location where care is being provided;
- (5) First aid and child cardio-pulmonary resuscitation (CPR) for exempt center-based providers shall ensure the following while children are present at the facility:
 - (A) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility;
 - (B) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department;
 - (C) A current first aid certificate means a certificate that has not expired;
 - (D) There shall be at least one adult caregiver with a current certificate in child CPR when children are present at the facility;
 - (E) The child CPR course must be provided by the American Red Cross, American Heart Association, or any organization whose child CPR certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department;
 - (F) A current certificate means a certificate that has not expired.
- (6) A first aid kit that is adequately stocked,

- readily available, and accessible; and
- (7) A first aid kit, emergency contact phone numbers, and medical treatment release forms when going on trips.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

[Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-47 Transportation provisions. When transportation is provided by the provider, children shall be protected by adequate supervision and safety precautions as follows:

- (1) The provider has written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
- (2) During any field trip or excursion operated or planned by the facility, the group sizes and provider-child ratios as required in section 17-800-42 shall apply;
- (3) Children shall be instructed in safe transportation conduct;
- (4) Car seats and safety restraints shall be used as required by applicable laws;
- (5) Children shall be secured in the back seat of the vehicle;
- (6) Children shall not be left alone in vehicles, even with the air conditioning on or windows rolled down; and
- (7) The provider shall take a head count or attendance record check before and after transportation is provided. [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-48 Background checks for exempt center-based providers. (a) All exempt center-based providers, and current or prospective staff, including substitutes and volunteers counted in the group sizes and provider-child ratio required under section 17-800-42, shall be subject to and in compliance with chapter 17-801, prior to the exempt center-based provider being listed with the department and annually thereafter in accordance with chapter 17-801, to ensure that all exempt center-based providers, employees, and volunteers that have unsupervised access to children are suitable to provide child care, are of reputable and responsible character, and do not pose a risk to children in care.

(b) The department shall deny listing with the department and not authorize child care payment assistance to the family if the exempt center-based provider determined by the department to be not suitable to provide child care pursuant to chapter 17-801.

(c) The department shall immediately remove from the department's listing the exempt center-based provider and not authorize child care payment assistance to the family, in accordance with section 17-800-5(e), if the exempt center-based provider refuses to terminate employment of a current or prospective staff who is determined by the department to be not suitable to provide child care or exclude from the premises a current or prospective staff who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801." [Eff]
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

2. The adoption of chapter 17-800, 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 June 1, 2020 and filed with the Office of the Lieutenant Governor.

PANKAJ BHANOT
Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

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PANKAJ BHANOT

Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

III. Old Business — After Public Hearing

IV. 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

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

Department or Agency: Department of Human Services

Administrative Rule Title and Chapter: 17-801

Chapter Name: Background Checks

Contact Person/Title: Dana Balansag

Phone Number: 586-7187

E-mail Address: dbalansag@dhs.hawaii.gov Date:

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.

See attachment 1

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

See attachment 1

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

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

See attachment 1

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

See attachment 1

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

See attachment 1

4. The number of persons who:

(i) Attended the public hearing: 5

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 0

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

☐ Yes ☒ No

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

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

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

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

**SMALL BUSINESS STATEMENT “AFTER” PUBLIC HEARING TO THE SMALL
BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

V.

Between 2016 and 2020, the department has discussed at six different meetings of its Child Care Advisory Committee the comprehensive background check requirements of the federal Child Care and Development Block Grant (CCDBG) Act of 2014. Many of the Committee members and meeting attendees are child care businesses or work with child care providers.

Between 2018 and 2020, the department has discussed with school-age providers about the comprehensive background check requirements of the federal CCDBG Act of 2014. The department discussed with the school-age providers about challenges in completing all of the required background checks and strategies to comply with the federal requirements without sacrificing the safety of children in care while not unnecessarily delaying the ability of new hires to start working.

In July 2017, DHS sent letters to all child care subsidy families using exempt home-based, relative and non-relative child care providers to inform both the families and their providers about the federal requirements and the coming changes that will be adopted for exempt home-based, relative and non-relative child care providers to complete health and safety requirements, including comprehensive background checks.

DHS did not receive any specific feedback from subsidy families or their exempt home-based, relative and non-relative child care providers from the July 2017 letters.

In 2015, the department held about 6 different listening sessions to review the various requirements of the federal Child Care and Development Block Grant (CCDBG) Act of 2014 and sought input as to what and how to implement the health and safety requirements for exempt child care providers that care for children whose families receive child care subsidies from DHS. The department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the listening sessions.

- a. For child care centers, the proposed rules do allow for new hires to start working provisionally, after the results from the fingerprint background checks are received and are cleared, while under direct supervision at all times of another staff person that has completed all of the required background checks.

VI.

1. The Public Notice was published in the newspapers statewide on Monday, October 5, 2020 to inform the public of the opportunity to provide their comments on the proposed rule chapter at the public hearing scheduled for November 6, 2020. The Department emailed its Child Care Advisory Committee members and meeting attendees, many of whom are child care businesses or work with child care providers, were also informed about the notice for the public hearing on the proposed rule chapter.
2. No comments were received from the public and small businesses for the proposed rule chapter.
3. Since no comments were received from the public and small businesses, no responses from the agency are provided.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Office of the Director
P. O. Box 339
Honolulu, Hawai'i 96809-0339

BESSD 20.C0501

May 19, 2020

MEMORANDUM:

TO: THE HONORABLE CLARE E. CONNORS, ATTORNEY GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL

THROUGH: JAMES WALTHER, SUPERVISING DEPUTY ATTORNEY GENERAL
HEALTH AND HUMAN SERVICES DIVISION

FROM: PANKAJ BHANOT *GP*
DIRECTOR

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED ADOPTION OF CHAPTER 17-801
HAWAII ADMINISTRATIVE RULES, RELATING TO BACKGROUND CHECKS

In accordance with Administrative Directive No. 18-02, we have completed revisions and are submitting for your review and approval as to form the proposed adoption to Chapter 17-801 relating to Background Checks. A copy of the Notice of Public Hearing is also enclosed for your approval as to form, and a copy of the impact statement is included for your information.

Your expedited response to this request would be greatly appreciated, as we must also secure the Governor's preliminary approval prior to publishing the Notice of Public Hearing. If you have any questions, please contact Dana Balansag, Child Care Program Administrator, at 586-7187.

Enclosures

APPROVED AS TO FORM:

James W. Walther
Deputy Attorney General

7/10/20
Date

AN EQUAL OPPORTUNITY AGENCY

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-801

Hawaii Administrative Rules

May 19, 2020

1. Chapter 17-801, Hawaii Administrative Rules, entitled "Background Checks" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 801

BACKGROUND CHECKS

§17-801-1	Purpose
§17-801-2	Definitions
§17-801-3	Confidentiality
§17-801-4	Background checks
§17-801-5	Suitability
§17-801-6	Notification to the person and child care facility

Historical Note: This chapter is based substantially upon sections of these chapters 17-891.1, 17-892.1,

17-895, and 17-896, Hawaii Administrative Rules. [Eff 6/18/87; am and comp 12/10/88; am and comp 12/19/02; am 2/24/17]

§17-801-1 Purpose. The purpose of this chapter is to establish the rules governing the administration and implementation of the child care block grant authorized under 42 U.S.C. §9858 and 42 U.S.C. §618 regarding requirements for background checks for the department's child care programs. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14, 45 C.F.R. §98.1)

§17-801-2 Definitions. For the purpose of this chapter:

"Adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, Hawaii Revised Statutes (HRS), by means of a search of the individual's name and birth date in the department's adult protective services file.

"Applicant" means the person who applied for licensure of a group child care center, group child care home, or registration of their family child care home, and for group homes and family homes includes this person's spouse.

"Background checks" means a criminal history record check which includes a Federal Bureau of Investigation fingerprint check, the state criminal record registry or database check, state sex offender registry check and national sex offender public website check, state child abuse and neglect registry check, adult abuse perpetrator registry check, employment history check, and other information obtained by the department regarding the person's ability or suitability to provide child care.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in a child care facility or exempt child care facility.

"Child" means any person who has not reached the age of eighteen years.

"Child care" means those situations in which a person, child care provider, child care facility, or exempt child care facility has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the parent, guardian, or caretaker for any part of a twenty-four-hour day. Child care may be provided out of the child's home in out-of-home relative care, in the child's home by relatives or non-relatives, in a child care facility or an exempt child care facility.

"Child care center" or "group child care center" means a place maintained by any individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop in child care centers, group child care homes, or other similar units operating under any name.

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Department" means the department of human services or its designee.

"Exempt care" means child care which is exempt from licensure or registration by the department under HRS §346-152.

"Exempt child care facility" means a place that child care is conducted which is legally-exempt in accordance with section 346-152, HRS, and includes exempt center-based providers pursuant to chapter 17-800.

"Family child care home," "family child care," or "FCC" means any private residence at which care is

provided at any given time to six or fewer children, as defined in section 346-151, HRS.

"Group child care center" means a facility, other than a private home, at which care is provided, as defined in HRS §346-151. The term may include nurseries; infant and toddler centers for children ages six weeks to thirty-six months, preschools; parent cooperatives; drop-in child care centers; before-school and after-school programs; holiday, intersession and summer care for eligible school age children; or other similar care settings that are established to provide group care to a child for any part of a twenty-four hour day and is license-exempt or licensed by the department.

"Group Child Care Home or "GCH" means child care provided by an individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. GCHs are licensed under the rules for group child care centers.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a group child care center or group child care home.

"New hire" means an applicant or prospective employee of a child care facility or exempt child care facility who is seeking to operate or be employed in a child care facility or exempt child care facility for the first time in the state of Hawaii.

"Person" means any individual with unsupervised access to children in care, caregiver, adult household member, applicant, provider, substitute, volunteer, new hire, rehire, temporary hire, or staff member in a child care facility or exempt child care facility.

"Provider" means an individual 18 years or older, caregiver, child care facility, exempt child care facility, agency, or organization, exempt care providers, and staff members, who provide child care to children in the absence of the child's caretaker.

"Registration" means a certificate of approval

issued by the state department of human services authorizing the operation of a family child care home.

"Rehire" means an applicant or prospective employee of a child care facility or exempt child care facility who is seeking to operate or be employed in a child care facility or exempt child care facility following separation from employment of one hundred eighty consecutive days or more and who has been out of state during this break in employment.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Staff member" means administrative, child care, office, maintenance, employees, and volunteers of a child care facility or exempt child care facility.

"Substitute" means a person who serves as a replacement caregiver for no more than ten consecutive working days in the same position when another caregiver is absent on an emergency or unplanned basis.

"Supervision" means to be within sight or hearing distance of the children to ensure the safety and protection of the children.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Volunteer" means a person working or offering services to a child care facility or exempt child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff

] (Auth: HRS §346-14) (Imp: HRS §346-151)

§17-801-3 Confidentiality. Requirements for confidentiality shall be as provided in chapter 17-601. [Eff] (Auth: HRS §§346-10 and 346-14; 45 C.F.R. §205.50) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 1391.3)

§17-801-4 Background checks. (a) Background checks conducted by the department shall include:

- (1) A criminal history record check, including:
 - (A) A Federal Bureau of Investigation fingerprint check; and
 - (B) A state criminal record registry or database check with the use of fingerprints in the state where the person resides;
- (2) Search of the state sex offender registry and national sex offender registries;
- (3) A state child abuse and neglect registry check;
- (4) An adult abuse perpetrator registry check;
- (5) An employment history check; and
- (6) Any other information obtained by the department regarding the person's ability or suitability to provide child care.

(b) All persons in a licensed or registered child care facility, or exempt child care facility shall be subject to background checks.

(c) A person subject to background checks shall provide consent to the department to conduct the background checks, prior to operating, working on-site at, or within five working days of living in a child care facility or exempt child care facility, and annually thereafter no later than the anniversary date of the most recent consent to conduct background checks. The consent shall be given upon forms supplied by the department.

(d) A person subject to background checks shall submit to the department a signed disclosure statement, under penalty of law, that indicates the person's background history that may affect the person's ability and suitability, under this chapter.

[Eff _____] (Auth: HRS §346-14, 346-162, 346-172) (Imp: HRS §§346-152.5, 346-154)

§17-801-5 Suitability. (a) Results of the background checks shall be reviewed as part of the department's determination of whether a person is suitable as defined in subsection (d) to provide child care.

(b) Each person subject to background checks shall be determined to be suitable by the department to operate, be employed, work in, or live in a child care facility or exempt child care facility, except when a person may be provisionally cleared to work:

- (1) A person may start working on a provisional basis when the requirements in section 17-801-4 (a)(1) are completed and the department does not receive results or other information that the person may pose a risk to children in care or is not suitable to provide care; and
- (2) A person who has been provisionally cleared pursuant to paragraph (1) shall be continuously supervised by another person who has been determined suitable to provide care based upon the results of the background checks described in section 17-801-4(a); provided that paragraphs (1) and (2) do not apply to applicants, registrants, or licensees of family child care homes or group child care homes or their household members.

(c) An applicant, caregiver, staff member, employee, rehired employee, substitute or volunteer who has stopped providing care, stopped residing in a child care home, or left the State for a period of one hundred eighty consecutive days or more, is required to complete background checks again in accordance with section 17-801-4(a), and may be allowed to meet the conditions in subsection (b).

(d) A person is not suitable to provide child care for children if the person:

- (1) Refuses to provide consent to the background checks;
- (2) Makes a materially false statement or omission in disclosing any prior background

history that may affect the person's ability and suitability;

- (3) Is registered or is required to be registered, on a state sex offender registry or repository or the national sex offender registry;
- (4) Is identified on another state's registry or database as the perpetrator of child abuse, neglect, harm, or threatened harm;
- (5) Within a five-year period starting from the date that the child abuse case record was closed, the person has been confirmed by the department as the perpetrator of threatened harm as defined in section 587A-4, HRS. In situations when a finding of threatened harm occurred more than five years from the date that the child abuse case record was closed, a person's suitability shall be based on paragraph (8);
- (6) Is confirmed at any time as the perpetrator of harm against a child as defined in section 587A-4, HRS;
- (7) Is confirmed at any time as the perpetrator of abuse of a vulnerable adult as defined in section 346-222, HRS; or
- (8) Is found by the department, for any other reason that has not been identified in this chapter, to not be of reputable and responsible character or may pose a risk to the health, safety, or well-being of the children in care. Factors that shall be considered by the department include but are not limited to:
 - (i) The nature of the incident;
 - (ii) When the incident occurred;
 - (iii) Patterns of behavior the department determines resulted in or could have resulted in injury to self or others;
 - (iv) Any other relevant information received and deemed credible by the department; and
 - (v) Evidence of rehabilitation.

(e) In instances where a person is the subject of an on-going or pending criminal, child welfare, or department investigation, the person shall be excluded from the premises and the department's determination of whether the person is suitable as defined in subsection (d) cannot be completed until the investigation is closed or any related legal proceeding is completed.

(f) A person shall not provide licensed or registered child care, or exempt child care for a child whose family receives a subsidy from the department pursuant to chapters 17-798.3 and 17-799, if the person has been convicted of an offense listed in Exhibit I, dated January 1, 2020, attached at the end of this chapter.

(g) A person shall not provide licensed or registered child care, or exempt child care for a child whose family receives a subsidy from the department pursuant to chapters 17-798.3 and 17-799, if the person has been convicted within the past five years of the time of the background check of an offense listed in Exhibit II, dated January 1, 2020, attached to the end of this chapter.

(h) The person may file a written request for an administrative appeal to appeal the decision by the department:

- (1) In accordance with the provisions set forth in chapters 17-891.2, 17-892.2, 17-895.1, 17-896.1, for applicants, licensees, or registrants; or

- (2) In accordance with the provisions set forth in chapter 17-602.1, for all other persons not specified in subparagraph (A);

provided that the filing of a request for an administrative appeal does not permit the person to continue to provide child care for children under this chapter, pending the decision of the administrative appeal hearing officer. [Eff]

(Auth: HRS §346-14, 346-162, 346-172) (Imp: HRS §346-151, 346-152.5, 346-154)

§17-801-6 Notification to the person, child care facility, and exempt child care facility. (a) The department shall provide written notice to a person determined by the department to be not suitable under this chapter or excluded from the premises under this chapter. The written notification shall state the reason for the department's determination.

(b) The department shall request in writing that a provider terminate employment or residence of any person not suitable pursuant to this chapter.

- (1) The request shall be in writing and shall state the reason for the department's determination that the person is not suitable to provide child care;
- (2) When an applicant, registrant, licensee, or provider does not terminate employment or residence as requested by the department, the applicant, registrant, licensee, or provider shall notify the department in writing no later than seven working days after receipt of the request and shall state the reasons for the decision; and
- (3) A license, registration, application, or listing may be denied, suspended, or revoked if the person's employment or residence is not terminated.

(c) In instances described in section 17-801-5(e), the department shall request in writing that a provider exclude the person from the premises until the department has completed a determination whether the person is suitable to provide care pursuant to this chapter.

- (1) The request shall be in writing and shall state the reason for the person's exclusion from the premises;
- (2) When an applicant, registrant, licensee, or provider does not exclude the person from the premises as requested by the department, the applicant, registrant, licensee, or provider shall notify the department in writing within seven working days after

receipt of the request and shall state the reasons for the decision; and

- (3) A license, registration, application, or listing may be denied, suspended, or revoked if the person is not excluded from the premises.

(d) A person who is determined not suitable to provide care under this chapter may contest the results of background checks as follows:

- (1) The person requests an informal review by the department for the limited purpose of contesting the accuracy or completeness of the information contained in the person's records that formed the basis for the decision:

- (A) The person shall provide a written statement to the department specifying the information and the reason why the person believes the background check information is inaccurate or incomplete;

- (B) The department shall attempt to verify the accuracy of the information challenged by the person, including making an effort to locate any missing disposition information related to the disqualifying record:

- (i) If the department locates any missing or corrected information, the department shall review the new or corrected information and issue a written notice to the person with the suitability determination by the department; or
 - (ii) If the department cannot locate any missing or corrected information, the department shall issue a written notice that indicates the department's efforts to verify the accuracy of the information challenged, and refer

- the person to the agency or program that produced or maintains the record the person believes to be inaccurate or incomplete, so that the person can have the record corrected or completed; and
- (C) After the person has successfully had the records corrected or completed by the agency or program that produced or maintains the record, the person may request for another background check to be completed by the department in accordance with this chapter.
- (2) The person shall have the right to obtain a copy of the person's criminal history records that were obtained through a fingerprint-based check under this section, according to Title 28 CFR Part 16, and for other records, the department, upon request, shall provide information to the person on how to obtain further information of the person's reports.
- (3) The person may file a written request for an administrative appeal to appeal the decision by the department:
- (A) In accordance with the provisions set forth in chapters 17-891.2, 17-892.2, 17-895.1, 17-896.1, for applicants, licensees, or registrants; or
- (B) In accordance with the provisions set forth in chapter 17-602.1, for all other persons not specified in subparagraph (A);
- provided that the filing of a request for an administrative appeal does not permit the person to continue to provide child care for children under this chapter, pending the decision of the administrative appeal hearing officer." [Eff]
- (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §346-14; 42 U.S.C. §§2002, 2005, 2014, 9858f)

Prohibiting Crimes Convicted Offenses – Indefinite

Hawaii Revised Statutes sections listed below and any criminal offense against a child involving violence, even those not listed in this Exhibit I or Exhibit II.

707-701 Murder in the first degree

707-701.5 Murder in the second degree

707-702 Manslaughter

707-702.5 Negligent homicide in the first degree

707-703 Negligent homicide in the second degree

707-705 Negligent injury in the first degree

707-710 Assault in the first degree

707-711 Assault in the second degree

707-712 Assault in the third degree, when the victim is a minor

707-712.5 Assault against a law enforcement officer in the first degree

707-712.7 Assault against an emergency worker

707-713 Reckless endangering in the first degree

707-714 Reckless endangering in the second degree

707-714.5 Criminally negligent storage of a firearm

707-716 Terroristic threatening in the first

707-720 Kidnapping

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 1

Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)

707-721 Unlawful imprisonment in the first degree

707-726 Custodial interference in the first degree

707-727 Custodial interference in the second degree-felony

707-730 Sexual assault in the first degree

707-731 Sexual assault in the second degree

707-732 Sexual assault in the third degree

707-733 Sexual assault in the fourth degree

707-733.6 Continuous sexual assault of a minor under the age of fourteen years

707-741 Incest

707-750 Promoting child abuse in the first degree

707-751 Promoting child abuse in the second degree

707-752 Promoting child abuse in the third degree

707-756 Electronic enticement of a child in the first degree

707-757 Electronic enticement of a child in the second degree

707-759 Indecent electronic display to a child

707-765 Extortion in the first degree

707-766 Extortion in the second degree

707-768 Firearms, explosives, and dangerous weapons

707-781 Labor trafficking in the first degree

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 2

Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)

707-782 Labor trafficking in the second degree

707-786 Nonpayment of wages

707-787 Unlawful conduct with respect to documents

708-810 Burglary in the first degree

708-812.55 Unauthorized entry in a dwelling in the first degree

708-812.6 Unauthorized entry in a dwelling in the second degree

708-816.5 Entry upon the premises of a facility utilized as a sex, child, or spouse abuse shelter; penalty

708-820 Criminal property damage in the first degree

708-821 Criminal property damage in the second degree

708-839.6 Identity theft in the first degree

708-840 Robbery in the first degree

708-841 Robbery in the second degree

708-842 Robbery; "in the course of committing a theft"

708-893 Use of a computer in the commission of a separate crime

708-8251 Arson in the first degree

708-8252 Arson in the second degree

708-8253 Arson in the third degree

709-902 Abandonment of a child

709-903.5 Endangering the welfare of a minor in the first degree

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 3

Prohibiting Crimes Convicted Offenses – Indefinite (cont'd)

709-904 Endangering the welfare of a minor in the second degree

709-904.5 Compensation by an adult of juveniles for crimes

709-906 Abuse of family or household members, if the conviction is a felony or when the victim is a minor

711-1106.4 Aggravated harassment by stalking

711-1110.9 Violation of privacy in the first degree

711-1111 Violation of privacy in the second degree

712-1202 Sex trafficking

712-1203 Promoting prostitution

712-1209.1 Solicitation of a minor for prostitution

712-1215 Promoting pornography for minors

712-1215.5 Promoting minor-produced sexual images in the first degree

712-1218 Failure to maintain age verification records of sexual performers

712-1218.5 Failure to maintain age verification records of sexually exploited individuals

712-1219 Failure to affix information disclosing location of age verification records of sexual performers

712-1219.5 Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers

712-1240.5 Manufacturing a controlled substance with a child present

712-1249.7 Promoting a controlled substance through a minor

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 4

Prohibiting Crimes Convicted Offenses – Five Year Period

Hawaii Revised Statute sections:

707-714 Reckless endangering in the second degree

707-717 Terroristic threatening in the second degree

707-722 Unlawful imprisonment in the second degree

707-734 Indecent exposure

708-803 Habitual property crime

708-811 Burglary in the second

708-813(b) Criminal trespass in the first degree, when in possession of a fire arm

708-817 Burglary of a dwelling during an emergency period

708-818 Burglary of a building during an emergency period

708-822 Criminal property damage in the third degree

708-830.5 Theft in the first degree

708-831 Theft in the second degree

708-835.5 Theft of livestock

708-835.6 Telemarketing fraud

708-835.7 Theft of copper

708-835.9 Theft of urn

708-836 Unauthorized control of propelled vehicle

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 1

Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)

708-836.5 Unauthorized entry into motor vehicle in the first degree

708-839.5 Unauthorized possession of confidential personal information

708-839.7 Identity theft in the second degree

708-839.8 Identity theft in the third degree

708-851 Forgery in the first degree

708-852 Forgery in the second degree

708-854 Criminal possession of a forgery device

708-858 Suppressing a testamentary or recordable instrument

708-871.5 False labeling of Hawaii-grown coffee

708-875 Trademark counterfeiting

708-891 Computer fraud in the first degree

708-891.5 Computer fraud in the second degree

708-891.6 Computer fraud in the third degree

708-892 Computer damage in the first degree

708-892.5 Computer damage in the second degree

708-892.6 Computer damage in the third degree

708-895.5 Unauthorized computer access in the first degree

708-895.6 Unauthorized computer access in the second degree

708-895.7 Unauthorized computer access in the third degree

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 2

Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)

708-8100 Fraudulent use of a credit card

708-8100.5 Fraudulent encoding of a credit card

708-8102 Theft, forgery, etc., of credit cards

708-8103 Credit card fraud by a provider of goods or services

708-8104 Possession of unauthorized credit card machinery or incomplete cards

708-8200 Cable television service fraud in the first degree

708-8202 Telecommunication service fraud in the first degree

708-8254 Arson in the fourth degree

708-8301 Habitual unlicensed contracting activity

708-8303 Unlicensed contractor fraud in the first degree

708-8304 Unlicensed contractor fraud in the second degree

708A-3 Money laundering

709-900 Illegally marrying

709-901 Concealing the corpse of an infant

709-905 Endangering the welfare of an incompetent person

711-1103 Riot

711-1106.5 Harassment by stalking

711-1106.6 Harassment by impersonation

711-1108 Abuse of a corpse

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 3

Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)

711-1108.5 Cruelty to animals in the first degree

711-1109 Cruelty to animals in the second degree, if the conviction is a felony

711-1109.3 Cruelty to animals by fighting dogs in the first degree

711-1109.35 Cruelty to animals by fighting dogs in the second degree

711-1109.4 Causing injury or death to a service dog or law enforcement animal

711-1112 Interference with the operator of a public transit vehicle

712-1200 Prostitution

712-1206 Loitering for the purpose of engaging in or advancing prostitution

712-1207 Street solicitation of prostitution; designated areas

712-1208 Promoting travel for prostitution

712-1209 Solicitation of prostitution near schools or public parks

712-1209.5 Habitual solicitation of prostitution

712-1211 Displaying indecent matter

712-1214 Promoting pornography

712-1215.6 Promoting minor-produced sexual images in the second degree

712-1217 Open lewdness

712-1221 Promoting gambling in the first degree

712-1222.5 Promoting gambling aboard ships

712-1224 Possession of gambling records in the first degree

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 4

Prohibiting Crimes Convicted Offenses – Five Year Period (cont'd)

- 712-1240.7 Methamphetamine trafficking
- 712-1241 Promoting a dangerous drug in the first degree
- 712-1242 Promoting a dangerous drug in the second degree
- 712-1243 Promoting a dangerous drug in the third degree
- 712-1244 Promoting a harmful drug in the first degree
- 712-1245 Promoting a harmful drug in the second degree
- 712-1246 Promoting a harmful drug in the third degree
- 712-1246.5 Promoting a harmful drug in the fourth degree
- 712-1247 Promoting a detrimental drug in the first degree
- 712-1248 Promoting a detrimental drug in the second degree
- 712-1249 Promoting a detrimental drug in the third degree
- 712-1249.4 Commercial promotion of marijuana in the first degree
- 712-1249.5 Commercial promotion of marijuana in the second degree
- 712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes
- 712-1250 Promoting intoxicating compounds
- 712-1250.5 Promoting intoxicating liquor to a person under the age of twenty-one
- 712-1257 Prohibited cigarette sales of less than twenty-one, felony
- 712-1258 Tobacco products and electronic smoking devices; persons under twenty-one years of age

Department of Human Services
Benefit, Employment and Support Services Division
January 1, 2020
Page 5

2. The adoption of chapter 17-801, 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 May 19, 2020 and filed with the Office of the Lieutenant Governor.

PANKAJ BHANOT
Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

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PANKAJ BHANOT
Director of Human Services

APPROVED AS TO FORM:

Deputy Attorney General

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 DLNR

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

Date: 6/7/2021

Department or Agency: Dept. of Land & Nat. Resources, Div. of Boating & Ocean Rec.

Administrative Rule Title and Chapter: Title 13, Chapter 256

Chapter Name: Ocean Recreation Management Rules and Areas

Contact Person/Title: Todd Tashima/General Professional

E-mail: todd.h.tashima@hawaii.gov Phone: 808-587-0142

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: Available at: <https://dlnr.hawaii.gov/dobor/draft-rules>

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.)

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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.

Small businesses operating surfing instruction schools in Kahalu'u Bay on Hawaii Island will be affected by this proposal. DOBOR's proposed amendments are intended to reduce adverse effects on affected businesses by providing more permits and reducing restrictive prerequisites to obtaining a commercial use permit. As proposed, operators would be able to choose a shift: morning or afternoon.

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

No anticipated increase in direct costs to businesses.

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.

Anticipated minor impact to DOBOR staffing needs - DOBOR staff will need to review permit applications and handle procedures for issuance of permits.

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.

In order to reduce restrictions on small businesses, DOBOR's proposal includes the following: (1) increase the permit limit from 4 to 8; and (2) remove the requirement that an applicant obtain County of Hawaii authorization to operate commercially as a prerequisite to qualifying for a DOBOR commercial use permit.

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

One less restrictive alternative is to remove the permit limit, but the community has expressed the desire for permit limits, and DOBOR agrees that commercial permit limits should be implemented for Kahalu'u Bay to balance recreational and commercial use.

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.

DOBOR considered issuing permits by public auction but does not have statutory authority to hold public auctions for commercial use permits. DOBOR also considered issuing permits based on the length a business has been in operation as determined by GET license, but that would also require a statutory amendment. Commercial surfing instruction businesses would be affected by the proposed rules and would be able to obtain a commercial use permit to operate their surfing schools.

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

DOBOR has been in discussions with affected operators over permit count limits and commercial restrictions for Kahalu'u Bay.

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

Yes, businesses recommended increasing the permit count limit. DOBOR adopted this recommendation and increased the permit count limit to 8.

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 amendments would not create more stringent restrictions and would provide additional opportunities by increasing the commercial permit count limit and by removing County of Hawaii authorization as a prerequisite, thereby simplifying approval requirements.

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

- a. Description of the public purposes to be served by the proposed rule.
N/A
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
N/A
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
N/A
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
N/A
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.
N/A

* * *

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

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

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and Compilation of Chapter 13-256,
Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 13-256, Hawaii Administrative Rules,
entitled "Ocean Recreation Management Rules and
Areas", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 256

OCEAN RECREATION MANAGEMENT RULES AND AREAS

Subchapter 1 General Provisions

Historical note

§13-256-1	Purpose and scope
§13-256-2	Interpretation
§13-256-3	Commercial use permit or catamaran registration certificate requirements
§13-256-4	Commercial vessel and water sports equipment registration requirements
§13-256-5	Commercial use permits; public auction
§13-256-6	Transferability of commercial use permits
§13-256-7	Business transfer fee
§13-256-8	Owner required to report change in ownership, address and other changes
§13-256-9	Insurance
§13-256-10	Revocation
§13-256-11	Fees
§13-256-12	Gross receipts
§13-256-13	Mooring of rafts and platforms
§13-256-14	Safety and enforcement
§13-256-15	Commercial vessel shoreline access
§13-256-16	Thrill craft operations; general provisions
§13-256-17	Recreational thrill craft operations
§13-256-18	Commercial thrill craft operations, commercial high speed boating and water sledding operations
§13-256-19	Parasailing activities
§13-256-20	Windsurfing
§13-256-21	Ultralight float equipped aircraft
§13-256-22	Tow-in surfing
§13-256-23	Oahu tow-in surfing areas
§13-256-24	Kauai tow-in surfing areas
§13-256-25	Maui tow-in surfing areas
§§13-256-26 to 13-256-30	(Reserved)

Subchapter 2 North Shore Kauai Ocean
Recreation Management Area

Historical note

§13-256-31	Definition
§13-256-32	Commercial operator licensee experience

	requirements
§13-256-33	Priority and procedures in the issuance of commercial vessel permits
§13-256-34	Review, acceptance, or rejection of the application
§13-256-35	Repealed
§13-256-36	Repealed
§13-256-37	Fees
§13-256-38	Anini Beach ocean waters
§13-256-39	Hanalei Bay ocean waters, general restrictions
§13-256-40	Haena ocean waters, general restrictions
§13-256-41	Na Pali Coast ocean waters, general restrictions
§§13-256-42 to 13-256-49	(Reserved)

Subchapter 3 South Shore Kauai Ocean Recreation Management Area

§13-256-50	Definition
§13-256-51	Hanamaulu Bay restricted zones
§13-256-52	Nawiliwili Bay restricted zones
§13-256-53	Nukumoi restricted zones
§13-256-54	Koloa Landing restricted area
§13-256-55	Salt Pond Park restricted area
§13-256-56	Wailua River restricted area
§§13-256-57 to 13-256-59	(Reserved)

Subchapter 4 North Shore Oahu Ocean Recreation Management Area

§13-256-60	Definition
§13-256-61	Haleiwa restricted zones
§13-256-62	Repealed
§13-256-63	Sharks Cove, Three Tables, and Waimea Bay ocean waters
§13-256-64	Sunset Beach restricted area
§13-256-65	Kawela Bay restricted area

§§13-256-66 to 13-256-70 (Reserved)

Subchapter 5 Windward Oahu Ocean Recreation
Management Area

§13-256-71 Definitions
§13-256-72 Kualoa waters restricted zones
§13-256-72.1 Kualoa waters restricted zones permit
§13-256-73 Kaneohe Bay ocean waters
§13-256-73.1 Kaneohe Bay ocean waters commercial
use permits
§13-256-73.2 Large full service permit restrictions
§13-256-73.3 Small full service permit restrictions
§13-256-73.4 Small full service permit restrictions
without thrill craft, water sledding,
and high speed towing activities
§13-256-73.5 Large snorkel tour permit restrictions
§13-256-73.6 Small sail/snorkel tour permit
restrictions
§13-256-73.7 Glass bottom boat tour permit
restrictions
§13-256-73.8 Replacement vessels size restrictions
§13-256-73.9 Shuttling restrictions
§13-256-73.10 Permit issuance
§13-256-73.11 Temporary mooring of vessels authorized
for commercial use in Kaneohe Bay
at Heeia Kea small boat harbor
§13-256-73.12 Kaneohe Bay ocean waters commercial use
permit revocation
§13-256-73.13 Ahu o Laka safety zone
§13-256-74 Kailua ocean waters restricted zones
§13-256-75 Waimanalo ocean waters restricted zones
§13-256-76 Makapuu ocean waters restricted zones
§13-256-77 Kaneohe recreational thrill craft zone
§§13-256-78 to 13-256-85 (Reserved)

Subchapter 6 South Oahu Ocean Recreation

Management Area

§13-256-86	Definition
§13-256-87	Hanauma Bay restricted zone
§13-256-88	Maunalua Bay waters
§13-256-89	Waialae-Kahala restricted areas
§13-256-90	Diamond Head restricted area
§13-256-91	Waikiki ocean waters restricted zones
§13-256-92	South Shore parasail area
§13-256-93	Kahakaaulana Islet (Harris Island) commercial zone
§13-256-94	Reef Runway Zone F
§13-256-95	Koko Head and Makapuu commercial high speed boating zone
§13-256-96	Ke'ehi Lagoon canoe racing zone
§13-256-97	Ke'ehi Lagoon competitive water ski zone
§§13-256-98 to 13-256-105	(Reserved)

Subchapter 7 West Maui Ocean Recreation Management Area

§13-256-106	Definition
§13-256-107	Napili Bay restricted area
§13-256-108	Lahaina-Kaanapali offshore restricted area
§13-256-109	Kaanapali commercial thrill craft areas
§13-256-110	Olowalu Beach restricted area
§13-256-111	Kaanapali commercial water sledding zone
§13-256-112	Maui humpback whale protected waters
§§13-256-113 to 13-256-115	(Reserved)

Subchapter 8 South Maui Ocean Recreation Management Area

§13-256-116	Definition
§§13-256-117 to 13-256-125	(Reserved)

Subchapter 9 North Maui Ocean Recreation
Management Area

§13-256-126 Definition
§13-256-127 Hookipa restricted zones
§13-256-128 Baldwin Park-Paia Bay restricted area
§13-256-129 Papa'ula Point restricted zone
§13-256-130 Kanaha Beach Park restricted zones
§§13-256-131 to 13-256-139 (Reserved)

Subchapter 10 East Hawaii Island
Ocean Recreation Management Area

§13-256-140 Definition
§13-256-141 Hilo Bay recreational thrill craft zone
§13-256-142 Waiakea access corridor
§13-256-143 Puhi Bay-Leleiwi Point restricted zones
§§13-256-144 to 13-256-149 (Reserved)

Subchapter 11 West Hawaii Island
Ocean Recreation Management Area

§13-256-150 Definition
§13-256-151 Honaunau Bay swimming zone
§13-256-152 Kahaluu Bay ocean waters
§13-256-153 Kalaepaakai Point commercial thrill craft
zone
§13-256-154 Oneo Bay swimming zone
§13-256-155 Kailua Bay restricted zones
§13-256-156 Kailua Pier restricted zones
§13-256-157 Honokohau swimming zone
§13-256-158 Kua Bay swimming zone
§13-256-159 Kahuwai Bay restricted zone
§13-256-160 Kiholo Bay speed zone
§13-256-161 Anaehoomalu Bay restricted zones
§13-256-162 Makaiwa Bay swimming zones
§13-256-163 Hapuna Bay swimming zone

§13-256-164 Kaunaoa Bay restricted zones
§§13-256-165 to 13-256-175 (Reserved)

Historical note. This chapter is based on the Ocean Recreation Management Rules and Areas, effective October 1, 1988, and as amended thereafter by the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-256-1 Purpose and ~~[Seepe]~~scope. (a) The purpose of these rules is to reduce conflicts among ocean water users, especially in areas of high activity. The department has designated ten "Ocean Recreation Management Areas", which are described in subchapters 2 through 11, of this chapter.

(b) All other waters of the ~~[state]~~State within three thousand feet seaward of the base line of the territorial sea are established as non-designated ocean recreation management areas subject to this chapter. [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-2 Interpretation. (a) If any section of these rules is inconsistent with any law of the State of Hawaii, or any laws of the United States, or any rule, or standard established pursuant to federal law, the ~~[State]~~state law or federal law, rule or standard shall govern. Nothing contained in these rules shall be construed to limit the powers of any department or agency of the ~~[state]~~State.

(b) These rules shall be construed liberally, consistent with the purpose stated in section 13-256-1.

(c) In areas designated for a specific use, if another use is not specifically restricted, that use is presumed to be allowed in addition to the use for which the area is designated, unless otherwise prohibited by this chapter. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24)
(Imp: HRS §§200-22, 200-24)

§13-256-3 Commercial use permit or catamaran registration certificate requirements. All operators of commercial vessels, water craft or water sports equipment or activities conducting commercial tours or instruction on [~~State~~]state ocean waters must obtain a commercial use permit or where applicable a catamaran registration certificate to be issued by the department, except for those operating out of a state commercial harbor. The applicant for such permit shall comply with the applicable provisions stated in sections 13-231-50 to 13-231-70. [Eff 2/24/94; am 9/25/14; am 12/31/18; am and comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-4 Commercial [~~Vessel~~]vessel and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with sections 13-231-50 to 13-231-70.

(b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94; am 9/25/14; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-5 Commercial use permits; public auction. (a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter for thrill craft or parasail operations may be made at public auction under sealed bid after public notice.

(b) Before any prospective bidder is entitled to submit a bid for a commercial use permit, the prospective bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice of its intention to bid to the officer charged with issuing the commercial use permits. Each prospective bidder shall submit answers, under oath, to questions contained in a questionnaire, provided by the department, setting forth a complete statement of the experience, competence and financial standing of the prospective bidder. The names and the number of persons who have submitted a notice of intention to bid shall not be divulged. Information contained in the answers to the questionnaire shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be fined not more than \$250. A questionnaire so submitted shall be returned to the bidder after having served its purpose.

(c) Advertisement for bids. Publication of a call for tenders shall be made not less than three times on not less than three different days in a newspaper of general circulation printed and published within the State and in a newspaper of general circulation published in the county in which the designated area is located. The first publication shall be not less than three weeks prior to the date designated for the opening of tenders. Notice of the call for tenders shall contain the following:

- (1) Location where the bid questionnaire is available;
- (2) Time and place of the opening of tenders;
- (3) General description of the designated area;
- (4) Specific use for which the commercial use permit is intended; and
- (5) The upset price as established by the department. Unless a higher amount is specified for a specific commercial use permit the annual upset price shall be \$900.00, which is the monthly charge of

\$75.00. If the commercial use permit is located within an area which requires less than twelve months of operation, the upset price shall be adjusted accordingly.

(d) All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the time and place to be stated in the call for tenders which time shall not be less than ten days after the last publication, in the presence of all bidders who attend, and may be inspected by any bidder. All bids which do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids may reject any or all bids and waive any defects when in the officer's opinion such rejection or waiver will be in the best interest of the public.

(e) All bids shall be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, or on a savings institution insured by the Federal Savings & Loan Insurance Corporation or by a share certificate issued by a credit union insured by the National Credit Union Administration, in a sum of not less than five per cent of the amount bid, payable at sight to the officer advertising for tenders. A bid deposit may also be in the form of a surety bond conforming to the requirements of [~~Section 103-31,~~] section 102-8, Hawaii Revised Statutes.

(f) If the highest bidder to whom the commercial use permit is awarded fails or neglects to fully comply with the terms and conditions for the issuance of the commercial use permit within ten days after the award or within such further time as the officer awarding the permit may allow, the bidder shall forfeit the bid deposit to the State. If the permit is issued, the bid deposit shall be returned to the permittee upon receipt of the first monthly payment. The deposits made by the unsuccessful bidders shall be returned to them after the commercial use permit is issued or if the commercial use permit is not awarded or issued after the officer's determination to publish

another call for tenders or not to issue any commercial use permit.

(g) The commercial use permit shall be awarded to the highest qualified bidder. If there is more than one authorized commercial operating area in a particular designated area, then the permit for each operating area shall be made by a separate call for tenders.

(h) No commercial operator shall be awarded more than one commercial use permit per designated area. Each bidder shall be awarded only one commercial use permit per designated area. Thus, if a bidder is the highest qualified bidder on more than one operating area then that bidder shall choose one operating area and the bidder's other bids shall be deemed withdrawn.

(i) Each commercial use permit shall be valid for one year with an option to renew the commercial use permit no more than four times, which shall be accomplished on or before the anniversary date of its initial issuance. A permittee interested in renewing its commercial use permit, shall however, notify the department sixty days before the expiration of the commercial use permit of its intent to renew. The terms and conditions during the renewal period shall be the same as those applicable to the initial issuance except as to the renewal option which shall in no event cause the commercial use permit to be renewed more than four times. At the end of the fourth renewal period of the permit, the permit may again be offered for public auction, provided that the previous permittee shall be offered the right of first refusal at the new upset price.

(j) Monthly payments for a commercial use permit shall be based [~~upon 1) one-twelfth of the bid price or 2) a percentage of the monthly gross receipt equal to two per cent, whichever is greater. Gross receipt is defined in §13-256-12.~~] upon:

- (1) One-twelfth of the bid price; or
- (2) A percentage of the monthly gross receipts equal to three per cent, whichever is greater.

Gross receipts are defined in section 13-230-8.

(k) The commercial use permit does not give the permittee any vested property rights. The department reserves the right not to issue or renew any commercial use permits. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-6 Transferability of commercial use permits. (a) A commercial use permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title to or interest in the vessel identified in the commercial use permit to another person or business entity by any arrangement, the commercial use permit shall expire. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial use permit. Notwithstanding the prohibition of individuals transferring commercial use permits, the department will allow the one-time transfer of ownership of the vessel from personal ownership to corporate or other business ownership without terminating the rights to operate the commercial vessel under the commercial use permit.

(b) The following rights, conditions, and restrictions apply to commercial use permits issued to a corporation or other business entity.

- (1) Any person owning an interest in a corporation or other business entity possessing a valid commercial use permit issued by the department may transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial use permit; provided that the corporation or business entity has been engaged in the same commercial vessel activity for a minimum of one year and provided that the department is notified within 7 days of the transfer of all transactions that amount to a transfer of

the stock or interest, as defined in section 13-256-7 in the corporation or business entity by the owners of record.

- (2) The business transfer fee must be paid before any transfer is permitted.

(c) A commercial use permit issued for a thrill craft or parasail operating area shall automatically terminate upon the transfer of any or all interest in the corporation or other business entity holding the permit. [Eff 2/24/94; comp] (Auth: HRS §§200-4, 200-24) (Imp: HRS §200-2, 200-3, 200-4, 200-2, 200-3, 200-10)

§13-256-7 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers stock or interest in the corporation, either as a single transaction or ~~as aggregate of~~ through several transactions, to any other person or business entity who is not a stockholder or owner of record on February 24, 1994, the seller or person transferring such stock or interest shall pay to the department a business transfer fee which is the greater of:

- (1) Two per cent of the gross receipts which are directly attributable to the use of the commercial use permit issued by the department for the twelve month period prior to the date of sale; or
- (2) Ten per cent of the net value of the sale of the stock or interest in the business as determined by the difference between the sale price and an equal percentage of the appraised value of the assets of the business.

(b) The value of the stock or interest transferred shall be as mutually agreed to by the seller and the department. In the case of a business which engages in more than one type of business activity, only the value of the business activity

which is dependent upon the possession and use of the commercial use permit shall be considered for the purposes of this section. In those cases where the transfer is made for consideration other than legal tender, the appraised or market value of the item of consideration given in exchange for the interest in the business shall be used.

(c) If the seller and the department are unable to agree on the value of the interest transferred, that value shall be determined through arbitration by an independent party acceptable to both the seller and the department. The cost of the arbitration shall be borne by the party in whose favor the final value is determined. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-8 Owner required to report change in ownership, address and other changes. In addition to the provisions in section 13-251-44, the holder of any commercial use permit issued under this chapter shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the permitted vessel or water sports equipment.
- (2) All or any interest in the permitted vessels or water sports equipment is transferred to or assigned to another person or business entity as defined in these rules; or
- (3) The owner's address or telephone number changes. [Eff 2/24/94; am 12/31/18; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-9 Insurance. The insurance requirements for commercial vessels shall be not less than \$50,000 for property damage and not less than \$500,000 personal liability for vessels authorized to carry one

to twenty-five passengers, and not less than \$1,000,000 for personal liability for vessels authorized to carry more than twenty-five passengers. The liability insurance shall name the State as additional insured. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-10 Revocation. (a) The department may immediately revoke a commercial use permit without the necessity for a hearing for any activity which does or may endanger the health or safety of passengers or the public.

(b) The department may revoke a commercial use permit for violation of any rules of the department if after 72 hours notice of the violation by the department the permittee fails to cure the violation. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-11 Fees. (a) Fees required to be paid to the department are as follows:

- (1) Registration fee. A registration fee payable at time of issuance and renewal shall be as prescribed in section 13-253-1;
- (2) Operator permit fee. A commercial operator permit fee payable at time of issuance and or renewal of the permit shall be as prescribed in §13-253-2;
- (3) Commercial operating area use permit fee. A monthly commercial use permit fee shall be the greater of \$75.00 per month, payable in advance, or 2% of the monthly gross receipts. The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form

acceptable to the department. A permittee possessing both a harbor commercial use permit and a commercial operating area use permit who is paying 2% of gross receipts under the commercial harbor use permit shall not be required to pay an additional 2% of gross receipts under the commercial operating area use permit.

(b) Delinquency in the payment of any fees owed to the department will result in automatic revocation of the commercial operating area use permit. [Eff 2/24/94; comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§13-256-12 Gross receipts. Each commercial permittee shall be responsible for submitting to the department a monthly statement of its gross receipts. [Eff 2/24/94; am 12/31/18; comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-13 Mooring of rafts and platforms. Except as permitted by the department, permanent or temporary mooring of rafts and platforms for use in thrill craft, parasailing and other water sports activities is prohibited. Rafts and platforms shall be removed daily from state waters or located in a designated anchorage or harbor in accordance with a valid permit issued by the department. Ground tackle for mooring of rafts and platforms shall not be placed on live coral. [Eff 2/24/94; am 6/16/03; comp] (Auth: HRS §§200-22, 200-24)
(Imp: HRS §§200-6, 200-22, 200-24)

§13-256-14 Safety and enforcement. The restrictions cited in this chapter shall not apply in the event of an emergency, to law enforcement or

rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department or the U.S. Coast Guard. [Eff 2/24/94; comp] (Auth: HRS §200-40) (Imp: HRS §§200-2, 200-3, 200-40)

§13-256-15 Commercial vessel shoreline access.

No commercial vessel shall land, embark or discharge passengers at any state or county facility, or at other public beaches except for locations at which the permittee has been issued an appropriate permit by the department or a lease or permit by the board of land and natural resources or a county, or within designated ingress/egress zones. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-16 Thrill craft operations; general provisions. (a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to:

- (1) Avoid possible adverse impacts on humpback whales or other protected marine life;
- (2) Provide for increased public access;
- (3) Reduce user conflicts; and
- (4) Promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from a state approved course on the safe use and operation of a

thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1.

(f) All persons holding or receiving a certificate of completion under this section are exempt from section 13-244-15.5 for purposes of operating thrill craft. [Eff 2/24/94; am 7/5/03; am 12/31/18; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-17 Recreational thrill craft operations.

(a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) Thrill craft operation shall be prohibited in state waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau. In all other non-designated ocean recreation management areas of state waters, recreational thrill craft may operate seaward of five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater.

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private beachfront property.

(f) The State may exempt thrill craft from the requirements of this section, and allow thrill craft to operate outside of designated thrill craft areas, as described in subchapters two through eleven, conditioned upon application for, and receipt of, a miscellaneous use permit pursuant to section 13-231-3(a)(8). [Eff 2/24/94; am 12/31/18; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-18 Commercial thrill craft operations, commercial high speed boating and water sledding operations. (a) No commercial thrill craft, high speed boating or water sledding activities shall be conducted on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated commercial thrill craft, high speed boating or water sledding operating area, in addition to any commercial use permit required for state-owned facilities. No more than one commercial operating area use permit shall be issued to an owner to conduct commercial thrill craft, high speed boating or water sledding.

(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area. Water sledding operations may be conducted in the designated thrill craft areas only if no other thrill craft activity is ongoing in said area.

(c) No more than one vessel shall be permitted to operate under a commercial operating area use permit issued for high speed boating or water sledding.

(d) Access to and from designated areas shall be only from harbors and ramp facilities, or areas designated by a valid conservation district use permit issued by the Department of Land and Natural Resources or areas designated by the Department.

(e) Commercial thrill craft, high speed boating and water sledding operators shall proceed at a speed of slow-no-wake, or as otherwise posted, by the most direct route consistent with safety considerations. Thrill craft, high speed boating and water sledding operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(f) No other activity is permitted in designated commercial thrill craft operating areas or recreational and commercial water skiing or water sledding areas during the time of authorized operations for safety purposes.

(g) Commercial thrill craft operators shall be required to establish a safety instruction program for customers that includes, but is not limited to, the safe use of a thrill craft, boundaries of operating areas and the use of a personal flotation device.

[Eff 2/24/94; am 7/5/03; am 8/8/11;

comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-22, 200-24, 200-37)

§13-256-19 Parasailing activities. (a)

Parasailing operators shall comply with rules and regulations promulgated by the U. S. Coast Guard in addition to the following provisions:

- (1) All parasailing vessels shall have access to designated areas only from harbors or ramp facilities by the most direct route consistent with safety considerations.
- (2) No commercial parasailing vessel shall

operate on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated parasail operating area, in addition to any commercial use permit required for state-owned facilities.

- (3) No operator shall be issued more than one commercial operating area use permit for a designated parasailing operating area.
- (4) No permittee shall be allowed to operate more than one parasail vessel with a parasail aloft in the designated parasailing operating area.
- (5) No parasailing vessel shall be engaged in parasailing activities while it is within three hundred feet of the shoreline or any marked channel entrance.
- (6) All parasail vessels shall carry at least one crew member in addition to the captain whose duty it shall be to observe the passenger in the chute.

(b) Parasailing operations shall be curtailed in certain designated areas under this chapter as necessary to avoid possible adverse impacts on humpback whales or other protected marine life. In designated areas during the whale season, the maximum vessel speed for parasailing shall be eighteen (18) knots, and maximum transit speed for shuttling passengers to and from the parasailing zones shall be fifteen (15) knots or minimum planing speed, whichever is less, unless governed by other limits such as slow-no-wake zones or as marked by signs. [Eff 2/24/94; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-20 Windsurfing. [~~a~~] Windsurfing activity shall be governed by the provisions of this chapter.

- (1) Ingress/egress to the shoreline shall be made by the most direct route dictated by

wind conditions.

- (2) Maneuvering shall be in accordance with rules of the road pertaining to sailing vessels. (Navigation Rules, COMDTINST M16672.2B. Rule 12)
- (3) Sailboard operators shall approach no closer than two hundred feet to a dive flag, indicating dive activity in progress. [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-21 Ultralight float equipped aircraft.

(a) For the purpose of this section, ultralight or experimental float equipped aircraft means an ultralight or experimental aircraft as defined by section 13-230-8.

(b) The takeoff, landing and inflight portions of all ultralight or experimental float equipped aircraft operations on or above any ocean recreation management area shall be governed by Parts 91 and 103 of the Federal Aviation Regulations, which are incorporated by reference. No person shall operate an ultralight or experimental float equipped aircraft in a careless or reckless manner so as to endanger the life or property of another.

(c) The operator of any aircraft designed to maneuver on the water shall abide by all rules governing the operation of motorized vessels during the launching, retrieval and taxi. No person shall operate an ultralight or experimental aircraft registered as an experimental or ultralight aircraft by the Federal Aviation Administration when operating within a designated ocean recreation management area while carrying passengers for hire.

(d) The use of shuttle vessels in support of ultralight or experimental float equipped aircraft operations is prohibited on the ocean waters of the State, except for small watercraft carried aboard the aircraft. [Eff 2/24/94; am 12/31/18;

comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-22 Tow-in surfing. (a) The State assumes no responsibility or liability associated with tow-in surfing.

(b) Only thrill craft may be used for tow-in surfing.

(c) All thrill craft being used for tow-in surfing shall be recorded with the department using forms provided by the department.

(d) Tow-in surfing decals shall be provided at the time the vessel is recorded with the department and shall be required to be prominently displayed on the front half of the vessel.

(e) Thrill craft not recorded with the department for tow-in surfing are prohibited from displaying a tow-in surfing decal.

(f) Effective September 1, 2004, both the thrill craft operator and surfer, who engage in, or operate a thrill craft for tow-in surfing, shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education in Hawaii on the safe use and operation of a thrill craft in high surf, that includes but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) Hawaii Administrative Rules as they apply to boating;
- (3) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (4) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(g) When operating a thrill craft for tow-in surfing, all operators shall:

- (1) Carry on board a two-way communicating device;
- (2) Tow-in a maximum of one person at any one

time;

- (3) Carry dive fins and a safety knife on their person; and
- (4) Yield right of way to all other boating or ocean recreation activities by leaving the same surfing break area and remaining a minimum of one thousand feet from the other activities.

(h) Notwithstanding section 13-256-17, within designated ocean recreation management areas, thrill craft used for tow-in surfing may enter the ocean recreation management area to gain access to and from a surfing site and for board and personnel recovery, rescue, and emergency purposes only in areas designated specifically for this activity as described in sections 13-256-23, 13-256-24 and 13-256-25.

(i) Unless otherwise provided by rule, towing surfers into waves within a designated ocean recreation management area shall be prohibited.

(j) Tow-in surfing may only be conducted during periods of high surf warning as declared by the National Weather Service in the region or around the island or islands for which the high surf warning has been issued.

(k) Notwithstanding section 13-244-18, surfers engaged in tow-in surfing shall not be required to wear a life-saving device.

(l) Thrill craft used for tow-in surfing may gain access to ~~[State]~~state waters from boat ramps, harbor facilities or from private beach front property and access the designated tow-in surfing area by the most direct route consistent with safety considerations.

(m) In addition to equipment required by the U.S. Coast Guard for vessels, all thrill craft used for tow-in surfing shall be equipped with the following:

- (1) A rescue sled that is a minimum of three feet wide, four feet long and three inches thick. The sled shall have a minimum of five hand-grip handles, two of which shall be on the port side, two on the starboard

side and one at the bow of the sled. The sled shall not exceed the thrill craft load capacity recommended by the manufacturer;

(2) A quick-release tow-rope a minimum of thirty-feet long; and

(3) A bow tow-line a minimum of six feet long.

(n) Notwithstanding section 13-244-9, thrill craft used for tow-in surfing may be in proximity of the shoreline and tow-in surfers and travel at a speed greater than slow-no-wake when accessing the ocean or shoreline or when retrieving a surfboard or surfer in accordance with this subchapter.

(o) The thrill craft shall be operated at all times with due care for the rights and safety of people and property and the operator shall abide by any state or federal laws as they pertain to protected species.

(p) All participants in tow-in surfing special events shall be required to possess a certificate of completion as described in subsection (f).

(q) Notwithstanding section 13-256-17(d), operators of a thrill craft used for filming tow-in surfing shall possess a certificate of completion as required by subsection (f). [Eff 10/2/03; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-23 Oahu [~~Tow-in~~] tow-in surfing areas.

(a) Persons may conduct tow-in surfing seaward of the North Shore Oahu Ocean Recreation Management Area (ORMA) between Kaena Point at 21 degrees 34.488 minutes north, 158 degrees 16.835 minutes west, and Kahuku Point at 21 degrees 42.817 minutes north, 157 degrees 59.061 minutes west, and may extend their operation into the ORMA waters for board and personnel recovery, rescue, and emergency purposes, except within the following restricted areas as shown on Exhibit "I-A," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas North Shore

Oahu," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

- (1) Area A, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary, including the waters of Kawela Bay, beginning at 21 degrees 42.573 minutes north, 157 degrees 59.902 minutes west, then proceeding along the shoreline to 21 degrees 41.617 minutes north, 158 degrees 01.155 minutes west, facing the "Dog Island";
- (2) Area B, which includes the waters seaward and perpendicular to the shoreline bounded by a line drawn from the shoreline at 21 degrees 40.753 minutes north, 158 degrees 02.530 minutes west, then west to the seaward boundary of the ORMA at 21 degrees 40.753 north, 158 degrees 03.580 minutes west, then south to the shoreline at 21 degrees 39.750 north, 158 degrees 03.580 minutes west;
- (3) Area C, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at the north end of Shark's Cove at 21 degrees 39.318 minutes north, 158 degrees 03.818 minutes west, then proceeding south along the shoreline to 21 degrees 38.351 minutes north, 158 degrees 04.227 minutes west at the west end of Waimea Bay; and
- (4) Area D, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at 21 degrees 35.019 minutes north, 158 degrees 08.090 minutes west facing the eastern edge of "Hammerheads" surf break, then proceeding west along the shoreline to 21 degrees 35.015 minutes north, 158 degrees 08.435 minutes west facing the western edge of "Hammerheads" surfbreak. No thrill craft,

except for rescue and enforcement units, shall operate in these restricted areas; provided that thrill craft operated under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g), and has been issued a permit pursuant to section 13-244-19 for tow-in surfing training, may be allowed in Area "B" during calm sea conditions in the summer months as provided in these rules.

(b) The following described areas are designated for training and instruction in tow-in surfing techniques, as shown on Exhibit "I-A," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas North Shore Oahu," dated January 4, 2002, and located at the end of this subchapter. The trainee shall be under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g), and has been issued a permit pursuant to section 13-244-19:

- (1) Training Area 1, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at Kahuku Point at 21 degrees 42.817 minutes north, 157 degrees 59.061 minutes west, then proceeding to the western shore of Turtle Bay at 21 degrees 42.573 minutes north, 157 degrees 59.902 minutes west (contiguous with the eastern boundary of restricted area A); and
- (2) Training Area 2, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at 21 degrees 41.617 minutes north, 158 degrees 01.155 minutes west, facing "Dog Island", then southwest along the shoreline to 21 degrees 40.753 minutes north, 158 degrees 02.530 minutes west, fronting the "Revelations" surf site. [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS

§§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-24 Kauai [~~Tow-in~~] tow-in surfing areas.

(a) Areas of ocean waters, excluding the designated ocean recreation management areas (ORMA), surrounding the island of Kauai where tow-in surfing is allowed are shown on Exhibit "1-B," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas Island of Kauai," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

- (1) Area I, which includes waters seaward and perpendicular to the shoreline beginning at Kailiu Point at 22 degrees 13.430 minutes north, 159 degrees 34.855 minutes west, then east along the shoreline (including Hanalei Bay) and ending at the southeastern point of Moloaa Bay at 22 degrees 11.675 minutes north 159 degrees 19.495 minutes west;
- (2) Area II, which includes waters seaward and perpendicular to the shoreline beginning at the northeast point of Papaa Bay at the 22 degrees 10.675 minutes north, 159 degrees 18.630 minutes west, then south along the shoreline and ending at Hanamaula Bay at 21 degrees 59.658 minutes north, 159 degrees, 20.050 minutes west;
- (3) Area III, which includes waters seaward and perpendicular to the shoreline beginning at Hanapepe Bay at 21 degrees 53.755 minutes north, 159 degrees 35.855 minutes west, then west and north along the shoreline ending at the shoreline at Keawanui Point at 22 degrees 09.000 minutes north, 159 degrees 43.385 minutes west. Persons engaged in tow-in surfing activities may extend their operation into designated ORMA waters for board and personnel recovery, rescue, and

emergency purposes.

(b) Training and instruction in tow-in surfing techniques may be conducted on a case by-case basis at selected areas in accordance with a permit issued pursuant to section 13-244-19, provided that the trainee is under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g). [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-25 Maui [~~Tow-in~~] tow-in surfing areas.

(a) The area of ocean waters, excluding the designated ocean recreation management area (ORMA), north of the island of Maui that is designated for tow-in surfing activities is shown on Exhibit "I-C," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Area Island of Maui," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

Waters seaward and perpendicular to the shoreline beginning at the base of the Kahului Harbor west breakwater located at 20 degrees 53.890 minutes north, 156 degrees 28.790 minutes west, then east along the shoreline ending at the eastern point of Kuau Beach at 20 degrees 55.780 minutes north 156 degrees 22.000 minutes west;

Persons engaged in tow-in surfing activities may extend their operation into ORMA waters located within three thousand feet of the shoreline for board and personnel recovery, rescue, and emergency purposes.

(b) Training and instruction in tow-in surfing techniques may be conducted on a case-by-case basis at selected areas in accordance with a permit issued pursuant to section 13-244-19, provided that the trainee is under the direct supervision of an

instructor who possesses a certificate of completion as described in section 13-256-22(g). [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§§13-256-26 to 13-256-30 (Reserved)

SUBCHAPTER 2

NORTH SHORE KAUAI OCEAN RECREATION MANAGEMENT AREA

Historical note: This subchapter is based primarily on the North Shore Kauai Rules effective October 1, 1988, and as amended thereafter by the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activity was transferred from the jurisdiction of the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992 in accordance with Act 272, SLH 1991. [Eff 2/24/94]

§13-256-31 Definition. The "North Shore Kauai Ocean Recreation Management Area" means all ocean waters and navigable streams located between eastern boundary of Moloaa Bay and the southernmost boundary of Na Pali Coast State Park extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "A", dated June 30, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

**§13-256-32 Commercial [~~Operator~~
~~Licensee~~] operator licensee experience requirements.**

(a) No commercial vessel operator shall be issued a commercial operator permit to operate or navigate within the Na Pali Coast ocean waters unless the applicant has a minimum of ninety days experience operating within the Na Pali Coast ocean waters attested to by two persons each of whom holds a valid commercial operator permit issued by the department.

(b) No commercial kayak tour guide license shall be issued a commercial operator licensee unless the operator meets the following conditions:

- (1) Possesses a current Red Cross Advanced Life Saving Certificate,
- (2) Has knowledge of elementary first aid;
- (3) Is physically qualified to perform as a kayak tour guide as evidenced by a written report of a physical examination made no earlier than thirty days prior to the application for the license; and
- (4) Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in the Na Pali Coast restricted area during the preceding six-month period.

(c) The department shall establish an advisory committee of not less than three commercial operator licensees to review applications and make recommendations for commercial operator licenses required by this section. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-33 Priority and procedures in the issuance of commercial vessel permits. (a) All commercial use permits shall be valid for not more than one year and shall automatically terminate on the expiration date.

(b) An application for a commercial use permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date; provided, however, priority for applicants who held a commercial use permit for Hanalei Bay or river in November 2000 shall be based upon the date the department issued such permit. An applicant must file a new application form each year but the effective filing date shall remain the same.

(c) Only when the number of commercial use permits issued under subsection (a) falls below the number authorized in section 13-256-38 or section 13-256-39, will the department offer a permit to the applicant with the next highest priority date; provided that in no event shall the limit set in section 13-256-38 or section 13-256-39 be exceeded thereby. [Eff 2/24/94; am 8/8/11; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-34 Review, acceptance, or rejection of the application. (a) The department shall examine and determine the genuineness of each application for a commercial vessel permit and may require additional information or conduct an independent investigation as may be deemed necessary for its determination.

(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.

(c) An application shall not be accepted for consideration and shall be rejected if:

- (1) The application fee is not paid at the time the application is made;
- (2) The applicant is delinquent in payment of any moneys due and payable to the department; or
- (3) The applicant is in violation of the rules of the department.

(d) Upon rejection of an application, the department shall notify the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefor. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application.

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

§13-256-35 Repealed. (R 12/31/18)

§13-256-36 Repealed. (R 8/8/11)

§13-256-37 Fees. (a) Fees required to be paid to the department are described in Chapter 13-234 and more specifically as follows:

- (1) Registration fee. A registration fee payable at the time of issuance shall be prescribed in section 13-253-1.
- (2) Operator license fee. A commercial operator license fee payable at time of issuance of the license shall be \$2.00.
- (3) Commercial vessel permit fee. A monthly commercial vessel permit fee shall be the greater of \$75.00 or two per cent of the monthly gross receipts.

(b) Delinquency of any fees owed to the department will result in automatic revocation of the commercial vessel permit. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-38 Anini Beach ocean waters. (a) Anini Beach ocean waters means the area confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point at the low watermark from Honono Point, thence along a straight line on an azimuth of 142 degrees measured from true south to the inner edge of the reef of the channel, thence clockwise along the outer edge of the reef to the intersection of a line drawn on an azimuth of 197 degrees from a point on the shoreline, then 017 degrees to the low water mark of the shoreline, then in a northerly direction along the Anini Beach shoreline to the point of beginning.

- (b) Restrictions. Anini Beach ocean waters.
- (1) Anini Beach ocean waters shall be limited to providing commercial sailboard instruction only. No more than sixteen commercially owned sailboards may be employed in

- instructional use at any one time.
- (2) Motorized vessels operating within Anini Beach ocean waters shall not exceed a speed of "slow-no-wake" (five miles per hour) within two hundred feet of the shoreline.
 - (3) Motorized vessels and sailboards shall not proceed within one hundred feet of persons engaged in fishing. This restriction shall apply to vessels transiting the channel to or from the launching ramp.
 - (c) ~~[Swimming Zone A, Anini Beach ocean waters.]~~
(1) Swimming Zone A, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point on the low water mark seventy-five feet east of the launching ramp, then proceeding in a straight line perpendicular to the low water mark seaward for a distance of one hundred feet, then proceeding in a straight line to a point on the extended eastern property line of Anini Beach Park located one hundred feet from the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.
 - (d) ~~[Swimming Zone B, Anini Beach ocean waters.]~~
(1) Swimming Zone B, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point on the low water mark on an azimuth measured clockwise from True South of 167 degrees from Honu Point, proceeding in a straight line for a distance of one hundred feet, then proceeding in a straight line to the extended western property line of Anini Beach Park located at a point in the water one hundred feet from

the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.

(e) Restrictions. Swimming Zones A and B of Anini Beach ocean waters are designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within these zones. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-39 Hanalei Bay ocean waters, general restrictions. (a) Hanalei Bay ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, and described as follows:

Beginning at a point on the shoreline at the northernmost tip of Makahoa Point on the western end of the bay, thence along a straight line drawn tangent to the shoreline of Puu Poa Point on the eastern end of the bay, thence clockwise along the shoreline, including the banks of all navigable streams to the upper limit of tidal influence, to the point of beginning.

(b) In addition to all federal, state, and county laws, rules, and ordinances, the following restrictions shall apply to all activities in Hanalei Bay ocean waters.

- (1) No person shall operate a vessel at a speed in excess of "slow-no-wake" within five hundred feet of the shoreline, an ingress/egress zone, designated mooring area, or on the Hanalei River.
- (2) No person shall navigate a motorboat within three hundred feet of a diver's flag or a designated swimming area. Vessels thirty feet or less overall engaged in fishing are exempt from the ~~[three-hundred]~~ three hundred foot shoreline restriction, except that they

- may not enter designated swimming areas.
- (3) No person shall anchor or moor a vessel, raft, barge, platform or other contrivance except within the designated mooring area.
 - (4) No fishing vessel longer than thirty feet overall may engage in fishing except by pole and line within Hanalei Bay ocean waters.
 - (5) No commercial vessel shall load or unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto without a permit issued by the department and approval by the County of Kauai. All vessels authorized to load and unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto shall travel to and from the beach only through a designated ingress/egress zone.
 - (6) The department may issue up to five (5) commercial use permits for the use of self-propelled vessels to load and unload passengers at Hanalei Bay. Priority for the initial issuance of permits under this 2011 amendment shall be given to the persons that held a commercial use permit and operated under said permit in November 2000 for Hanalei Bay ocean waters. Through attrition of these initial five permittees, the maximum number of permits issued shall be reduced to three (3) permits. Permits shall be limited to passenger vessels certified by the Coast Guard to carry twenty-five or fewer passengers, and each permit shall authorize the carrying of no more than thirty passengers daily.
 - (7) The department may issue up to two (2) commercial use permits for the Hanalei launch ramp for the purpose of conducting guided kayak tours in Hanalei Bay ocean waters. The maximum number of passenger kayaks per trip per permit shall not exceed (8), and no more than thirty passengers shall be allowed per day under each permit. A guide kayak shall be required for each

group of eight passenger kayaks. Priority for the initial issuance of permits under this 2011 amendment shall be given to the operators that held a commercial use permit in November 2000 for Hanalei Bay ocean waters to conduct kayak tours.

- (8) No commercial water sports instruction or tours may be conducted in the Hanalei Bay ocean waters from the adjacent beaches without a permit from the department and approval by the County of Kauai. The department may issue a total of up to eight (8) permits for commercial water sports instruction within the Hanalei Bay ocean waters, including surfing and stand-up paddle boarding. Each permit shall authorize one instructor per day to conduct water sports instruction. The instructor shall have no more than four students at any given time. The instructor shall have a minimum of three (3) years surfing experience and possess a current Red Cross advanced life saving certificate. The department may designate the site of instruction at Hanalei Bay and hours of operation for each permittee, and may change the site whenever such changes is found by the department to be necessary. For the purpose of this section, commercial water sports instruction or tours include, but are not limited to, commercial kayak tours, canoe rides, diving, snorkeling, parasailing, surfing, sailboarding and other water-related recreational activities.

(c) Swimming Zones B-1 and B-2, Hanalei Bay ocean waters.

- (1) Zones B-1 and B-2 mean the areas confined by the boundaries shown and described in Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, as follows:
Zone B-1 swimming area extends three hundred

feet seaward of the low water mark for a distance of three hundred feet on each side of Hanalei Pier.

Zone B-2 swimming area extends three hundred feet seaward of the low water mark between the extended boundary lines of the county park containing the beach pavilion.

- (2) Restriction. Zones B-1 and B-2 are designated for bathing and swimming. No person shall operate or moor a vessel, sailboard, or any other recreation device within Zones B-1 and B-2, provided that this restriction shall not apply to:

- (A) Vessels engaged in small-scale surround net fishing without the use of motors or fishing and crabbing from shore;

- (B) Hawaiian design outrigger canoes.

- (d) The designated mooring area for the mooring or anchoring of vessels, rafts, barges, platforms and other watercraft, is the area encompassed by the boundaries shown on Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, and which are described as follows:

Beginning at a point on the northwest corner of Hanalei Pier by azimuths clockwise from True South, 123 degrees for a distance of six hundred seventy-five feet; 346 degrees for a distance of one thousand two hundred seventy-seven feet; 022 degrees for a distance of seven hundred fifty-six feet; 127 degrees for a distance of three thousand two hundred twenty-five feet; then on a straight line to the point of beginning.

- (1) All vessels, rafts, barges, platforms, and other watercraft within Hanalei Bay ocean waters shall be moored or anchored solely within the designated mooring area.
 - (2) No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance

- with U.S. Coast Guard regulations.
- (3) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department.
 - (e) Ingress/Egress zones.
 - (1) Vessels shall access the beach and shall be accessed from the beach solely through the following Ingress/Egress zones. Zone number one begins at the southern boundary of the County Park pavilion parcel and extends southwest along the shoreline a distance of three hundred feet, then seaward to the designated mooring area. Zone number two begins at the north bank of Hanalei River and extends southward across the Hanalei River mouth to the northern boundary of Black Pot Park, and then extends seaward to the designated mooring area.
 - (2) Zone number one and Zone number two are designated for use by both commercial and recreational vessels. [Eff 2/24/94; am 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-40 Haena ocean waters, general restrictions. (a) The Haena ocean waters are subject to the following restrictions. This section shall not apply in the event of an emergency, to law enforcement or to rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department, Coast Guard or Hawaiian design outrigger canoes engaged in crew training.

- (1) No commercial motorized vessel shall land, or discharge or load passengers from shore within Haena ocean waters, unless the owner possesses a valid commercial use permit for the use of the beach for this purpose issued by the board of land and natural resources. The total number of vessels operating from

- this area shall not exceed ten passenger carrying vessels and one support craft.
- (2) No person shall solicit business or offer goods or services for rent, sale or use within Haena ocean waters.
 - (3) Non-motorized commercial vessels may be permitted to land at the beach area fronting the western half of the county beach park.
 - (4) Vessels may be moored or anchored only during daylight hours.
 - (5) Motorized vessels shall not exceed a speed of "slow-no-wake" (five miles per hour) within Haena ocean waters.
 - (c) Recreational Zone A, Haena ocean waters.
 - (1) Zone A means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at the intersection of the edge of the inner reef and the mean low water mark on the south side of the boat channel, then clockwise along the outer edge of the inner reef to the intersection of the edge of the reef and a straight line drawn between a marker pole on the shoreline and the exposed rock on the southern tip of the outer reef, then along this line to the exposed rock, then along a line drawn at a ninety degree angle to the outer edge of the reef, then clockwise along the outer edge of the reef to the point where it becomes tangent to the Haena ocean waters boundary line, then clockwise along the boundary line to the mean low water mark to the point of beginning.

- (2) Restrictions. Zone A is designated for recreational use. No commercial motorized vessel shall be permitted within Zone A, provided that customers patronizing commercial vessels anchored or moored within Zone C shall be allowed to enter Zone A for

- snorkeling or scuba diving activities.
- (3) Notwithstanding the provisions of subsection (b)(2), commercial vessels whose owners possess a valid use permit issued by the department of land and natural resources shall be permitted direct access to the beach area specified in the permit for the purpose of passenger pick-up or discharge.
 - (d) Swimming and Snorkeling Zone B, Haena ocean waters.
 - (1) Haena Zone B means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988 located at the end of this subchapter and described as follows:

Beginning at the intersection of the western boundary of Haena ocean waters and the mean low water mark, then along the western boundary of Haena ocean waters for a distance of two hundred feet, then clockwise along a line drawn parallel to the low water mark at a distance of two hundred feet to the outer edge of the inner reef, then along the outer edge of the inner reef to the mean low water mark, then along the mean low water mark to the point beginning.
 - (2) Restrictions. Haena Zone B is designated for swimming and snorkeling activities. No motorized vessel shall be permitted within Zone B.
 - (e) Snorkeling Zone C, Haena ocean waters.
 - (1) Haena Zone C is as shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter. Haena Zone C includes those ocean water areas outside Zone A and Zone B.
 - (2) Restrictions. Haena Zone C is an area designated for the use of motorized vessels with passengers engaged in snorkeling and scuba diving activities, Haena ocean waters include those ocean areas outside Zone A and Zone B. No vessel shall moor within Zone C except at three mooring buoys approved for installation by the board of land and

natural resources along the outer edge of the inner reef at the locations shown on Exhibit "D" dated June 30, 1988. No more than two vessels may be moored to each buoy at any one time, for a period not exceeding forty-five minutes per vessel.

- (3) Anchoring during daylight hours may be permitted within Zone C except in areas containing coral growth. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-41 Na Pali Coast ocean waters, general restrictions. (a) Na Pali Coast ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "E" dated June 30, 1988, located at the end of this subchapter and described as follows:

Beginning at the intersection of the southwestern boundary of the Na Pali Coast State Park and the shoreline, thence in a straight line drawn perpendicular to the shoreline to the intersection with the territorial sea base line, then along a straight line drawn perpendicular to the territorial sea base line seaward for a distance of three thousand feet, thence along a line drawn parallel to the territorial sea base line in a clockwise direction to the intersection of the western boundary of Haena ocean waters, thence along this line to the western boundary of Haena ocean waters to the point where it intersects the shoreline, thence along the shoreline to the point of beginning.

(b) The Na Pali Coast ocean waters are subject to the following restrictions:

- (1) No person shall navigate a commercial motorboat or conduct a commercial kayak tour within Na Pali Coast ocean waters except for persons who have been issued a permit by the department to operate within Na Pali Coast

ocean waters in accordance with this subchapter.

- (2) In no case shall a commercial vessel having a passenger carrying capacity of fifty or more passengers be permitted to operate within the Na Pali Coast ocean waters.
- (3) No commercial operator shall embark or disembark passengers along the shoreline within Na Pali Coast ocean waters unless that operator has been issued a permit by the board of land and natural resources for use of the area at the location where passengers are embarked or disembarked.
- (c) Vessel operations within sea caves.
 - (1) Commercial vessel operators shall maintain a listening watch on a radio frequency to be designated by the North Shore Charter Boat Association when operating within three hundred feet of the entrance to a sea cave.
 - (2) Vessel operators intending to enter a sea cave shall ensure that no other vessel traffic is operating within the cave.
 - (3) A vessel exiting a sea cave shall have the right-of-way over vessels preparing to enter a sea cave.

(d) The Nualolo Kai restricted zone is the area encompassed by the boundaries shown on Exhibit "F", dated March 1, 1989, located at the end of this subchapter, and which is described as follows:

Beginning at a point on the shoreline at the low water mark of the westernmost tip of Makuai Point, then by ~~[azimuth]~~ azimuths measured clockwise from True South; 241 degrees for a distance of two thousand one hundred feet to a point tangent to the outer edge of the reef, then along the outer edge of the reef to the westernmost edge of the shoreline of Alapii Point, then along the shoreline to the point of beginning.

- (1) Restrictions on commercial use. No more than six commercial vessels may anchor or moor within the Nualolo Kai restricted zone at

any one time, none of which may have a passenger carrying capacity exceeding eighteen passengers. The maximum time limit which a commercial vessel may moor within the Nualolo Kai restricted zone shall not exceed forty-five minutes. The limitation on commercial vessel provisions by this subsection shall not apply to commercial vessels whose owner possesses a valid permit issued by the board of land and natural resources to embark or disembark passengers at this location.

- (2) Restrictions on operation over reef areas. No motorized vessel shall operate over coral reefs subzone as shown on Exhibit "F". No vessel shall anchor or moor on live coral. Mooring shall be permitted only at day use moorings. A "day use moorings" means a mooring established by the department for daylight hour uses only. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-42 to 13-256-49 (Reserved)

SUBCHAPTER 3

SOUTH SHORE KAUAI OCEAN RECREATION MANAGEMENT [AREAS] AREA

§13-256-50 Definition. The "South Shore Kauai Ocean Recreation Management Area" means all waters of

the State from Lae Niau located at the north boundary of Kealia Beach, Kauai, Hawaii, to the west boundary of Salt Pond Beach Park, Hanapepe, Kauai, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "G", "South Shore Kauai, Hawaii," dated February 27, 1998, located at the end of this subchapter. [Eff 2/24/94; am 10/19/02; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200- 24)

§13-256-51 Hanamaulu Bay restricted zones. (a)

Zone A, Hanamaulu Bay.

- (1) Zone A, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark at the tip of land which is six hundred feet from the mouth of the Hanamaulu Stream, then by ~~[azimuth]~~azimuths measured clockwise from True South; 180 degrees to a point on the low water mark of the northern boundary of Hanamaulu Bay; thence along the low water mark of the bay to the point beginning.

- (2) Restrictions. Zone A, Hanamaulu Bay is designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within Zone A.
- (b) Zone B, Hanamaulu Bay.
- (1) Zone B, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point on the low water mark on the northern tip of Ahukini State Park; thence by ~~[azimuth]~~azimuths measured clockwise from True South; 170 degrees to a

point on the low water mark on the shoreline; then westward along the low water mark to the northern boundary of Zone A; then southward along the boundary of Zone A to the low water mark on the shoreline; then eastward along the low water mark to the point of beginning.

- (2) Restrictions. Zone B, Hanamaulu Bay is designated as a "slow-no-wake" zone. All watercraft within this zone shall not exceed a speed of slow-no-wake.

(c) Hanamaulu Bay Ingress-Egress Corridor.

- (1) Zone C, Hanamaulu Bay Ingress-Egress Corridor means the ocean waters confined by the boundaries for said corridor as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point on the low water mark at the south opening of Hanamaulu Stream; thence by ~~[azimuth]~~ azimuths measured clockwise from True South; 240 degrees to a point on at the west boundary of Zone B and the low water mark on the shoreline; then along western boundary of Zone B for a distance of one hundred feet; then 063 degrees to a point at the low water mark of the Hanamaulu Beach; the along the low water mark of the shoreline to the point of beginning.

- (2) Restrictions. Zone C, Hanamaulu Bay Ingress-Egress Corridor is designated for use by recreational motorized vessels. All watercraft within this zone shall not exceed a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-52 Nawiliwili Bay restricted zones. (a) Zone A, Nawiliwili Bay is the ocean waters encompassed

by the boundaries of the zones as shown on Exhibit "I", dated November 23, 1988 located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark on the southern tip of Kukii Point then by azimuths measured clockwise from True South; 090 degrees across the bay to a point on the jetty; then proceeding north along the low water mark along the shoreline of Kalapaki Bay to the point of beginning.

Zone A, Nawiliwili Bay is designated for general ocean recreation activities. No person shall moor a vessel or operate at a speed in excess of slow no wake within Zone A. [Eff 2/24/94; comp]
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-21, 200-22, 200-24)

§13-256-53 Nukumoi [~~Restricted Zones~~]restricted zones.

- (a) Nukumoi Swimming Zone
- (1) Nukumoi swimming zone means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:
- Beginning at a point at the low water mark on the southern tip of the Nukumoi Point, then proceeding on a straight line to the low water mark of the southern point of Kihouna Heiau, then along the low water mark of Nukumoi Beach in an easterly heading to the point of beginning.
- (2) Restrictions. Nukumoi swimming zone is designated for swimming and bathing. No person shall operate or moor a vessel or other watercraft within this zone.
- (b) Nukumoi Ingress/egress Corridor.
- (1) Nukumoi ingress/egress corridor means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated

September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark adjacent to the west side of the basalt rock on Nukumoi Beach then by ~~[azimuth]~~azimuths measured clockwise from True South, 018 degrees for a distance of three hundred feet and the swim zone boundary; 112 degrees for a distance of fifty feet; 198 degrees to the shoreline; then along the low water mark of Nukumoi Beach in an easterly direction to the point of beginning.

- (2) Restrictions. Nukumoi ingress/egress corridor is designated for the use of nonmotorized vessels. No person shall operate or moor a motorized vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-54 Koloa Landing ~~[Restricted Area.]~~restricted area. (a) The Koloa Landing restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "K", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of Lae O Kohala, thence by ~~[azimuth]~~azimuths measured clockwise from True South; 130 degrees to a point on the low water mark at the western edge of Keawaloa Bay; then long the low water mark of the shoreline in a northerly direction and then on an easterly heading to the point of beginning.

(b) Restrictions. Koloa Landing restricted area is designated for swimming and diving. No person shall operate or moor a vessel in this area, except that a vessel may enter or depart the area by a

straight line from the boat launching area to the closest seaward boundary line. All vessels transiting the area shall not exceed a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-55 Salt Pond Park ~~[Restricted Area-]~~restricted area. (a) The Salt Pond Park restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "M", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark which is five hundred feet east of the centerline extension of Salt Pond Road; then on the low water mark along the beach in a southerly direction for a distance of approximately one thousand two hundred fifty feet; then on a straight line to the point of beginning.

(b) Restrictions. The Salt Pond Park restricted area is designated for swimming and bathing. No person shall operate or moor a vessel within this area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-56 Wailua River restricted area. (a) Restrictions described in this section shall not apply to department vessels, department personnel or emergency, patrol, or rescue craft while performing official duties.

(b) The Wailua River restricted area means the navigable waters of the Wailua River, Kauai, as defined by the boundaries as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted ~~[Area, "]~~Area" dated February 27, 1998, and located at the end of this subchapter. The boundaries begin at a point at the high water mark at the mouth of the Wailua River and include all the navigable waters

along the Wailua River in a westerly direction to the base of Kaholalele Falls on the north fork of the river and all of the navigable waters to the base of the Wailua Falls on the south fork of the river.

(c) The Wailua River restricted area shall be divided into four zones:

- (1) Zone 'A' includes all the navigable waters beginning fifty feet into the river from the western side of the Wailua River bridge and from seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline, then extends from the banks of the north shoreline to approximately seven hundred and eighty-three yards upstream as indicated by navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B', as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone ['A','A']" dated February 27, 1998, and located at the end of this subchapter.
- (2) Zone 'B' includes all waters extending approximately two miles upstream from the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B' to the base of Kaholalele Falls on the north fork of the river and approximately three and a half miles from the navigational aids designating the boundary between Zones 'A' and 'B' to the base of the Wailua Falls on the south fork of the river as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted [Area,']Area" dated February 27, 1998, and located at the end of this subchapter.
- (3) Zone 'C' includes the waters beginning at the west side of the Wailua River bridge between the north and south banks and extends fifty feet into the river, then

proceeds along the north shoreline extending seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone [~~'A',~~]" 'A'" dated February 27, 1998, and

located

at the end of this subchapter.

- (4) Zone 'D' begins at the eastern boundary of Zone 'C' and extends under the Wailua River bridge between the north and south banks, extending to the shoreline.
- (d) General rules for Wailua River.
- (1) Only commercial and recreational vessels not exceeding twenty-one feet in length shall be allowed to utilize the Wailua River and shall be limited to:
 - (A) Vessels used for waterskiing;
 - (B) Motorized vessels, excluding thrill craft; and
 - (C) Manually-propelled vessels.
- (2) Commercial barges, or vessels otherwise allowed by the department, shall be exempt from vessel length restrictions described in paragraph (1).
- (3) Recreational motorized vessels, and recreational and rented manually-propelled vessels may utilize Zones 'A', 'B' and 'C' as provided for in this section.
- (4) Zone 'C' shall be designated a swimming zone indicated by marker buoys. Motorized vessels launching from launch ramp 'A' shall proceed with caution while within Zone 'C'.
- (5) All manually-propelled vessels shall be required to operate along side the northern river bank.
- (6) All vessel operators shall possess a state park permit to embark or disembark along the shores only within the state park in Zone 'B'.

(e) Commercial vessel activity requirements for Wailua River.

- (1) Unless otherwise provided by law, anyone conducting commercial activities on the Wailua River shall possess a valid commercial activity permit from the department.
- (2) All individuals possessing a commercial activity permit to utilize the Wailua river as of June 11, 1999, may retain the commercial activity permit on the effective date of these rules.
- (3) All available commercial activity permits may be issued in accordance with section 13-231-60.
- (4) Reissuance of commercial activity permits shall be in accordance with section 13-231-61.
- (5) Commercial barges, or vessels otherwise allowed by the department, may only utilize Zones 'A' and 'B'.
- (6) All commercial vessel activity is prohibited from Zones 'C' and 'D'.
- (7) Commercial waterskiing commercial activity permittees shall abide by the requirements described in subsection (g).
- (8) Commercial manually-propelled vessel commercial activity permittees shall abide by the requirements described in subsection (f).

(f) Commercial manually-propelled vessel requirements for the Wailua River.

- (1) Not more than fifteen manually-propelled vessel commercial activity permits, with a maximum of twelve vessels per commercial activity permit per day, and with a maximum of four guides per permit, may be issued for guided tours for the Wailua River.
- (2) Not more than four manually-propelled vessel commercial activity permits, with a maximum of six vessels per commercial activity permit, may be issued for rented manually-

propelled vessels for the Wailua River.

- (3) In addition to the provisions in subsection (e)(1), manually-propelled vessel commercial activity permittees utilizing the Wailua River shall abide by the following:

- (A) For guided tours, a minimum of one tour guide shall be required for each group of twelve people;
- (B) Tour guides shall be required to wear a bright orange shirt with the company name printed on the shirt when guiding tours; and
- (C) All commercial manually-propelled vessels permittees shall be provided a Wailua River restricted area decal for each commercial manually-propelled vessel and shall be required to display it on the bow of the vessel.

(g) Waterskiing activity requirements for the Wailua River.

- (1) Waterskiing may be conducted in Zone 'A' in an area designated by the department, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone [~~'A'~~, "'A'" dated February 27, 1998, and

located

at the end of this subchapter, and shall be prohibited in Zone 'C'.

- (2) Waterskiing may be conducted in Zone 'B' only between sunrise to 9:00 a.m. and from 5:00 p.m. to sunset.
- (3) A maximum of one commercial activity permit may be issued for waterskiing activities.
- (4) The vessel towing water skiers may tow not more than one person at any one time.
- (5) Waterskiing shall be conducted in accordance with section 13-244-18.
- (6) Waterskiing activities shall be exempt from the speed restrictions of section 13-244-9.
- (7) Waterskiing vessel traffic patterns shall be in a counter-clockwise direction.
- (8) Waterskiing tow ropes shall not exceed

seventy-five feet in length.

- (9) Vessels engaged in waterskiing activities shall not exceed a speed of thirty-six miles per hour.
- (10) The only water towing apparatus allowed shall be those equipped with boots, straps, or a leash on the board or ski.

(h) ~~[Launch ramp restrictions.~~

- ~~(1)]~~ All commercial vessels are prohibited from utilizing Launch ramp 'A', as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone

~~['A',"]~~'A' "

dated February 27, 1998, and located at the end of this subchapter, and shall be required to utilize Launch ramp 'B', as shown in Exhibit ~~["L-1,"]~~"L-1" titled "Island

of

Kauai, Wailua River Restricted Area, Zone ~~['A',"]~~'A' " dated February 27, 1998, and

located

at the end of this subchapter.

(i) The eastern half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A' ~~[,"]~~" dated February 27, 1998, and located at the end of this subchapter, shall be used exclusively for the launching and recovery of Hawaiian outrigger canoes.

(j) The western half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone ~~['A',"]~~'A' " dated February 27, 1998, and located at the end of this subchapter, may be utilized by recreational vessels, other than Hawaiian outrigger canoes, allowed on Wailua River. [Eff 10/19/02; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§§13-256-57 to 13-256-59 (Reserved)

SUBCHAPTER 4

NORTH SHORE OAHU OCEAN RECREATION MANAGEMENT AREA

§13-256-60 Definition. The "North Shore Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from Kaena Point to Kahuku Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "N", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200- 4)

§13-256-61 Haleiwa [~~Restricted Zones~~]restricted zones. (a) Zone A, Haleiwa restricted zone is the area encompassed by the boundaries of the area shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark at the western edge of Alii Beach Park, then by [~~azimuth~~]azimuths measured clockwise from True South, 128 degrees for a distance of four hundred feet; 200 degrees for a distance of one thousand feet; then on a straight line to the low water mark of the corner of the breakwater at Haleiwa Small Boat Harbor; then along the low water mark in a westerly heading to the point of beginning. Zone A Haleiwa restricted area is designated a swimming and bathing area. No person shall operate or moor a vessel within this zone.

(b) Zone B, Haleiwa restricted zone is the area encompassed by the boundaries of the area shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water by ~~[azimuth]~~azimuths measured clockwise from True South, 090 degrees for a distance of one hundred feet from the low water mark at the end of the breakwater at Haleiwa Small Boat Harbor; 060 degrees for a distance of one thousand six hundred feet; 175 degrees for distance of one thousand three hundred feet; then on a straight line to ~~[a]~~the point of beginning.

Zone B is designated a surfing and bodysurfing zone. No person shall operate or moor a vessel, within this zone.

(c) Zone C Haleiwa ~~[Restricted Zone]~~restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point from the low water mark of the western tip of Kawaihoa Beach, thence by ~~[azimuth]~~azimuths measured clockwise from True South, 075 degrees for a distance of one hundred feet; 300 degrees for a distance of eight hundred feet; then on a straight line to the low water mark at the end of the groin located at the southern boundary of Haleiwa Beach Park; then along the low water mark along the groin and beach in a northerly direction to the point of beginning.

Zone C is designated as a swimming and bathing zone. No person shall operate or moor a vessel, surfboard, or sailboard within this zone.

(d) Zone D, Haleiwa restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water by
[~~azimuth~~]azimuths measured clockwise from True
South, 038 degrees for a distance of four hundred
ninety feet from Pua'ena Point, then by a on a
radius of two hundred feet around that point
Zone D is designated as a commercial thrill craft
zone. No more than six rental thrill craft shall be
operated at any time.

(e) Zone E Haleiwa restricted zone is the area
encompassed by the boundaries of the zone shown on
Exhibit "O", dated November 23, 1988, located at the
end of this subchapter. The boundaries are as follows:

Beginning at a point from the low water mark
on the tip of the breakwater of Haleiwa Small
Boat Harbor, then by [~~azimuth~~]azimuths measured
clockwise from True South, 110 degrees for a
distance of two thousand eight hundred feet; 020
degrees for a distance of two thousand feet; 110
degrees for a distance of one thousand feet;
200 degrees for a distance of two thousand feet;
then by a straight line to the point of
beginning.

Zone E is designated as a recreational thrill
craft zone. No person shall operate a commercial
thrill craft in this zone. This zone shall be closed
to all thrill craft operations from December 15 to May
15 of the following year.

(f) Zone F Haleiwa restricted zone is the area
encompassed by the boundaries of the zone shown on
Exhibit "O", dated November 23, 1988, located at the
end of this subchapter. The boundaries are as follows:

Beginning from the low water mark at Pua'ena
Point, then by [~~azimuth~~]azimuths measured
clockwise from True South, 125 degrees for a
distance of four hundred thirty feet to a point
in the water; then 140 degrees for a distance of
one thousand feet; 230 degrees for a distance of
two thousand feet; 320 degrees for a distance of
one thousand feet; then 050 degrees for two
thousand feet and the point of beginning.

Zone F is designated as a recreational thrill craft zone. No person shall operate a commercial thrill craft in this zone. [Eff 2/24/94; am and comp] (Auth: HRS §§200-21, 200-22, 200-24, 200-37) (Imp: HRS §§200-21, 200-22, 200-24, 200-37)

§13-256-62 Repealed. [R 4/27/02]

§13-256-63 Sharks Cove, Three Tables, and Waimea Bay ocean waters. (a) Sharks Cove, Three Tables, and Waimea Bay ocean waters means the area confined by the boundaries shown on Exhibit "Q", titled "Ocean Recreation Management Areas, Sharks Cove, Three Tables and Waimea Bay ocean waters", dated October 20, 2000, and located at the end of this subchapter.

- (1) Zone 'A' begins at a point in the water at approximately 21°38.296 N, 158°04.092 W, then in a northerly direction along the shoreline to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a straight line in a southwesterly direction for approximately one thousand eight hundred thirty-seven feet back to the point of origin.
- (2) Zone 'B' begins at a point in the water Three Tables Point at approximately 21°38.751 N, 158°03.925 W; then along the shoreline in a northeasterly direction to a point in the water at approximately 21°39.010 N, 158°03.842 W, then due west to approximately 21°39.010 N, 158°03.874 W, then in a straight line in a southwesterly direction back to the point of origin.
- (3) Zone 'C' begins at a point in the water at approximately 21°39.010 N, 158°03.842 W, then in a northerly direction along the

shoreline to Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then in a straight line in a southwesterly direction to approximately 21°39.010 N, 158°03.874 W, then in a straight line due east back to the point of origin.

- (4) Zone 'D' begins at Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then due west for one hundred yards, then in a straight line in a southwesterly direction to the Wananapaoa Islet at approximately 21°38.340 N, 158°04.198 W, then in a straight line in a southeasterly direction to 21°38.296 N, 158°04.092 W, then in a straight line in the northeasterly direction to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a northeasterly direction along the shoreline to approximately 21°38.751 N, 158°03.925 W and then in a straight line in a northeasterly direction to the point of origin.
- (b) Following are restrictions for Zone 'A':
 - (1) Except where permitted by law, motorized vessels, except sailing vessels with auxiliary engines, are prohibited in Zone 'A'.
 - (2) Sailing vessels with auxiliary engines shall be required to enter and leave Zone 'A' on sail power or by oar only.
 - (3) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline of Zone 'A'.
 - (4) Any vessel anchoring within Zone 'A' shall be prohibited from anchoring within two hundred feet of the shoreline and shall anchor only in sandy areas.
 - (5) All vessels shall proceed at a speed of slow-no-wake, as defined in section 13-230-8, when in Zone 'A'.
- (c) Following are restrictions for Zone 'B':
 - (1) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline

in Zone 'B'.

- (2) Except where permitted by law, motorized vessels, including sailing vessels with auxiliary engines, are prohibited in Zone 'B'.

(d) Except where permitted by law, all vessels are prohibited from embarking or disembarking from the shoreline into Zone 'C'.

(e) In addition to any federal, state or county law, rule, permit or ordinance requirements, a commercial activity permit shall be required to conduct commercial SCUBA or commercial snorkeling activities in Zone [~~'C,'~~] 'C', issued by the department. This applies to all for-profit and not-for-profit companies or organizations. Allocation of the commercial activity permits shall be in accordance with section 13-231-60 and the applicant shall submit the following with the application:

- (1) A list of all instructors or guides to be named on the commercial activity permit. The onus shall be on the commercial activity permittee to update any additions or deletions of the names of the persons utilized for instruction or guided tours;
- (2) Proof of insurance, as described in section 13-231-65, for each individual listed on the commercial activity permit;
- (3) A copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;
- (4) Vehicle license numbers for vehicles utilized for shuttling customers; and
- (5) Proof of a leadership level professional credential, i.e., dive master or above, from an internationally recognized SCUBA diving training agency, e.g., PADI, for each instructor or guide listed on the commercial activity permit for commercial SCUBA and snorkeling activities.

(f) Commercial activity permits for commercial SCUBA or snorkeling activities shall be valid for a period not to exceed one year.

(g) Renewal of a commercial activity permit shall be in accordance with section 13-231-61, except that paragraphs of section 13-231-61(b)(1), (4) and (8) shall not apply. The minimum revenue standard shall be the fees provided in subsection (j).

(h) A yearly non-refundable commercial activity permit application fee of \$50 shall be paid at the time the application is submitted.

(i) In addition to the commercial activity permit described in subsection (e), a use permit, as described in subsection (j) shall be required when using Zone 'C'.

(j) A maximum of six use permits, with a combination of commercial activity permittees and customers not to exceed ten individuals, including instructors and assistants per use permit, shall be issued for any one of three time periods and the permittee shall only be allowed to use Zone 'C' during the periods reserved by the permittee via a reservation system established by the department.

(k) Use permit fees, that shall be paid in full at the time of the reservation for use periods, shall be as follows:

- (1) A seasonal user fee of \$420;
- (2) A monthly user fee of \$75;
- (3) A weekly user fee of \$56; or
- (4) A daily user fee of \$10.

(l) Individuals who possess a commercial activity permit and pay fees in accordance with section 13-234-25, shall be exempt from the fee requirements provided in subsection (k) but shall be required to make reservations as described in subsection (j).

(m) Commercial activities may be allowed from April 1st through October 31st of each year but shall be prohibited between the hours of 9:00 p.m. to 8:00 a.m. and from November 1st through March 31st of each year.

(n) Individuals conducting instruction or guided tours shall be required to make available to representatives of the department a copy of the use permit upon demand.

(o) Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules shall be subject to fines as prescribed in sections 200-14, 200-14.5, and 200-25, Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.

(p) Commercial activity permittees shall make available to customers: maps or charts that show the boundaries of the area(s), outlined restricted zones, and dangerous areas and conditions and shall establish an education program acceptable to the department addressing the historical, cultural, ecological significance of the area, and any rules or laws pertaining to protected species and marine resource conservation etiquette.

(q) Unless otherwise allowed by the County, commercial activity permittees shall be required to shuttle their customers to and from the parking area fronting Zone 'C', when utilizing [~~Shark's~~Sharks Cove for commercial activities.

(r) Following are restrictions for Zone 'D'.

(1) All vessels shall proceed at a speed of slow-no-wake, as defined in section 13-230-8, when in Zone 'D'.

(2) When installed, all vessels mooring in Zone 'D' shall utilize [~~day-use-moorings~~day use moorings] or shall anchor in sandy areas.

(s) Individuals conducting special events in Zones 'A', 'B', 'C' or 'D', shall be required to obtain a special events permit in accordance with section 13-244-19. Eff 2/24/94; am 4/27/02; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

§13-256-64 Sunset Beach [~~Restricted Area~~restricted area].

(a) The Sunset Beach restricted area means the area confined by the boundaries for said area shown on Exhibit "R", dated,

August 21, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark on the shoreline located two hundred fifty feet along the low water mark of the shoreline in a northerly direction from the mouth of Kalunawaikaola Stream, then by ~~[azimuth]~~azimuths measured clockwise from True South, 125 degrees; then 130 degrees for a distance of one thousand feet; 220 degrees for a distance of nine thousand four hundred fifty feet; 310 degrees to a point on the low water mark of the shoreline; then in a southerly direction along the low water mark to Ehukai Beach Park Swimming Zone; then in a southerly direction along the makai boundary of that zone; then along the low water mark of the beach to the point of beginning.

(b) Restrictions. The Sunset Beach restricted area is designated for surfing, kayaking and windsurfing. No person shall operate a motorized vessel or sailing vessel in this area during the months of October 1st through April 30th. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-65 Kawela Bay [~~Restricted Area.~~]restricted area. (a) Kawela Bay restricted area means the area confined by the boundaries for said area shown on Exhibit "S", dated, June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark on the tip of the shoreline of the bay, then by straight line to the low water mark on the shoreline of the northern tip of the bay; then in a southerly direction along the low water mark to the point of beginning.

(b) Restrictions. No person shall operate a vessel in Kawela Bay in excess of slow-no-wake speed. Water ski activity is prohibited. [Eff 2/24/94; am

and comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-66 to 13-256-70 (Reserved)

SUBCHAPTER 5

WINDWARD OAHU OCEAN RECREATION MANAGEMENT AREA

§13-256-71 [~~Definition.~~] Definitions.

"Commercial ocean use activities" means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, or any other similar commercial ocean recreation activity.

"Family [~~Member~~]" member" means any person and his or her spouse as well as their legal children.

"Windward Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from northwest boundary of Kahana Bay to Makapuu Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "T", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-39)

§13-256-72 Kualoa [~~water~~]waters restricted zones. (a) Zone A Kualoa waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," dated September 8, 1998, incorporated herein, and located at

the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at approximately 21° 31' 16.6" N / 157° 50' 06.9" W, then going in an easterly direction to approximately 21° 31' 16.6" N / 157° 49' 58.2" W, then going in an southerly direction to approximately 21° 31' 11.5" N / 157° 49' 58.2" W, then going in a westerly direction to approximately 21° 31' 11.5" N / 157° 50' 07.3" W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in Zone A when being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zone A on Sundays or federal holidays.

(b) Zone B Kualoa waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," dated September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point at approximately 21° 31' 16.6" N / 157° 49' 58.2" W, then in an easterly direction to approximately 21° 31' 16.6" N / 157° 49' 56.0" W, then in an southerly direction to approximately 21° 31' 06.4" N / 157° 49' 56.5" W, then in a westerly direction to approximately 21° 31' 06.4" N / 157° 50' 07.5" W, then in a northerly direction to approximately 21° 31' 11.5" N / 157° 50' 07.7" W, then in an easterly direction to approximately 21° 31' 11.5" N / 157° 49' 58.2" W, then in a northerly direction by straight line to the point of beginning. Zone B is designated as a non-exclusive commercial ocean water sports zone. High speed towing, water skiing, and water sledding shall be prohibited.

All vessels transiting Zone B shall proceed with extreme caution.

(c) All commercial ocean use activities are prohibited within Kualoa waters restricted zones and on Sundays and federal holidays. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-4, 200- 22, 200-23, 200-24, 200-37, 200-39)

§13-256-72.1 Kualoa waters restricted zones permit. (a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules;
- (2) All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
- (3) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;
- (4) The maximum number of customers per day may

be established through the conservation district use permit application process, but shall not exceed [~~one-hundred~~]one hundred and fifty customers;

- (5) Water sledding, water skiing, and high speed towing shall be prohibited;
- (6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and
- (7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.

(c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.

(e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73 Kaneohe Bay ocean waters. (a)

Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N / 157° 43' 21.6" W, then in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N / 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

(b) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.

(c) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.

(d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N / 157° 47' 45.5" W.

(e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located

at the end of this subchapter. The boundaries of Zone B are as follows:

Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N / 157° 48' 08.5" W.

(f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

(g) Zones A, B, and C are subject to the following:

- (1) Zones A, B, and C are designated as commercial thrill craft zones where full service permittees shall be required to operate. Not more than six rental thrill craft shall operate within each of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.
- (2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C on Sundays or federal holidays.

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the

Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately 21° 28' 32" N / 157° 49' 39" W, then by a straight line in a due East (true) direction to approximately 21° 28' 32" N / 157° 49' 32" W, then in a straight line to approximately 21° 28' 10.5" N / 157° 49' 27" W, then in a straight line due West (true) to approximately 21° 28' 10.5" N / 157° 49' 34" W, then in a straight line back to beginning.

Zone D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27' 25" N / 157° 47' 46.5" W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone F are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of

beginning. Zone G is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(l) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.

Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of

towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:

Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

(o) Kaneohe Bay speed restrictions. In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay

offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu [~~O Laka Island,~~] o Laka safety zone ("The Sand Bar").

(p) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.1 Kaneohe Bay ocean waters commercial use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial use permit issued by the department. For the purpose of this section, "full service permit" means a permit which includes thrill craft, water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sail boarding, and other

related water recreational activities approved by the department.

(b) The number and types of Kaneohe Bay ocean waters commercial use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit without thrill craft, water sledding, and high speed towing activities as authorized in section 13-256-73.4;
- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than ~~[one-hundred]~~one hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service

permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial use permit required under this section shall satisfy the requirement for all other harbor use permits required of commercial operators under chapter 13-231, with the exception of a mooring permit for each vessel moored in Heeia Kea small boat harbor or offshore.

(f) The Kaneohe Bay waters commercial use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted thereunder.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of

the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia Kea small boat harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea small boat harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more than three trailers per permit per day at the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardiopulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee.

[Eff 11/7/11; am and comp] (Auth:

HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.2 Large full service permit

restrictions. (a) Not more than [~~one-hundred~~]one hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) Two host vessels with an aggregate maximum carrying capacity of [~~one-hundred~~]one hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.
- (2) Six rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20;
- (4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit

capacity of [~~one hundred~~]one hundred fifty. Should the certified passenger capacity of the primary vessel be less than [~~one hundred~~]one hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.

(j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-

profit passengers shall not engage in thrill craft or high speed towing activities.

(k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.3 Small full service permit restrictions. (a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20;
- (4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation. [Eff 11/7/11;

comp] (Auth: HRS §§200-4, 200-22,
200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3,
200-4, 200-22, 200- 23, 200-24, 200-37, 200-39)

§13-256-73.4 Small full service permit restrictions without thrill craft, water sledding, and high speed towing activities. (a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft, water sledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers.
- (2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20.
- (3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United ~~[Stated]~~States Coast Guard Certificate of Inspection; and
- (4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.

(g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.

(k) Thrill craft, water sledding, waterskiing and high speed towing are not authorized activities under this permit. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200- 24, 200-37, 200-39)

§13-256-73.5 Large snorkel tour permit restrictions. (a) No more than [~~one-hundred~~]one hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe [~~Bay~~]Bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted [~~zone~~]Zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written

approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted. [Eff 11/7/11; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.6 Small sail/snorkel tour permit restrictions. (a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only nonmotorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be

mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.7 Glass bottom boat tour permit restrictions. (a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no United States Coast Guard Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-

256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.8 Replacement vessels size restrictions. (a) Replacement vessels shall not be greater in vessel length overall than 10% of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the

department. [Eff 11/7/11; comp]
(Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS
§§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.9 Shuttling restrictions. No
shuttling or transferring of customers among the
permittees for the purpose of exceeding the maximum
daily customer limit specified by type of permit or
exceeding the certified passenger capacity of the
vessel shuttling or receiving the passengers shall be
allowed. [Eff 11/7/11; comp]
(Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-
24, 200-37, 200-39)

§13-256-73.10 Permit [~~Issuance~~]issuance. (a)
Permittees holding valid commercial use permits on the
effective date of this rule shall be offered the
opportunity to apply for the permit category in which
they are operating upon the expiration of their
respective permits. If any permit offer is refused by
the permittee, that permit shall not be issued and
shall be eliminated from the total number of Kaneohe
Bay ocean waters commercial use permits.

(b) Permit applications shall be reviewed for
compliance with chapter 200, HRS, applicable rules,
and permit conditions. Failure to comply with any
permit condition, or having any record of inaccurate
submission of gross receipts, inconsistent or untimely
payments of fees and charges, or unsafe operations
during the last term of a valid permit held by the
applicant, may be cause for rejection of the permit
application.

(c) The following documents shall be submitted
for review at the time an application is made for the
issuance of a permit:

- (1) Vessel documentation or registration.
- (2) Vessel certificate of inspection (if

- applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable, and naming the State of Hawaii as an additional insured.
 - (4) Certificate of good standing from the ~~[Department of Commerce and Consumer Affairs.]~~ department of commerce and consumer affairs.
 - (5) Tax clearance certificate from the department of taxation.
 - (6) Conservation district use permits (if applicable).
 - (7) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers that have occurred within the past year.
 - (8) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United ~~[State]~~ States Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
 - (9) Affidavit describing any and all sales or transfers of any ownership interest in the business.
- (d) The department shall publish a list of Kaneohe Bay waters commercial use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area, with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual

supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as required of the permittee and names the State of Hawaii as an additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor. Temporary mooring within Heeia Kea small boat harbor for any vessel that is authorized for commercial use in Kaneohe Bay ocean waters shall not exceed a cumulative period of 180 days in the same calendar year. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

§13-256-73.12 Kaneohe Bay ocean waters commercial use permit revocation. Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6.
[Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone J, shown on Exhibit "O-9", "Kaneohe Bay Ocean Waters" dated April 21, 2015, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water at 21°28.462'N 157°49.203'W, then by straight lines drawn to a point at 21°27.9647'N 157°49.140'W, then to 21°27.514'N 157°48.115'W, then to 21°28.030'N 157°47.940'W, then back to the starting point.

(b) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone J is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (1) No person shall possess, use, or consume alcohol within Zone J;
- (2) No person shall enter or remain in Zone J while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone J shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;
 - (C) subject another person to offensively

coarse behavior or abusive language which is likely to provoke a violent response; or

- (D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

Noise is unreasonable, within the meaning of subparagraph (3) (B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law. [Eff 8/18/12; am 7/26/15; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-256-74 Kailua [~~Ocean Waters Restricted Zones.~~] ocean waters restricted zones. (a) Zone A Kailua ocean waters restricted zone is the area

encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the extension of the western boundary of Kailua Beach Park; then along the low water mark of the shoreline in a eastern direction for a distance of three hundred feet; then by ~~[azimuth]~~azimuths measured clockwise from True South, 180 degrees for a distance of one thousand one hundred fifty feet; 090 degrees for a distance of three hundred feet; then by a straight line to the point of beginning.

Zone A Kailua ocean waters restricted zone is designated for windsurfing. No person shall operate a motorboat and no person shall swim in the zone when used by windsurfers.

(b) Zone B Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the center of the bridge of Kawaihoa Road at the entrance to Kaelepulei Pond; then for fifty feet either side of a line by ~~[azimuth]~~azimuths measured clockwise from True South, 240 degrees for a distance of one thousand feet.

Zone B Kailua ocean waters restricted zone is designated an ingress/egress zone for manually propelled vessels. Swimming in the zone is prohibited when in use by vessels. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§13-256-75 Waimanalo ~~[Ocean Waters Restricted Zones.]~~ocean waters restricted zones. (a) Zone A Waimanalo restricted zone.

(1) Zone A Waimanalo [Ocean Waters]ocean waters restricted zone means the area confined by

the boundaries shown for said zone on Exhibit "AA", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark of the shoreline which is six hundred feet south of the south bank of the mouth of Waimanalo Stream; then by ~~[azimuth]~~azimuths measured clockwise from True South, 265 degrees for a distance of one hundred feet; 355 degrees for a distance of five hundred feet; 085 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.

(b) Zone B Waimanalo ~~[Restricted Zone.]~~restricted zone.

(1) Zone B Waimanalo restricted zone means the area confined by the boundaries shown for said zone on Exhibit "AA", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point on the low water mark of the shoreline which measures one thousand four hundred fifty feet in a southerly direction, along the low water mark from the south boundary of Zone A; then by ~~[azimuth]~~azimuths measured clockwise from True South, 256 degrees for a distance of one hundred feet; 340 degrees for a distance of five hundred feet; 075 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.

(c) Zone C Waimanalo ~~[Restricted Zone.]~~restricted zone.

(1) Zone C Waimanalo restricted zone means the area confined by the boundaries shown for said zone on Exhibit "AA", dated, June 30, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point on the low water

mark of the shoreline which measures nine hundred fifty feet, along the low water mark of the shoreline in a northerly direction from the extension of Aloiloi Street at the shoreline; then northward along the low water mark for a distance of five hundred feet; then by [~~azimuth~~]azimuths measured clockwise from True South, 240 degrees for a distance of one hundred feet; 320 degrees for a distance of five hundred feet; 055 degrees to a point on the low water mark of the shoreline; then by a straight line to the point of beginning.

(d) Zones A, B and C Waimanalo restricted zones are designated for swimming and bathing. No person shall operate or moor a vessel, surfboard, or sailboard within these zones. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-76 Makapuu [~~Ocean Waters Restricted Zones.~~]ocean waters restricted zones. (a) Zone A Makapuu restricted zone.

- (1) Zone A Makapuu restricted zone means the area confined by the boundaries shown for said zone on Exhibit "BB", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark of the shoreline south of the Makai Range Pier in line with the channel range lights; then by [~~azimuth~~]azimuths measured clockwise from True South, 213 degrees for a distance of one hundred feet; 120 degrees for a distance of five hundred seventy feet; 033 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.

- (2) Restriction. Zone A Makapuu restricted zone

is designated for swimming and bathing. No person shall operate or moor a vessel, surfboard, or sailboard within this zone.

- (b) Zone B Makapuu Restricted Zone.
- (1) Zone B Makapuu restricted zone means the area confined by the boundaries shown for said zone on Exhibit "BB", dated, June 30, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point on the low water mark of the eastern tip of Manana Island; then by a straight line to the northeastern tip of Kaohikaipu Island; then along the low water mark in a westerly direction to the western tip of the island; then by a straight line to the low water mark at the western tip of Manana Island; then along the low water mark in a easterly direction to the point of beginning.
- (2) Restriction. No person shall operate a vessel at a speed in excess of slow-no-wake in this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-77 Kaneohe recreational thrill craft zone. (a) The recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit "V", dated April 16, 2001, located at the end of this subchapter and incorporated herein. The boundaries of Zone K are as follows:

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects the Kaneohe Sampan channel range extending seaward with an azimuth measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured

clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea. As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W. This zone is designated as a recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [Eff 2/24/94; am 11/7/11; comp]
(Auth: HRS §§200-22, 200-24, 200-37, 200-39)
(Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

§§13-256-78 to 13-256-85 (Reserved)

SUBCHAPTER 6

SOUTH OAHU OCEAN RECREATION MANAGEMENT [~~AREAS~~] AREA

§13-256-86 Definition. The "South Shore Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from Makapuu Point to the west boundary of the Honolulu International Airport Reef Runway, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "CC", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-87 Hanauma Bay [~~Restricted Zone~~] restricted zone. (a) The Hanauma Bay [~~Restricted Zone~~] restricted zone means the area confined by the boundaries shown for said zone on Exhibit "DD", dated August 15, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at Palea Point then by [~~azimuth~~] azimuths measured clockwise from True South, 23 degrees 15 minutes and 50 seconds for a distance of one thousand nine hundred forty-six feet to Paioluolu Point; then along the shoreline of Hanauma Bay to the point of beginning.

(b) Restriction: Hanauma Bay is designated a swimming and snorkeling zone. No watercraft of any description shall operate or moor in this zone, except a person (1) engaged in law enforcement, rescue or other operations essential to preserve life or property; (2) engaged in research or other activities pursuant to a permit issued by the department of land and natural resources. [Eff 2/24/94; am and

comp] (Auth: HRS §200-4) (Imp: HRS
§§200-2, 200-3, 200-4)

§13-256-88 Maunalua Bay waters. (a) Maunalua Bay waters means the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the southern point on the shoreline of Kawaihoa Point, then by ~~[azimuth]~~azimuths measured clockwise from True South, 107 degrees for a distance of seventeen thousand and eighty-five feet to the southwestern tip of Wailupe Peninsula, then along the shoreline of Maunalua Bay to the point of beginning.

(b) Commercial ocean recreation activities shall be restricted within Maunalua Bay waters as follows:

- (1) No commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motorboat towing a person engaged in water sledding during all weekends, and state or federal holidays.
- (2) All commercial ocean recreation activities in Maunalua Bay waters are prohibited on ~~[Sunday]~~Sundays, effective January 1, 1991.

(c) Zone A ~~[Restricted Zone]~~restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South, which is 325 degrees for a distance of two thousand three hundred twenty-five feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two

hundred feet around that point.

(d) Zone B [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water, by [~~azimuth~~]azimuths measured clockwise from True South, which is 330 degrees for a distance of one thousand six hundred eighty feet from a point on the low water mark on the east side of Maunaloa Bay boat ramp; then on a radius of two hundred feet around that point.

(e) Zone C [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point in the water, by [~~azimuth~~]azimuths measured clockwise from True South, which is 340 degrees for a distance of two thousand five hundred fifty feet from a point on the low water mark on the east side of Maunaloa Bay boat ramp; then on a radius of two hundred feet around that point.

Zones A, B and C are designated commercial thrill craft operating zones. No commercial operator permittee shall operate more than six rental thrill craft within each designated area at any one time. No commercial thrill craft shall be operated within Zones A, B and C except between the hours of 0900 (9:00 a.m.) and 1700 (5:00 p.m.), Mondays through Fridays. No commercial thrill craft shall be operated within Zones A, B and C on Saturdays, Sundays and state or federal holidays.

(f) Zone D [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by

~~[azimuth]~~azimuths measured clockwise from True South, which is 012 degrees for a distance of seven hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zone D is designated a recreational thrill craft operating zone for use by inexperienced operators only. Commercial thrill craft operations are prohibited.

(g) Zone E ~~[Restricted Zone]~~restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South 076 degrees for a distance of four thousand one hundred feet from Buoy "1", then 076 degrees for a distance of eight thousand four hundred feet; 168 degrees for a distance of one thousand four hundred fifty-five feet; 259 degrees for a distance of eight thousand five hundred eighty feet; then in a straight line to the point of beginning.

Zone E is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft within this area. Other vessels shall exercise caution when transiting this area. This zone shall be closed to all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(h) Zone F ~~[Restricted Zone]~~restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water at Buoy "1", by ~~[azimuth]~~azimuths measured clockwise from True South, then 157 degrees for a distance of one thousand nine hundred thirty-five feet; 092 degrees for a distance of one thousand nine

hundred five feet; 085 degrees for a distance of three thousand three hundred feet; 075 degrees for a distance of four thousand two hundred eighteen feet; 347 degrees for a distance of two thousand four hundred feet; 259 degrees for a distance of eight thousand eight hundred eighty feet; 000 degrees for a distance of eight hundred eighty-five feet; then by a straight line to a point of beginning.

No person shall operate a vessel within this area at a speed in excess of slow-no-wake. This is a green sea turtle resting and foraging area.

(i) Zone G Maunalua Bay [~~Parasail Zone~~]parasail zone is the area encompassed by the boundaries shown of the zone on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at entrance buoy "1" to the Hawaii-Kai Marina and Maunalua Bay boat launching ramp, establishing the eastern boundary along the extended centerline of the Ku'i channel entrance; then by straight line to buoy R-2 off Diamond Head, establishing the western boundary.

Zone G Maunalua Bay [~~Parasail Zone~~]parasail zone is designated for parasail operations. All operating parasail vessels shall remain seaward of the boundary line. No more than two commercial operating area use permits for parasailing operations shall be authorized for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. No person shall operate within one thousand feet of any buoy when the parasail is aloft. All other vessels using this area shall exercise extreme caution. This zone, except for that portion which is encompassed by alternate parasail zone G1, shall be closed to parasail operations from January 6 to May 15 of each year.

(j) Zone G1 Maunalua Bay [~~Alternate Parasail Zone~~]alternate parasail zone is the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G1 are as follows:

Beginning at a point on the eastern boundary of Zone G at the intersection of the straight line following a line from Kawaihoa Point at Koko Head to buoy R-2 off Diamond Head, establishing the shoreward boundary; then at a point on the shoreward boundary intersected by a line on a bearing of 000 degrees to the Kahala Hilton Hotel establishing the western boundary.

Zone G1 Maunalua Bay [~~Alternate Parasail Zone~~]alternate parasail zone is that portion of parasail Zone G which is designated for parasail operations from January 6 to May 15 of each year. No permittee shall operate more than one parasail vessel within this zone during this period. No parasail vessel shall exceed the speed of 18 knots within this zone. All other vessels using this area shall exercise caution.

(k) Zone H [~~Ingress-egress~~]ingress-egress corridor means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point at the shoreward western boundary of Maunalua Beach Park boat ramp; then by [~~azimuth~~]azimuths measured clockwise from True South, 120 degrees for a distance of seventy-five feet, 030 degrees for a distance of one hundred feet to a point in the water; 120 degrees for a distance of one hundred feet to a point in the water; 218 degrees for distance of one hundred feet to a point on land; then in a straight line to the point of beginning.

Zone H is designated for recreational thrill craft ingress-egress to the ocean waters of Maunalua Bay. No person shall operate or moor a vessel, surfboard, or sailboard within this area.

(l) Zone I means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water 270

degrees by ~~[azimuth]~~ azimuths measured clockwise from True South, at a distance of twenty-five feet from daybeacon R"2" of Ku'i channel; then 270 degrees for a distance of three hundred feet, 025 degrees for a distance of one thousand one hundred twenty-five feet; 090 degrees for a distance of three hundred feet; then in a straight line to the point of beginning.

Zone I is designated for recreational water skiing and commercial water sledding. Only one commercial operating area use permit shall be issued for this zone for safety purposes.

(m) Maunalua Bay, Ku'i Channel speed restrictions.

- (1) The speed of any watercraft shall not exceed 10 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, located at the end of this Subchapter, and described as follows:

Beginning at a line drawn between buoys R"2" and G"1A", then through each and every daybeacon in ascending order to daybeacons R"8" and G"9".

- (2) The speed of any watercraft shall not exceed 5 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a line drawn between buoys R"8" and G"9", then through each and every daybeacon and buoy in ascending order to the boundaries of Hawaii Kai Marina Bridge, May Way Bridge and Kuli'ou'ou Stream. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

**§13-256-89 Waialae-Kahala [~~Restricted~~
~~Areas.~~]restricted areas.** (a) The Waialae-Kahala
~~[Swimming Area]~~swimming area A.

- (1) The Waialae-Kahala swimming area A means the area confined by the boundaries shown for said zone on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at the southern tip of the Waialae Nui Stream groin, then by ~~[azimuth]~~azimuths measured clockwise from True South; 205 degrees for a distance of five hundred fifty feet to a point in the water; then in a straight line to the southern tip of the rocky peninsula; then along the low water mark in a westerly direction to the point of beginning.

(b) The Waialae-Kahala ~~[Swimming Area]~~swimming
area B.

- (1) The Waialae-Kahala swimming area B means the area confined by the boundaries shown for said area on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at the southern tip of the rocky peninsula then by ~~[azimuth]~~azimuths measured clockwise from True South; 340 degrees to the north tip of the islet; then along the low water mark on the eastern portion of the islet to the southeast tip; then in a straight line to the southern tip of the groin at the eastern boundary of the Kahala Hilton Hotel; then following the low water mark in a westerly direction to the point of beginning.

- (2) Restrictions. The Waialae-Kahala swimming areas A and B are designated for swimming and bathing and the use of water sports equipment. No person shall operate or moor a vessel, except as provided for in subsection (d), or surfboard, or sailboard within this area.

(c) Waialae-Kahala [~~Ingress-Egress Corridor.~~]
ingress-egress corridor.

- (1) The Waialae-Kahala ingress-egress corridor means the area confined by the boundaries shown for said area on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline which is adjacent to the east side of the groin at Waialae Beach Park; then by [~~azimuth~~]azimuths measured clockwise from True South, 006 degrees to the seaward end of the groin and the boat channel; then 253 degrees for a distance of one hundred forty feet along the boat channel; then 186 degrees to the low water mark of the shore; then along the shoreline to the point of beginning.

- (2) Restrictions. The Waialae-Kahala ingress-egress corridor is designated for use by windsurfing and manually propelled water sports equipment.

(d) Waialae-Kahala [~~Beach Boat Channel.~~]
beach boat channel.

- (1) The Waialae-Kahala beach boat channel means the area confined by the boundaries shown on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of the Waialae Nui Stream groin, then by [~~azimuth~~]azimuths measured clockwise from True South, 205 degrees for a distance five hundred fifty feet, coincident with [~~Swimming Area~~] swimming area A boundary; then in a straight line to the low water mark at the [~~south eastern~~]southeastern tip of the rocky peninsula; then along the low water mark of the rocky peninsula and shoreline to a point one hundred twenty-five feet east of the rocky peninsula; then 343 degrees in a

straight line to intersect [~~Swimming Area~~]
swimming area B boundary; then along
[~~Swimming Area~~]swimming area B boundary to
the northern tip of the islet; then 160
degrees for a distance of four hundred
twenty-five feet; then 025 degrees for a
distance of four hundred seventy-five feet;
then in a northwesterly direction to the
point of beginning.

- (2) Restrictions. The Waialae-Kahala beach boat
channel is designated for use by commercial
vessels, operating under contract with the
Kahala Hilton Hotel and holding a valid
commercial use permit from the department.
The operation of any other vessel is
prohibited within this area. [Eff 2/24/94;
am and comp] (Auth:
HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-90 Diamond Head [~~Restricted~~
~~Area.~~]restricted area. (a) The Diamond Head
[~~Restricted~~]restricted area means the area confined by
the boundaries shown for said area on Exhibit "JJ",
dated September 19, 1988, located at the end of this
subchapter, the boundaries are as follows:
Beginning at a point at the low water mark of
the shoreline on the western boundary of the
Diamond Head Lighthouse; then by [~~azimuth~~]
azimuths measured clockwise from True South, 345
degrees for a distance of two thousand eight
hundred eighty feet; 253 degrees for a distance
of two thousand two hundred fifty feet; then by a
straight line to a point at the low water mark at
the most eastern boundary of Diamond Head Beach
Park; then along the low water mark in a westerly
direction to the point of beginning.
(b) Restrictions. The Diamond Head [~~Restricted~~
~~Area~~]restricted area is designated for surfboards,
sailboards and manually propelled vessels. No person
shall operate a motorized vessel within this area.

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

§13-256-91 Waikiki [~~Ocean Waters Restricted Zones.~~] ocean waters restricted zones. (a) Waikiki [~~Speed Zone.~~] speed zone. Waikiki speed zone means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water of the shoreline at the southern tip of Magic Island on a straight line to the Ala Wai [~~Entrance Buoy G "1",~~] entrance buoy G-1, then on a straight line to Diamond Head [~~Buoy R "2",~~] buoy R-2, then on a straight line toward Diamond Head Lighthouse to intersect the Diamond Head windsurfing zone boundary, then along the boundary to the low water mark at Diamond Head Beach Park, then along the low water mark following the shoreline to the point of beginning.

Restriction. No person shall operate a vessel or watercraft within the Waikiki speed zone at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers.

(b) Waikiki [~~Commercial Thrill Craft Zone~~] commercial thrill craft zone A.

Waikiki [~~Thrill Craft Zone~~] commercial thrill craft zone A means the area confined by the boundaries shown on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by [~~azimuth~~] azimuths measured clockwise from True South, 045 degrees for a distance of three thousand six hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(c) Waikiki [~~Commercial Thrill Craft Zone~~] commercial thrill craft zone B.

Waikiki [~~Commercial Thrill Craft Zone~~] commercial thrill craft zone B means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at a point in the water by [~~azimuth~~] azimuths measured clockwise from True South, 025 degrees for a distance of three thousand eight hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(d) Restrictions. Waikiki [~~Commercial Thrill Craft Zone~~] commercial thrill craft zones A and [Zone] B are designated commercial thrill craft areas. No commercial operator permittee shall operate more than six rented thrill craft within it assigned area at any one time. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200- 24, 200-37)

§13-256-92 South Shore [~~Parasail Area~~] parasail area. (a) South Shore [~~Parasail Area~~] parasail area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy G-1 of the Ala Wai channel; then by straight line to buoy R-2 off Diamond Head.

(b) South Shore [~~Parasail Area~~] parasail area is designated for the operation of parasail vessels. No more than four commercial operating area use permits shall be authorized in this area. No permittee shall operate more than one vessel with a parasail aloft at any one time. All operating parasail vessels shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of

any channel entrance buoys. All other vessels using this area shall exercise extreme caution. This area shall be closed to parasail operations from January 6 to May 15 of each year.

(c) South Shore [~~Alternate Parasail Area~~] alternate parasail area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy R-2 off Diamond Head.

(d) South Shore [~~Alternate Parasail Area~~] alternate parasail area is designated for parasail operations from January 6 to May 15 of each year. No more than four parasail vessels shall be operated within this area during this period. All parasail vessels with parasail aloft, shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of any channel entrance buoys. All other vessels using this area shall exercise extreme caution. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-93 Kahakaaulana Islet (Harris [~~Is-~~ Commercial Zone-]) Island) commercial zone. (a) Zone A [~~Restricted Area~~] restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, which is 123 degrees for a distance of five hundred twenty-five feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(b) Zone B [~~Restricted Area~~] restricted area is the area encompassed by the boundaries shown of the

zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South, which is 208 degrees for a distance of four hundred fifty feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(c) Zone C ~~[Restricted Area]~~restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South, which is 242 degrees for a distance of nine hundred feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(d) Zone D ~~[Restricted Area]~~restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South, which is 115 degrees for a distance of six hundred forty-five feet from a point on the low water mark on the western tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(e) Zones A, B, C, and D are designated as commercial thrill craft zones. No commercial operator permittee shall operate more than six rented thrill craft within the assigned zones at any one time.

(f) Zone E restricted zone is the area encompassed by the boundaries shown on Exhibit "NN",

dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the northern tip of Kahakaaulana [~~Islet (Harris Is.)~~]Islet, then by [~~azimuth~~]azimuths measured clockwise from True South, which is 180 degrees for a distance of three hundred sixty feet; 090 degrees for a distance of one thousand fifty feet; 000 degrees for a distance of one thousand two hundred seventy-five feet; then by a straight line to the shoreline at the south tip of Kahakaaulana [~~Islet (Harris Is.)~~]Islet.

(g) Zone E restricted zone is designated a commercial ocean activities zone for commercial sailing, windsurfing and diving. Vessels transiting this area shall exercise extreme caution when occupied by commercial activities. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-94 Reef Runway Zone F. (a) The Reef Runway Zone F is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by [~~azimuth~~]azimuths measured clockwise from True South, 323 degrees for a distance of four hundred fifty feet from the low water mark of the western boundary of the Reef Runway 8R; then 323 degrees for a distance of two thousand seven hundred sixty feet; 270 degrees for a distance of thirteen thousand seven hundred ten feet; 180 degrees for a distance of two thousand two hundred fifty feet; then by a straight line to the point of beginning.

(b) The Reef Runway Zone F is designated for recreational thrill craft operations. No person shall operate a commercial thrill craft within this area. Any vessel transiting this area shall exercise extreme

caution when occupied by recreational thrill craft.
[Eff 2/24/94; am and comp] (Auth:
HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-
37)

§13-256-95 Koko Head and Makapuu commercial high speed boating zone. (a) The zone is the area defined on Exhibit "CC-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at point in the water, by
[~~azimuth~~]azimuths measured clockwise from True South, 312 degrees from Kawaihoa Point, establishing the southwest boundary extending seaward; then on a line not less than one thousand five hundred feet from the shoreline to Makapuu Point; then 311 degrees extending seaward from Makapuu Point, establishing the northeast boundary.

(b) This zone is designated for the operation of commercial high speed boats. No more than four commercial operating area use permits for high speed boats shall be issued in this zone. All operating commercial high speed boats shall remain seaward of the shoreward boundary as shown on Exhibit "CC-1". All other vessels transiting this zone shall exercise extreme caution. This zone shall be closed to commercial high speed boat operations during the whale season, from December 15 to May 15 of the following year. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-96 Ke'ehi Lagoon canoe racing zone. (a) The Ke'ehi Lagoon canoe racing zone is the area encompassed by the boundaries of the zone shown on Exhibit "NN-1", dated August 15, 1990, and located at

the end of this subchapter. The boundaries of the zone are as follows:

Beginning at a point in the water, located by ~~[azimuth]~~azimuths measured clockwise from True South, 043 degrees for a distance of one thousand ninety feet from the low water mark of the shoreline at the ~~[Southwest]~~southwestern boundary of Ke'ehi Lagoon Beach ~~[Park, --]~~Park; then 235 degrees for a distance of two thousand eight hundred twenty-five feet; 325 degrees for a distance of nine hundred feet; 055 degrees for a distance of two thousand eight hundred twenty-five feet; then to the point of beginning.

(b) The Ke'ehi Lagoon canoe racing zone is designated for training and competitive Hawaiian canoe activities. No person shall anchor or moor a vessel in this zone at any time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-97 Ke'ehi Lagoon competitive water ski zone. (a) The Ke'ehi Lagoon competitive water ski zone is the area encompassed by the boundaries of the zone shown on Exhibit "NN-1", dated August 15, 1990, and located at the end of this subchapter. The boundaries of the zone are as follows:

Beginning at a point in the water, located by ~~[azimuth]~~azimuths measured clockwise from True South, 000 degrees for a distance of ninety-five feet from the Kalihi Channel rear range light; then 048 degrees for a distance of one hundred eighty-five feet; 064 degrees for a distance of four hundred ten feet; 154 degrees for a distance of two thousand seven hundred forty feet; 244 degrees for a distance of four hundred fifty feet; then to the point of beginning.

(b) The Ke'ehi Lagoon competitive water ski zone is designated as a competitive waterski area. Individual recreational water ski activities shall be permitted except during scheduled competitive water

ski activities. No person shall anchor or moor a vessel in this zone at any time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200- 24, 200-37)

§§13-256-98 to 13-256-105 (Reserved)

SUBCHAPTER 7

WEST MAUI OCEAN RECREATION MANAGEMENT [~~AREAS~~]AREA

§13-256-106 Definition. The "West Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the northeast boundary of Honolua Bay to McGregor Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "00", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-107 Napili Bay [~~Restricted Area.~~]restricted area. (a) The Napili Bay [~~Restricted Area~~]restricted area means the area confined by the boundaries shown for said area on Exhibit "PP", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the western tip of Kaelekii Point, then on a straight line across Napili Bay to a point at the low water mark at the north western point of Napili Bay, then along the low water mark of the shoreline in a southerly direction to the point of beginning.

(b) Restriction. The Napili Bay restricted area is designated for swimming and surfing. No person shall operate or moor a vessel within this area, except a vessel holding a valid mooring permit issued by the department. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-108 Lahaina-Kaanapali [~~Offshore Restricted Area.~~]offshore restricted area. (a) The Lahaina-Kaanapali [~~Offshore Restricted Area~~]offshore restricted area is the area encompassed by the boundaries shown of the area on Exhibit "QQ", dated October 24, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline between and in line with the Lahaina Harbor entrance range markers, by [~~azimuth~~]azimuths measured clockwise from True South, 045 degrees for a distance of three thousand one hundred twenty feet to a point in the water defining the southeastern boundary of the area; then 140 degrees for a distance of six thousand sixty feet; 180 degrees for a distance of six thousand three hundred feet; 167 degrees for a distance of twelve thousand three hundred feet, to a point in the water defining the northern boundary of the area.

(b) Restrictions. The Lahaina-Kaanapali [~~Offshore~~]offshore restricted area is designated as a parasailing area. Parasailing activity shall remain seaward of the described boundary when within three miles of the coastline, except when transiting to or from Lahaina Harbor, Mala ramp or a designated mooring area. No more than five commercial operating area use permits shall be issued for this zone. Persons operating vessels shall exercise due care when transiting this area. This area shall be closed to parasail operations from December 15 to May 15 of the following year. [Eff 2/24/94; am and

comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-109 Kaanapali [~~Commercial Thrill Craft Areas~~]commercial thrill craft areas. (a) The

Kaanapali [~~Commercial Thrill Craft Areas~~]commercial thrill craft areas are the areas encompassed by the boundaries shown of the areas on Exhibit "RR", dated March 1, 2002, and located at the end of this subchapter. The boundaries are as follows:

(1) Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 1.

The area within 200 yards of a line drawn between GPS position 20 degrees 54.170 minutes north latitude, 156 degrees 41.530 minutes west longitude and GPS position 20 degrees 54.340 minutes north latitude, 156 degrees 41.630 minutes west longitude.

(2) Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 2.

The area within 150 yards radius of GPS position 20 degrees 54.250 north latitude, 156 degrees 41.850 minutes west longitude.

(b) A maximum of three commercial thrill craft operating area permits may be issued for Kaanapali ocean waters. Notwithstanding the contrary provisions of sections 13-256-18, a person owning one or more business entities holding valid commercial thrill craft permits may consolidate all commercial thrill craft operations within Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 1; provided that no more than eighteen rental units and three safety units shall be operated at any one time. Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 2 is reserved for use by a single permittee. All support rafts or platforms shall be located within the operating area and shall display an anchor light at night.

(c) These areas shall be closed to all thrill craft operations during the whale season, from

December 15 to May 15 of the following year. [Eff 2/24/94; am 6/16/03; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-6, 200-22, 200-23, 200-24, 200-37)

§13-256-110 Olowalu Beach [~~Restricted Area~~] **restricted area.** (a) The Olowalu Beach [~~Restricted Area~~]restricted area means the area confined by the boundaries shown for said area on Exhibit "SS", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of Olowalu Beach which is by [~~azimuth~~]azimuths measured clockwise from True South, 256 degrees for a distance of three thousand feet from the southern tip of Hekili Point; then 360 degrees for a distance of five hundred feet; 295 degrees for a distance of three thousand feet; then 256 degrees to a point on the shoreline at the low water mark; then along the shoreline in a westerly direction to the point of beginning.

(b) Restrictions. This area is designated for swimming, snorkeling, scuba diving and shoreline fishing. No person shall operate or moor a vessel within this area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-111 Kaanapali commercial water sledding zone. The Kaanapali commercial water sledding zone is encompassed by the boundaries shown on Exhibit "RR", dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a point in the water located by [~~azimuth~~]azimuths measured clockwise from True South, 090 degrees for a distance of one thousand fifty feet from the western tip of Kekaa Point, coincident with the Kaanapali Shore Waters

boundary; then 090 degrees for a distance of one thousand seven hundred twenty-five feet to the parasail boundary; then 346 degrees for a distance of eight thousand three hundred twenty-five feet along the parasail boundary; then 241 degrees for a distance of one thousand six hundred eighty feet to the Kaanapali Shore Waters boundary; then along the Kaanapali Shore Waters boundary in a northerly direction to the point of beginning.

- (1) This area is designated for commercial water sledding. No more than two commercial operating area use permits for water sledding shall be issued for this zone.
- (2) This area shall be closed to all commercial water sledding operations during the whale season, from December 15 to May 15 of the following year. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-112 Maui [~~Humpback~~]humpback whale protected waters. The Maui [~~Humpback~~]humpback whale protected waters means the area encompassed by the boundaries shown on Exhibit "00-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the shoreline of the southwestern tip of Puu Olai Point, then by azimuths measured clockwise from True South, 082 degrees for a distance of two nautical miles; 141 degrees for a distance of nineteen nautical miles; 164 degrees for a distance of three nautical miles; 184 degrees for a distance of two and five-tenths nautical miles; 200 degrees for a distance of four and three-tenths nautical miles; 295 degrees to Hawea Point; then along the shoreline of west and south Maui to the point of beginning.

Between December 15 and May 15 of the following year during the whale season, no person shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a motorboat towing a person engaged in water sledding or parasailing within this area. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§§13-256-113 to 13-256-115 (Reserved)

SUBCHAPTER 8

SOUTH MAUI OCEAN RECREATION MANAGEMENT AREA

§13-256-116 Definition. The "South Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the eastern boundary of La Perouse Bay to McGregor Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea base line as shown on Exhibit "TT", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-117 to 13-256-125 (Reserved)

SUBCHAPTER 9

NORTH MAUI OCEAN RECREATION MANAGEMENT AREA

§13-256-126 Definition. The "North Shore Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the eastern boundary of Maliko Bay to Waihee Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "VV", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-127 Hookipa [~~Restricted Zones~~]restricted zones. (a) Zones A, B, C and D, Hookipa restricted zones means the areas confined by the boundaries shown for said zones on Exhibit "WW", dated August 20, 1988, located at the end of this subchapter. The boundaries are as follows:

- (b) Zone A, Hookipa restricted Zone.
 - (1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, 075 degrees for a distance of seven hundred fifty feet; 360 degrees to the boundary of Zone D; then along the boundary of Zone D and the low water mark of the shoreline to the point of beginning.
 - (2) Restriction. Zone A is designated for swimming and surfing only. No person shall operate a sailboard or other water craft within this area.
- (c) Zone B, Hookipa restricted Zone.
 - (1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, to a beginning point in the water 075 degrees for

a distance of seven hundred fifty feet; then continuing at 075 degrees for a distance of five hundred fifty feet; 360 degrees to the shoreline; then along the shoreline to Zone D and along the boundary of Zone D to the boundary of Zone A; then by straight line north to the point of beginning.

- (2) Restriction. Zone B is designated for surfing when at least five or more persons (5-man rule) are engaged in surfing within this zone. No person shall operate a sailboard within this zone within the surf break area.

- (d) Zone C, Hookipa restricted Zone.

- (1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, to a beginning point in the water 075 degrees for a distance of thirteen hundred feet; then continuing at 075 degrees for a distance of four hundred seventy-five feet; 360 degrees to the shoreline; then along the shoreline to the boundary of Zone B; then by straight line north to the point of beginning.

- (2) Restriction. Zone C is designated for surfing when at least ten or more persons (10-man rule) are engaged in surfing within this zone. No person shall operate a sailboard within this zone within the surf break area. Access for sailboards between the surf break and the shoreline shall be provided at all times.

- (e) Zone D, Hookipa restricted Zone

- (1) Beginning at a point at the low water mark three hundred ninety feet from the western boundary of Hookipa Beach Park, thence measured clockwise from True South; 180 degrees for a distance of one hundred feet; 270 degrees for a distance of four hundred ten feet; 238 degrees for a distance of five hundred forty feet; then in a straight line to the shoreline; then along the shoreline to the point of beginning.

- (2) Restriction. Zone D is designated for pole and net fishing. No person shall operate a sailboard within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-128 Baldwin Park-Paia Bay [~~Restricted Area~~]restricted area. (a) The Baldwin Park-Paia Bay restricted area means the area confined by the boundaries shown for said zone on Exhibit "XX/YY", dated August 23, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark at the northern tip of Fly Water Point, then by [~~azimuth~~]azimuths measured clockwise from True South, 157 degrees for a distance of five hundred feet; 070 degrees for a distance of six thousand two hundred feet; 344 degrees to the low water mark of the shoreline; then along the low water mark of the shoreline in an easterly direction to the point of beginning.

(b) Restrictions. The Baldwin Park-Paia Bay restricted area is designated for swimming, diving and fishing. No person shall operate a motor vessel at a speed in excess of slow-no-wake, or operate a sailboard within this area. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-129 Papa'ula Point [~~Restricted Zone~~]restricted zone. (a) Papa'ula Point [~~Restricted Zone-mean~~]restricted zone means the area confined by the boundaries shown for said zone on Exhibit "ZZ", dated August 22, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark being an extension of the east boundary of

Kahului Airport thence by ~~[azimuth]~~ azimuths measured clockwise from True South; 155 degrees for a distance of one thousand six hundred seventy-five feet, 120 degrees for a distance of four hundred fifty feet; 080 degrees for a distance of nine hundred twenty-five feet; 350 degrees to the low water mark of the shoreline, then along the shoreline in an easterly direction to the point of beginning.

(b) Restriction. Papa'ula Point restricted zone is designated for fishing and diving. No person shall operate a vessel or sailboard within this area. Windsurfing access west of the restricted zone shall be permitted after 11:00 a.m. ~~[]~~ [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-130 Kanaha Beach Park ~~[Restricted Zones.]~~ restricted zones. (a) Kanaha Beach Park ~~[Swimming Zones]~~ swimming zones A, B, and C mean the areas confined by the boundaries shown for said zones on Exhibit "AAA", dated August 20, 1988, located at the end of this subchapter. The boundaries are as follows:

- (b) Swimming Zone A.
 - (1) Beginning at a point at the low water mark in line and being an extension of the east boundary of Kanaha Beach Park; thence by ~~[azimuth]~~ azimuths measured clockwise from True South, 180 degrees for a distance of three hundred feet; 228 degrees for a distance of seven hundred ten feet; 315 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a westerly direction to the point of beginning.
- (c) Swimming Zone B.
 - (1) Beginning at a point at the low water mark at the tip of the groin located by

~~[azimuth]~~azimuths measured clockwise from True South, 093 degrees for a distance of four hundred seventy feet from the east boundary of Kanaha Beach Park; 135 degrees for a distance of three hundred ten feet; 047 degrees for a distance of six hundred feet; 350 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a easterly direction to the point of beginning.

(d) Swimming Zone C.

(1) Beginning at a point at the low water mark at the northeast tip of the groin located by ~~[azimuth]~~azimuths measured from True South, 090 degrees for a distance of one hundred fifty feet from the west boundary of Kanaha Beach Park; 180 degrees for a distance of three hundred feet; 248 degrees for a distance of eight hundred thirty feet; 315 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a westerly direction to the point of beginning.

(e) Restrictions. The Kanaha Beach Park swim zones A, B, and C are designated for swimming only. No person shall operate a vessel or sailboard within these zones. No person shall launch a sailboard from Kanaha Beach Park prior to 11:00 a.m., except that windsurfing instruction and beginning windsurfing may be conducted within three hundred feet of the shoreline between swimming zones A and B after 9:00 a.m.[-] [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-131 to 13-156-139 (Reserved)

SUBCHAPTER 10

EAST HAWAII ISLAND OCEAN RECREATION MANAGEMENT AREA

§13-256-140 Definition. The "East Hawaii Ocean Recreation Management Area" means all ocean waters and navigable streams from Leleiwi Point, South Hilo, to Pepeekeo Point, North Hilo, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "BBB", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-141 Hilo Bay [~~Recreational Thrill Craft Zone.~~] recreational thrill craft zone. (a) Hilo Bay recreational thrill craft zone means the area confined by the boundaries shown on Exhibit "CCC", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark which is three thousand six hundred feet east of the tip of Hilo Breakwater; then by [~~azimuth~~]azimuths measured clockwise from True South, 005 degrees for a distance of one thousand one hundred feet; 095 degrees for a distance of three thousand nine hundred feet; 185 degrees for a distance of two thousand feet; 275 degrees for a distance of one thousand one hundred feet; 005 degrees to the low water mark on the seaward side of the breakwater; then along the low water mark to the point of beginning.

(b) Restrictions: This area is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft in this area. [Eff 2/24/94; am and comp] (Auth: HRS

§§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-142 Waiakea [~~Access Corridor.~~]access corridor. (a) The Waiakea [~~Access Corridor~~]access corridor means the area confined by the boundaries shown on Exhibit "DDD", dated August 19, 1988, located at the end of this subchapter. The boundaries of the corridor are as follows:

Beginning at a point at the low water mark at the north tip of the Wailoa River Channel; then by [~~azimuth~~]azimuths measured clockwise from True South, 187 degrees for a distance of four hundred fifty feet; 097 degrees for a distance of one hundred fifty feet; 007 degrees for a point at the low water mark of the shoreline; then along the shoreline to the point of beginning.

(b) Restrictions: The corridor is for access to the beach from Hilo Bay for recreational thrill craft and waterski activities. No person shall operate a commercial thrill craft or waterski activity in this corridor. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-143 Puhi Bay - Leleiwi Point [~~Restricted Zones.~~]restricted zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "EEE", dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark which is an extension of the center line of Pua Avenue; then by [~~azimuth~~]azimuths measured clockwise from True South, 220 degrees for a distance of one thousand six hundred feet; 310 degrees

to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zone A is designated as a swimming area. No person shall operate or moor a vessel within this area.
- (b) Zone B.
 - (1) Zone B means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point at the low water mark on the shoreline which is the northeast boundary of Zone A; then by ~~[azimuth]~~azimuths measured clockwise from True South, 130 degrees for a distance of two hundred feet; 245 degrees for a distance of five hundred feet; 214 degrees for a distance of one thousand feet; 283 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.
- (c) Zone C.
 - (1) Zone C means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point at the low water mark on the shoreline of Keokea Point; then by ~~[azimuth]~~azimuths measured clockwise from True South, 245 degrees for a distance of five hundred feet; 270 degrees for a distance of one thousand eight hundred feet; 359 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.
- (d) Zone D.
 - (1) Zone D means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this

subchapter. The boundaries of Zone D are as follows:

Beginning at a point at the low water mark of Mahikeya Island; then by ~~[azimuth]~~azimuths measured clockwise from True South, 318 degrees for a distance of four hundred fifty feet; 290 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zones B, C and D are designated as ~~[a]~~ diving, swimming and surfing zones. No person shall operate or moor a vessel, except at a speed of slow-no-wake or when diving with dive flag displayed.

(e) Zone E.

- (1) Zone E means the area confined by the boundaries shown on Exhibit "EEE", dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point at the low water mark of the shoreline by ~~[azimuth]~~azimuths measured clockwise from True South, 054 degrees for a distance of five hundred feet from Richardson's Ocean Center; 045 degrees for a distance of two hundred feet; 074 degrees for a distance of four hundred feet; 177 degrees for a distance of eight hundred feet; 260 degrees to the low water mark on the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zone E is designated as a surfing, canoeing, kayaking, diving and swimming zone. No person shall operate or moor a vessel within this zone, except at a speed of slow-no-wake or when diving with dive flag displayed.

(f) Zone F.

- (1) Zone F means the area confined by the boundaries shown on Exhibit "EEE", dated

August 19, 1988, located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point at the low water mark of the shoreline which is the southeast boundary of Zone E; then along the low water mark to the southwest boundary of Zone E; then along the southern boundary of Zone E to the point of beginning.

- (2) Restrictions. Zone F is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-144 to 13-256-149 (Reserved)

SUBCHAPTER 11

WEST HAWAII ISLAND OCEAN RECREATION MANAGEMENT AREA

§13-256-150 Definition. The "West Hawaii Ocean Recreation Management Area" means all ocean waters and navigable streams from the southernmost boundary of Honaunau Bay, South Kona, to the north west boundary of Honokoa Gulch, North Kohala, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "FFF", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-151 Honaunau Bay ~~[Swimming Zone.]~~ swimming zone. (a) Honaunau Bay ~~[Swimming Zone]~~ swimming zone means the area confined by the boundaries shown on Exhibit "GGG", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark on the shoreline which is four hundred feet east of Mana Point; then by ~~[azimuth]~~ azimuths measured clockwise from True South, 360 degrees for a distance of four hundred feet; 270 degrees for a distance of nine hundred feet; then along the low water mark to the point of beginning.

(b) Restrictions. Honaunau Bay ~~[Swimming Zone]~~ swimming zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-152 Kahaluu Bay ocean waters. (a)

Kahaluu Bay ocean waters means the area confined by the boundaries shown on Exhibit "H-5", dated November 20, 2014, located at the end of this [subchapter and incorporated herein.]subchapter. The boundaries are as follows:~~[-Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahuluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.]~~

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.

~~[(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.~~

~~(2)]~~

Kahaluu Bay ocean waters is designated as a swimming, surfing, and diving zone. No commercial water sports instruction or commercial tours [may]shall be conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay ~~[Zone]~~ocean waters zone A is described as follows:

~~[Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.]~~

Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then southeasterly along the shoreline to the north

lifeguard tower at 19°34'48.67"N, 155°57'58.88"W;
then seawards northwesterly to Pyramid Rock at
19°34'50.21"N, 155°58'07.98"W; then seawards
northeasterly ending at the point of beginning.

- ~~[(1) Restrictions. Zone A is designated as a surfing zone.~~
- ~~(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.~~
- ~~(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one to four instructor to student ratio must be maintained at all times while in the water.~~
- ~~(4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.~~
- ~~(5) The department may designate the site of instruction with Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.]~~

Kahaluu Bay ocean waters zone A is designated as a surfing zone. At all times, no person shall operate or moor any type of vessel, or use any type of water sports equipment other than a surfboard, in this zone. All commercial activities of any type shall be prohibited in this zone, except that the department may issue commercial use permits to authorize commercial surfing instruction within this zone; provided that:

- (1) The total number of permits authorizing commercial surfing instruction issued under this subsection shall not exceed eight at

any one time for Kahaluu Bay ocean waters zone A;

- (2) Each permit issued by the department pursuant to this subsection shall only authorize surfing instruction within Kahaluu Bay ocean waters zone A;
- (3) No more than four permits shall authorize commercial surfing instruction from 0800 hours (8:00 a.m.) to 1200 hours (noon 12:00 p.m.), and no more than four permits shall authorize commercial surfing instruction from 1300 hours (1:00 p.m.) to 1700 hours (5:00 p.m.);
- (4) No permittee may allow more than four students in the water at any one time per surfing instruction permit, regardless of the number of surf instructors of that permittee in the water;
- (5) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
- (6) The department may designate the site of surf instruction within Kahaluu Bay ocean waters zone A and hours of operation for each permittee. The department may change a designated site of operation within Kahaluu Bay ocean waters zone A whenever such changes are found by the department to be necessary for reasons of public health, safety, or welfare.

(c) Kahaluu Bay [~~Zone~~] ocean waters zone B is described as follows:

Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards [~~north-westerly~~] northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaau O Kalakani Point at the point of beginning.

~~[(1) Restrictions. Zone B is designated as a swim zone.]~~

~~(2) No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.]~~

Kahaluu Bay ocean waters zone B is designated as a swim zone. No person shall operate or moor any vessel within this zone, including, but not limited to, boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes. [Eff 2/24/94; am 4/22/16; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-153 Kalaepaakai Point [~~Commercial Thrill Craft Zone~~] commercial thrill craft zone. (a) Zone A is the area encompassed by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of Kalaepaaki Point; then by [~~azimuth~~] azimuths measured clockwise from True South, 078 degrees for a distance of seven hundred feet; then on a radius of two hundred feet around that point.

(b) Zone A is designated a commercial thrill craft area. No more than six rental thrill craft shall operate within the area at one time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: §§200-22, 200-24, 200-37)

§13-256-154 Oneo Bay [~~Swimming Zone~~] swimming zone. (a) Oneo Bay Swimming Zone means the area confined by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of

Kalaepaakai Point; then by ~~[azimuth]~~azimuths measured clockwise from True South, 157 degrees to the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. Oneo Bay Swimming Zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-155 Kailua Bay ~~[Restricted Zones.]~~restricted zones. (a) Kailua Bay ~~[Restricted Zone]~~restricted zone B is the area encompassed by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South, 341 degrees for a distance of two thousand one hundred ninety feet from the south tip of Kukailimoku Point; then 330 degrees for a distance of three thousand seven hundred fifty feet; 090 degrees for a distance of three thousand eight hundred forty feet; 210 degrees to the point of beginning.

(b) Kailua Bay ~~[Restricted Zone]~~restricted zone B is designated for parasailing and recreational thrill craft. No person shall operate a commercial thrill craft in this zone. No more than two commercial operating area use permits for parasailing shall be issued for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. This zone shall be closed to parasail and all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(c) Kailua Bay ~~[Restricted Zone]~~restricted zone C, is designated for parasailing and recreational thrill craft. No permittee shall operate more than

one parasail vessel at any one time in this zone. This inshore operating zone shall be open to parasail and all thrill craft operations during the whale season from December 15 to May 15 of the following year. The inshore operating zone is the area defined on Exhibit "HHH", dated, February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, measured clockwise from True South, 060 degrees at a distance of six hundred sixty feet from Kalaepaakai Point, then 330 degrees for a distance of three thousand five hundred forty feet; 090 degrees for a distance of one thousand seven hundred forty feet; then in a straight line to the point of beginning.

(d) Zone C shall be closed to parasail and all thrill craft operations from May 15 to December 15 of each year. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: §§200-22, 200-24, 200-37)

§13-256-156 Kailua Pier [~~Restricted Zones~~]restricted zones. (a) Kailua Pier [~~Restricted Zones~~]restricted zones means the areas defined by the boundary lines as shown on Exhibit "III", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

(b) Zone A.

(1) Beginning at a point at the low water mark on the east side of Kailua Pier; then by [~~azimuth~~]azimuths measured clockwise from True South, 317 degrees for a distance of two hundred twenty feet; 336 degrees for a distance of three hundred twelve feet; 026 degrees 30 minutes for a distance of four hundred sixty-five feet; 158 degrees for a distance of three hundred four feet; 214 degrees for a distance of one hundred eighteen feet to the western seaward edge of

- Kailua Pier.
- (2) Restrictions. This area is designated for boating use only. Swimming is prohibited.
 - (c) Zone B.
 - (1) Beginning at a point at the low water mark on the east side of Kailua Pier; then by [~~azimuth~~]azimuths measured clockwise from True South; 317 degrees for a distance of two hundred twenty feet; 292 degrees for a distance of six hundred eighty-three feet to intersect with the low water mark fronting the western property line of Hulihee Palace; thence along the low water mark to the beginning.
 - (2) Restrictions. This area is designated a swimming zone. No person shall operate or moor a vessel within this zone, except for commercial fishing vessels engaged in baitfishing operations. Vessels operating near the shoreline of Kailua Bay between Hulihee Palace and the Kona Hilton Hotel shall exercise caution due to swimming activity. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-157 Honokohau [~~Swimming Zone~~] swimming zone. (a) Honokohau [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "JJJ", dated August 15, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark located by [~~azimuth~~]azimuths measured from True South from the N. E. Range Marker at Noio Point 160 degrees for a distance of four hundred seventeen feet; then 243 degrees to a point at the low water mark of the shoreline south of Honokohau Harbor entrance; then along the shoreline in a southwesterly direction to the

point of beginning.

(b) Restrictions. Honokohau [~~Swimming Zone~~] swimming zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-158 Kua Bay [~~Swimming Zone~~] swimming zone. (a) Kua Bay [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows: Beginning at the low water mark on the shoreline of Papiha Point; then by straight line to the low water mark at Punalua Point; then along the low water mark to the point of beginning.

(b) Restrictions. Kua Bay [~~Swimming Zone~~] swimming zone is designated as a swimming zone. No person shall operate or moor a vessel, surfboard, sailboard or other watercraft within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-159 Kahuwai Bay [~~Restricted Zone~~] restricted zone. (a) Kahuwai Bay restricted zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark on the shoreline of southern boundary of the bay; then by [~~azimuth~~] azimuths measured clockwise from True South, 225 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. Kahuwai Bay is designated a slow-no-wake zone. No person shall operate a vessel at a speed in excess of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-160 Kiholo Bay [~~Speed Zone.~~] speed zone.

(a) Kiholo Bay [~~Speed Zone~~] speed zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the point on the low water mark of Nawaikulua Point; then by [~~azimuth~~] azimuths measured clockwise from True South, 065 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. No person shall operate a vessel in excess of a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-161 Anaehoomalu Bay [~~Restricted Zones.~~] restricted zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline by [~~azimuth~~] azimuths measured clockwise from True South, 256 degrees for a distance of two hundred ninety feet from the westernmost tip of Lae O Hiiaka Point; then 177 degrees for a distance of six hundred feet; 260 degrees for a distance of three hundred feet; 324 degrees to a point on the low water mark on

the shoreline; then along the shoreline in a westerly direction to the point of beginning.

(b) Zone B.

(1) Zone B means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline one hundred feet from the westernmost tip of the Kahapapa weir, then by ~~[azimuth]~~ azimuths measured clockwise from True South, 077 degrees for a distance of five hundred seventy-five feet; 155 degrees to a point on the low water mark on the shoreline; then along the shoreline in a southeasterly direction to the point of beginning.

(c) Restrictions. Anaehoomalu Bay ~~[Restricted Zones]~~ restricted zones A and B are designated for swimming and diving. No person shall operate or moor a vessel within these zones.

(d) Zone C, Ingress/egress corridor

(1) Zone C means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of the shoreline one hundred fifty feet from the westernmost tip of the Kahapapa weir, then by ~~[azimuth]~~ azimuths measured clockwise from True South, 065 degrees for a distance of six hundred fifty feet; 000 degrees for a distance of one hundred fifty feet; 245 degrees to a point on the low water mark on the shoreline; then along the shoreline in a northerly direction to the point of beginning.

(e) Restriction. Zone C is designated an ingress/egress corridor for vessels and sailboards.

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

**§13-256-162 Makaiwa Bay [~~Swimming~~
~~Zones.~~] swimming zones.**

Zone A means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northwestern tip to the entrance of the boat ramp; then by [~~azimuth~~] azimuths measured clockwise from True South, 110 degrees for a distance of seven hundred ten feet to a point of low water of the shoreline; then along the shoreline in a south and easterly direction to the point of beginning.

(b) Zone B.

Zone B means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northeastern tip to the entrance of the boat ramp; then by [~~azimuth~~] azimuths measured clockwise from True South, 226 degrees for a distance of five hundred forty feet to a point of low water of the shoreline; then along the shoreline in a south and westerly direction to the point of beginning.

(c) Restrictions. The Makaiwa Bay swimming zones A and B are designated for swimming and diving. No person shall operate or moor a motor vessel within this zone. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-163 Hapuna Bay [~~Swimming Zone~~] swimming zone. (a) The Hapuna Bay [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, 311 degrees for a distance of four hundred feet; 268 degrees to a point on the low water mark of the shoreline; then along the low water mark in a southerly direction for a distance of one thousand three hundred feet; 088 degrees for a distance of one hundred feet; then by a straight line to the point of beginning.

(b) Restrictions. The Hapuna Bay [~~Swimming Zone~~] swimming zone is designated for swimming and diving. No person shall operate or moor a motorized vessel, within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-164 Kaunaoa Bay [~~Restricted Zones~~] restricted zones. (a) Zone A, Kaunaoa Bay Swimming Zone.

(1) Zone A means the area confined by the boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the northern boundary of Kaunaoa Beach five hundred forty feet from Kaaha Point, then in a straight line to the southern boundary of Kaunaoa Beach; then along the low water mark of the shoreline to the point of beginning.

(2) Restrictions. The Kaunaoa Bay [~~Swimming Zone~~] swimming zone is designated as a swimming and diving zone.

No person shall operate or moor a motorized vessel within this zone.

(b) Zone B, Kaunaoa Bay [~~Ingress/Egress Corridor~~]ingress/egress corridor. (1) Zone B means the area confined by the

boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the water which is measured clockwise by [~~azimuth~~]azimuths from True South, 360 degrees for a distance of five hundred fifty feet from the northern boundary of Kaunaoa Beach; 270 degrees to the low water mark of the shoreline; then along the shoreline in a southerly direction for one hundred fifty feet to the point of the northern boundary of the swimming zone; 090 degrees coincident to the northern swimming zone boundary to its seaward point; then in a straight line to the point of beginning.

(2) Restriction. Zone B is designated an ingress/egress corridor to the beach for commercial motorized vessels. No person shall operate a vessel in excess of slow-no-wake within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§§13-256-165 to 13-256-175 (Reserved) "

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 to reflect these amendments and compilation are not underscored.

4. The amendments and compilation of chapter 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:



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

VI. Election of Board Officers

A. Discussion and Action on the following:

- a. Chairperson, pursuant to Section 201M-5(c), HRS**
- b. Vice Chair**
- c. Second Vice Chair**

§201M-5 Small business regulatory review board; powers.

(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county rules, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;

(3) Two members shall be appointed from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio, voting member of the board;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and

county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3; am L 2017, c 174, §3; am L 2018, c 18, §5; am L 2019, c 247, §1]