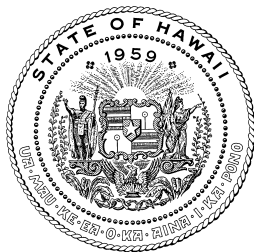


**Small Business Regulatory Review Board Meeting**

**May 21, 2020**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

### AGENDA

**Thursday, May 21, 2020 ★ 10:00 a.m.**

**David Y. Ige**  
*Governor*

**Michael McCartney**  
*DBEDT Director*

#### Members

**Robert Cundiff**  
*Chairperson*  
*O'ahu*

**Garth Yamanaka**  
*Vice Chairperson*  
*Hawai'i*

**William Lydgate**  
*2nd Vice Chairperson*  
*Kaua'i*

**Harris Nakamoto**  
*O'ahu*

**Dr. Nancy Atmospera-Walch**  
*O'ahu*

**Mary Albitz**  
*Maui*

**James (Kimo) Lee**  
*Hawai'i*

**Jonathan Shick**  
*O'ahu*

**Director, DBEDT**  
*Voting Ex Officio*

As authorized under the Governor's May 5, 2020, Seventh Supplementary 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, [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NGZhZjczYzAtNTQ4MS00OGMzLTkyZWItMzY3ZGNhMjgwMDJi%40thread.v2/0?context=%7b%22Tid%22%3a%223847dec6-63b2-43f9-a6d0-58a40aaa1a10%22%2c%22Oid%22%3a%22193c93d5-a780-4cc9-abc3-79b7ecd978c1%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGZhZjczYzAtNTQ4MS00OGMzLTkyZWItMzY3ZGNhMjgwMDJi%40thread.v2/0?context=%7b%22Tid%22%3a%223847dec6-63b2-43f9-a6d0-58a40aaa1a10%22%2c%22Oid%22%3a%22193c93d5-a780-4cc9-abc3-79b7ecd978c1%22%7d)

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov) or via postal mail to **SBRRB 250 South Hotel Street, Room 506A, Honolulu, Hawaii 96813**. 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, May 20, 2020**.

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 February 20, 2020 Meeting Minutes**

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

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 104, **Rules Regulating Activities Within Forest Reservations**, promulgated by Department of Land and Natural Resources (DLNR) – **Discussion Leader – Mary Albitz**

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

- A. Discussion and Action on Proposed New HAR Title 10 Chapter 4.1, **Management of Water Systems**, promulgated by Department of Hawaiian Home Lands – **Discussion Leader – Chair Robert Cundiff**

**V. Administrative Matters**

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS) including:
  - 1. Discussion and Action on the Board's 2020 Draft *201M-7 Periodic Review; Evaluation Report* for Submission to the Hawaii State Legislature pursuant to Section 201M-7, HRS

**VI. Legislative Matters**

- A. Update on the following Legislative Measures:
  - a. Governor's Message 672, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Mary Albitz, for a term to expire June 30, 2024
  - b. Governor's Message 673, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Nancy Atmospera-Walch, for a term to expire June 30, 2024
  - c. Governor's Message 674, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Robert Cundiff, for a term to expire June 30, 2024
  - d. Governor's Message 675, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Taryn Rodighiero, for a term to expire June 30, 2023
  - e. Governor's Message Submitting for Consideration for the Gubernatorial Nomination of James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024

**VII. Next Meeting:** Thursday, June 18, 2020, at 10:00 a.m.

## **II. Approval of February 20, 2020 Meeting Minutes**



## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - DRAFT

February 20, 2020

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

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

**MEMBERS PRESENT:**

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

**ABSENT MEMBERS:**

- William Lydgate, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Jennifer Polk-Waihee

II. **APPROVAL OF JANUARY 16, 2020**

Mr. Ritchie made a motion to accept the January 16, 2020 meeting minutes, as presented. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

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

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

Chair Cundiff explained that Mr. Gerald Rapozo, Director of Kauai Liquor Control Commission, is on stand-by in Kauai should there be any questions posed by the members.

Overall, Chair Cundiff found the amendments to be simple, straight-forward and less restrictive than the existing rules. Major changes entail removing the requirement for licensees to obtain Federal tax clearances, eliminating requirements for a pitcher of beer to not exceed 64 ounces (versus 48 ounces), and removing the “stacking” rule which proved to be confusing to servers.

Chair Cundiff noted that the Liquor Control Commission created a committee of representatives from the different classes of liquor licenses to review the amendments; feedback was provided and incorporated into the proposal.

Ms. Albitz made a motion to recommend that the proposed rules move on to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

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

Discussion leader, Ms. Albitz stated that the rule changes were housekeeping in nature and also brought the Hawaii State Fire Code up to national standards and in compliance with the fire and building codes.

Administrative specialists, Messrs. Gary Lum and Lloyd Rogers and Captain Tim Caires of the Honolulu Fire Prevention Bureau explained specific changes to the rules. Among the changes are the deletion of permit and/or permit fee requirements as permits and fees will now be administrated by the counties. Changes also include the standardizing of fire inspections, testing, and maintenance for required fire protection systems.

Other changes include the adoption of the National Fire Protection Association Fire Code, 2018 edition, and the minimum requirements necessary to establish a reasonable level of fire and life safety. It is expected that the adoption of the new chapter will not increase the economic burden on small businesses, nor should there be a direct or indirect impact to DLIR's operations. Vice Chair Yamanaka acknowledged that the proposed changes should not be financially adverse to businesses on the Big Island.

Ms. Albitz made a motion to recommend that the proposed rules move on to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

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

Chair Cundiff explained that Gregg Taketa, Chair of the Board of Public Accountancy, and Relley Araceley, Executive Officer at DCCA, are on stand-by should there be any questions posed by the members.

The amendments will mostly entail non-substantive, housekeeping measures. While the changes are not expected to have an adverse effect on small businesses, members were interested as to whether any of the business stakeholders would have comments at the public hearing.

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

#### IV. LEGISLATIVE MATTERS

##### A. Discussion and Action on the following Legislative Matters:

###### a. Update on Senate Bill 2078 Relating to the Small Business Regulatory Flexibility Act

Chair Cundiff explained that House Representative Gene Ward introduced this measure on behalf of the Small Business Caucus; it entitles this board to a separate line item within the budget of the department of business, economic development and tourism (DBEDT). Despite the bill's support, which is evidenced by the many testimonies, it was deferred.

Chair Cundiff noted that on February 11<sup>th</sup> he and DBEDT staff met with DBEDT Director Mike McCartney to discuss the Board's activities and specific board expenses entailing neighbor island members travel and outreach. He believed the meeting went well and that Director McCartney understood the Board's mission and financial concerns.

###### b. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Nancy Atmospera-Walch to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023

It was confirmed with Ms. Nancy Atmospera-Walch, that despite her heavy schedule, she is very willing and able to remain a member of this Board.

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Ms. Nancy Atmospera-Walch to this Board when the Legislature schedules a hearing for this measure. Mr. Shick seconded the motion, and the Board members unanimously agreed.

###### c. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Ms. Mary Albitz to this Board when the Legislature schedules a hearing for this measure. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

###### d. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Robert Cundiff to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2023

Ms. Albitz made a motion to recommend supporting the nomination and providing testimony in support of Mr. Robert Cundiff to this Board when the Legislature schedules a hearing for this measure. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

It was noted that Mr. Cundiff has not yet registered on the Governor's Boards and Commissions website.

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

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Mr. James (Kimo) Lee to this Board when the Legislature schedules a hearing for this measure. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

It was noted that Mr. Lee has not yet registered on the Governor's Boards and Commissions website.

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

Mr. Shick made a motion to recommend supporting the nomination and providing testimony in support of Ms. Taryn Rodighiero to this Board when the Legislature schedules a hearing for this measure. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

It was noted that Ms. Rodighiero was highly referred as a member of this Board by Kauai-resident and Second Vice Chair Will Lydgate.

## **V. ADMINISTRATIVE MATTERS**

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

- 1. Review of Board Interview on ThinkTech Hawaii's "Business in Hawaii" January 23, 2020

Chair Cundiff and Ms. Albitz discussed their thoughts and opinions regarding their interview on the live-stream show, ThinkTech Hawaii, narrated by Ms. Dailyn Yanagida. It was believed that the key points of what this Board does were discussed and that Ms. Yanagida did a very nice job interviewing them.

Ms. Albitz suggested that Akaku, a Maui-based community media, similar to ThinkTech Hawaii, be approached to discuss scheduling an interview on its government and public affairs channel #53. DBEDT staff will contact Akaku and follow-up with the Board members.

- 2. Discussion of Board's Potential Outreach Opportunities

Chair Cundiff questioned if the members knew of any upcoming outreach opportunities for this Board. Several ideas and suggestions were discussed

that included the Small Business Fair on May 2<sup>nd</sup>, connecting with Ms. Jane Sawyer, District Director of Hawaii's Small Business Administration, attendance at the Filipino Chamber of Commerce awards dinner on April 11<sup>th</sup>, and others.

It was discussed that this Board draft a generic letter to be sent to business chambers and trade organizations introducing the Board, and requesting the possibility of opportunities with the organizations to meet for outreach purposes, with a subsequent follow-up telephone call. Chair Cundiff requested that specific suggestions for names of chambers and trade organizations be sent to DBEDT staff.

Mr. Ritchie made a motion recommending that a letter is drafted and sent to various business chambers and trade associations and organizations to introduce the Board and to request an opportunity to meet and discuss this Board's statutory mandates. Mr. Shick seconded the motion, and the Board members unanimously agreed.

- VI. **NEXT MEETING** – The next meeting is scheduled for Thursday, March 19, 2020 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. **ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Mr. Shick seconded the motion; the meeting adjourned at 10:58 a.m.

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

#### **A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 104, Rules Regulating Activities Within Forest Reservations, promulgated by DLNR**

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

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

**Department or Agency:** \_\_\_\_\_

**Administrative Rule Title and Chapter:** \_\_\_\_\_

**Chapter Name:** \_\_\_\_\_

**Contact Person/Title:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_ **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**

<https://dlnr.hawaii.gov/dofaw/draft-rules/>

(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.**

- 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](mailto:DBEDT.sbrrb.info@hawaii.gov)

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



Discussion leader, Mr. Baker stated that at the public hearing a concern was raised by the Tax Foundation of Hawaii. In response, Ms. Kristen Sakamoto, Administrative Rules Specialist at DoTax, explained that the Tax Foundation had a legal challenge with the rules due to eliminating the “nexus” standard requirement. However, DoTax’s reason for eliminating this requirement relates to the federal commerce clause which does not apply to activity within the state and not required by Hawaii’s state law.

Mr. Baker made a motion to pass the rules onto the Governor for adoption. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

## 2. Proposed New Section 29.53, Exported Services

Ms. Sakamoto explained that as there are currently no rules for exported services, this proposal will add thirteen new sections; they are intended to clarify how to determine whether gross income is derived from services; i.e., Expedia and Expedia or from contracting.

Due to the massive changes being made to the rules (more than 60 pages) two public hearings were held. Discussion leader Mr. Reg Baker noted that comments at the public hearing from the Tax Foundation of Hawaii were generally supportive of the rules. Ms. Sakamoto added that comments from Priceline and Expedia at the first hearing expressed concern that the rules violated federal law under the Internet Tax Freedom Act; these comments were reiterated at the second public hearing. However, the State’s Deputy Attorney General confirmed that there was no violation and approved the rules “to form.”

Mr. Baker made a motion to pass the rules onto the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## **IV. NEW BUSINES** March 21, 2018 SBRRB Meeting Minutes

### **A. Discussion and Action on Proposed Amendments to HAR Title 13, Chapter 104, Rules Regulating Activities Within Forest Reserves, promulgated by Department of Land and Natural Resources**

Mr. Ryan Peralta, Forest Management Supervisor at DLNR’s Division of Forestry and Wildlife, explained that the proposed changes provide more opportunity for small businesses, which is referred to in the rules as “commercial harvest,” but that the rules require new permit fees. Overall, the changes are expected to promote a mixed-use management strategy in forest reserves.

Mr. Peralta further explained that personal use of the lands is free, but commercial use permit fees require a charge; funds from the fees go into a special account and used for operating expenses. There is also a salvage permit fee used for example when a tree is cut down and sold; another fee relates to direct resale.

Chair Borge suggested that DLNR engage the small businesses that may be impacted by the rule/fee changes. Ms. Kimura recommended Mr. Peralta contact: HTA (Hawaii Tourism Authority), HVCB (Hawaii Visitors and Convention Bureau), HLTB (Hawaii Lodging and Tourism Association), and Activities & Attractions of Hawaii, Inc.

Mr. Ritchie made a motion to pass the rules onto the Governor for public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 162, Food Safety Certification Costs Grant Program, promulgated by Department of Agriculture (DoAg)

Discussion leader Vice Chair Cundiff explained that these new rules create a grant program that provides the farming community with assistance pay for costs associated with compliance with the U.S. Food and Drug Administration. There are no fees or fines involved in submitting a grant; any costs for the small business farmers may vary depending on their present infrastructure, training, and other food safety practices.

Vice Chair Cundiff made a motion to pass the rules onto the Governor for public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Repeal of HAR Title 11, Chapter 200, and Proposed New Chapter 200.1, Environmental Impact Statement Rules, promulgated by Department of Health (DOH)

Mr. Scott Glenn, Director of the Office of Environmental Quality Control, an attached agency of DOH, stated that the proposed rules are premised on statutory changes of Chapter 343, HRS, that go back to 1995/1996 and will reflect today's electronic means. The proposed changes may have an impact on small businesses regarding the new requirement that adds a cost element to the process.

In regard to the businesses that will be impacted by the rules, a list of company-applicants that prepared an EIS (environmental impact statement) from 2012 through 2017 was included in the Board's small business impact statement; the companies include a mix of small businesses as defined by Section 201M-1, HRS.

While the current rules state that a scoping meeting is optional, the federal process requires a public scoping meeting. As DOH believes that requiring a public scoping meeting will better realize Chapter 343, HRS, the proposed changes will standardize the requirement of an EIS preparation notice by revising its definition and standardizing the requirements for content and process at the notice stage, including the requirement of a public scoping meeting.

In addition to making the public scoping meeting mandatory rather than optional, the rules will also require a set portion for oral comments that will be audio recorded and summarized in writing in the draft EIS; this will be retained and made available to the public. Chair Borge noted that streamlining and updating the rules and incorporating the stakeholders is important to Hawaii's environment.

Amendment and Compilation of Chapter 13-104  
Hawaii Administrative Rules

January 10, 2010

1. Chapter 13-104, Hawaii Administrative Rules, entitled "Rules Regulating Activities Within Forest Reserves", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5 FORESTRY AND WILDLIFE

PART 1 FORESTRY

CHAPTER 104

RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES

Subchapter 1 General Provisions

- §13-104-1 Purpose and applicability
- §13-104-2 Definitions
- §13-104-3 Penalty

Subchapter 2 Public Use

- §13-104-4 Preservation of public property and resources
- §13-104-5 Litter and sanitation
- §13-104-5.5 Abandoned and unattended property
- §13-104-6 Report of injury or damage
- §13-104-7 Fire use restrictions
- §13-104-7.5 Closing of areas
- §13-104-8 Hunting and fishing

§13-104-9 Firearms or other weapons  
§13-104-10 Swimming and bathing  
§13-104-11 Vehicles and transportation  
§13-104-12 Animals  
§13-104-13 Audio devices and noise  
§13-104-14 Explosives  
§13-104-15 Disorderly conduct  
§13-104-16 Camping  
§13-104-17 Compliance with laws

### Subchapter 3 Permits

§13-104-18 General provisions for permits  
§13-104-19 Camping permits  
§13-104-20 Special use permits  
§13-104-21 Collecting permits  
§13-104-22 Commercial permits  
§13-104-23 Access permits  
§13-104-24 Commercial activities

### Subchapter 4 Fees and Charges

§13-104-25 General statement  
§13-104-26 Payment  
§13-104-27 Camping and cabin rental fees  
§13-104-28 Commercial use permit fees  
§13-104-29 Kiln fees  
§13-104-30 Permit processing fees  
§13-104-31 Parking and entrance fees  
§13-104-32 Fee for copies of rules

Historical Note: Chapter 104 of Title 13, Administrative Rules, is based substantially upon Regulation 1 [Eff 12/9/43; am 8/12/76; R 9/28/81] and Regulation 10 [Eff 12/12/59; R 9/28/81] of the Division of Forestry, Department of Land and Natural Resources.

## SUBCHAPTER 1

## GENERAL PROVISIONS

~~[\$13-104-1 Purpose and applicability.]~~ **§13-104-1 Purpose and applicability.** (a) The purpose of ~~[these rules]~~ this chapter is to regulate activity within forest reserves established pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes.

(b) These rules shall apply to all persons entering the boundaries and jurisdiction of a forest reserve. All persons shall observe and abide by officially posted signs within forest reserves. Everyone using the forest reserves should conduct themselves in a safe and courteous manner. Users of the forest reserves should be aware that there are ~~[certain]~~ certain inherent risks involved due to other users and the environment and should use caution at all times. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)

~~[\$13-104-2 Definitions.]~~ **§13-104-2 Definitions.** As used in ~~[these rules,]~~ this chapter, unless the context requires otherwise:

"Abandoned and unattended property" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels that have been left unattended on land owned or controlled by the State for a continuous period of more than forty-eight hours without the written permission of the board or its authorized representative.

"Administrator" means the administrator of the division of forestry and wildlife.

"Authorized representative" means the administrator, foresters, conservation enforcement officers, and other persons authorized by the board

~~[of land and natural resources]~~ to act for the board.

"Board" means the board of land and natural resources.

"Camping" or "to camp" means ~~[being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia,]~~ a person's physical presence any time [after] one hour after sundown until sunrise in a forest reserve[-] and indicia of camping includes the use of a forest reserve one hour after sundown until sunrise for living accommodation purposes, including, but not limited to: sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping); storing personal belongings; making any fire; the presence or use of any tents, temporary shelters, unauthorized structures or vehicles; or digging or breaking ground without proper authorization.

"Commercial activity" means the use of or activity in the forest reserve for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Soliciting, demanding, or requesting gifts, money, or services shall be considered commercial activity. Commercial activities include activities ~~[whose]~~ with base of operations ~~[are]~~ outside the boundaries of the forest reserve, display of merchandise, or activities which provide transportation to or from the forest reserve.

"Commercial use" is any type of commercial activity which is considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve.

"Compensation" includes but is not limited to, monetary fees, donations, barter, or services in-kind.

~~["Division" means the division of forestry and wildlife.]~~

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife.

"Forest product" means any natural material from a forest reserve, including but not limited to timber, seedlings, seeds, fruits, greenery, tree fern, cinder, lava rock, ti leaves, and bamboo.

"Forest reserve" means those lands designated as forest reserves by the department pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes, and other lands for plant sanctuaries, facilities, nurseries, and baseyards under the custody and control of the division.

"Motorized vehicle" means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuels) for propulsion.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

~~["Residing" means being in the same forest reserve for more than seven (7) continuous days.]~~

~~["Spark arrester" means a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that is operated by hydrocarbon fuels.]~~

"Structure" means any object or improvement constructed, installed, or placed on state lands, including but not limited to buildings, sheds, lean-tos, picnic tables, memorials, hunting blinds, tree stands, mobile homes, campers, trailers; provided that tents, campers, vehicles, and other temporary objects related to authorized activities shall not be considered structures for the purposes of this definition; provided further that the objects are in compliance with rules and regulations governing those activities on state lands.

"Tree harvesting" means the removal of live trees from a forest reserve. [Eff 9/28/81; am and comp 10/15/93; am 12/9/02; am and comp ]

(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-3 Penalty.]~~ **§13-104-3 Penalty.** (a) Any person violating any of the provisions of ~~[these rules]~~ this chapter shall be ~~[guilty of a misdemeanor and shall be penalized]~~ subject to penalty as provided by law. All revenues generated from fines or penalties imposed pursuant to this section shall be deposited into the forest stewardship fund. Any equipment, article, instrument, aircraft, vehicle, business record, or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by section 199-7, Hawaii Revised Statutes, and chapter 712A, Hawaii Revised Statutes.

(b) Restrictions and prohibitions imposed by this chapter shall not apply to state employees or their agents acting in the scope of their employment while within the forest reserve. Any penalty imposed may take into account emergency situations, such as fire or other disasters or where necessary to protect life or property. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-4, 183-5, 183-16, 195D-8, 199-7)

## SUBCHAPTER 2

### PUBLIC USE

~~[\$13-104-4 Preservation of public property and resources.]~~ **§13-104-4 Preservation of public property and resources.** The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the ~~[Board]~~ board or authorized representative or as provided by the rules of the [Board,] board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g., natural stream beds) except as authorized by the board or



- its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within ~~[or on]~~ a forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board~~[-]~~;
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board~~[-]~~;
- (8) To distribute or post handbills, circulars, or other notices~~[-]~~;
- (9) To introduce any plant or animal except as approved by the ~~[Board.]~~ board; and
- (10) To enter or remain within a forest ~~[reserves when]~~ reserve while under the influence of alcohol, narcotics, or drugs, to a degree that may ~~[endanger oneself or]~~ endanger or cause annoyance to other persons, or endanger oneself or property. The use or possession of narcotics, drugs, or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-2, 183-17)

~~[\$13-104-5 Litter and sanitation.]~~ **§13-104-5**  
**Litter and sanitation.** The following acts are prohibited within a forest reserve:

- (1) To drain, dump, or leave any litter, animal waste or remains, or any other material which pollutes or is likely to cause pollution in the forest reserve, including streams and other water sources;
- (2) To deposit any body waste in areas without

- comfort stations, without digging a hole and covering all signs of the waste;
- (3) To deposit any body waste within 150 feet of a spring, stream, lake, or reservoir; and
  - (4) To leave or abandon ~~[a vehicle or]~~ any ~~[other]~~ large refuse, such as refrigerators or stoves, household garbage or trash, or other forms of waste or debris. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-5.5 Abandoned and unattended property.**

No person shall abandon or leave personal property unattended within a forest reserve for any purpose not otherwise authorized or inconsistent with the purposes of the forest reserve. All such property may be seized, impounded, or otherwise confiscated by the board or any authorized representative.

- (1) If unattended personal property, including but not limited to motor vehicles, interferes with the safe or orderly management of a forest reserve or is stored on the publicly-managed lands, the personal property may be seized or impounded by the board or its authorized representative. Any article or instrument that is dangerous, noxious, hazardous, or considered as contraband under the laws of the State of Hawaii, which could endanger the health, safety, or welfare of the public, or public property, may be immediately seized and disposed of by any authorized representative of the department if found abandoned or unattended in the forest reserve.
- (2) All impounded vehicles shall be towed to a place of storage. Owners of towed vehicles shall contact the division or the division of conservation and resource enforcement branch office for information on towed

- vehicles. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawaii Revised Statutes.
- (3) All impounded or confiscated property, other than vehicles, shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related costs. Additionally, the owner of this property shall bear the responsibility for the risk of any loss or damage to their property.
- (4) Abandoned vehicles may be sold at public auction pursuant to section 290-11, Hawaii Revised Statutes. All other impounded or confiscated property shall be disposed of pursuant to section 171-31.5, Hawaii Revised Statutes. [Eff and comp ]  
 (Auth: HRS §183-2) (Imp: HRS §§171-31.5, 183-2, 290-11)

~~[§13-104-6 Report of injury or damage.]~~ **§13-104-6 Report of injury or damage.** All incidents resulting in injury or death to persons or damage to property shall be reported by the person or persons involved as soon as possible to the board or its authorized representative. This report does not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-7 Fire use restrictions.]~~ **§13-104-7 Fire use restrictions.** The following acts are prohibited within a forest reserve:

- (1) To build any fire on the ground or in any structure[+] not otherwise authorized by this section;

- (2) To build any fire without using a portable stove or other self-contained unit;
- (3) To leave a fire unattended without extinguishing all traces of heat;
- (4) To deposit or discard any potential fire-producing material, such as embers, coals, or ashes that are too hot to touch;
- (5) To set on fire or cause to be set on fire any live or dead vegetation except for department fire control measures; and
- (6) To start a fire in windy conditions in a place or manner that is likely to cause live or dead vegetation to be set on fire[~~;~~ and
- ~~(7) To use any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment].~~ [Eff 9/28/81; am and comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §§183-2, 185-7)

**§13-104-7.5 Closing of areas.** (a) The board, or its chairperson, may close or restrict the public use of all or any portion of a forest reserve in the event of an emergency or when deemed necessary for:

- (1) The protection of the biological, geological, or cultural resources of the area;
- (2) Health, safety, or welfare reasons;
- (3) The protection of property; or
- (4) Management activities, by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(b) The chairperson is authorized to effect a given closure or restriction under subsection (a) for a period of not more than ninety days. The board is authorized to effect a closure or restriction for any period as deemed necessary to accommodate the condition or conditions indicated under subsection

(a). [Eff and comp ] (Auth: HRS §183-2)  
(Imp: HRS §§183-1.5, 183-2, 185-3)

~~[§13-104-8 Hunting and fishing.]~~ **§13-104-8**  
**Hunting and fishing.** The hunting, fishing, trapping, or disturbing of any fish, animal, or bird is prohibited except as permitted by department hunting or fishing rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-9 Firearms or other weapons.]~~ **§13-104-9**  
**Firearms or other weapons.** Firearms and other weapons, including those discharging projectiles by air or gas ~~[operated,]~~ operation; or bow and arrow, ~~[and other weapons]~~ are prohibited except as permitted by department hunting rules and are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff 9/28/81; comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-10 Swimming and bathing.]~~ **§13-104-10**  
**Swimming and bathing.** Swimming and bathing in all waters within a forest reserve are permitted at an individual's own risk except in waters and at times where the activities are prohibited by the board or its authorized representative in the interest of public health and safety. The ~~[excepted]~~ prohibited waters and times shall be designated by posted signs. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-11 Vehicles and transportation.]~~ **§13-104-11 Vehicles and transportation.** ~~[(a)]~~ The following acts are prohibited while under the jurisdiction of the state within a forest reserve:

- (1) To drive, operate, or use any motorized or non-motorized land vehicle, glider, hang glider, aircraft, unmanned aircraft system, balloon, or parachute carelessly and without due caution for the rights or safety of others and in a manner that endangers any person or property;
- (2) To launch or land ~~[airplanes,]~~ aircraft, gliders, helicopters, balloons, parachutes, or other similar means of transportation without a ~~[special-use]~~ permit for that purpose from the board or its authorized representative; provided~~[, however,]~~ that landing is authorized without a permit in case of any emergency;
- (3) To drive, operate, or use any motorized vehicle in any area or trails not designated for that purpose~~[+]~~, including areas requiring four-wheel drive only;
- (4) To park any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) To drive, lead, or ride a horse, mule, other animal, or non-motorized land vehicle in areas and on roads or trails that are posted against such activity; ~~[and]~~
- (6) To drive, operate, or use any motorized ~~[ground]~~ land vehicle without a functioning street legal muffler, and without a valid vehicle license plate, registration and safety sticker if required by ~~[each]~~ the appropriate respective county~~[-]~~; and
- (7) To launch, land, or operate any unmanned aircraft system without a permit for that purpose from the board or its authorized representative.

~~[(b) Any vehicle or property left unattended within a forest reserve for longer than forty-eight hours without prior written permission from the board~~

~~or its authorized representative shall be considered abandoned. Any abandoned vehicle or property may be impounded or towed away by the board or its authorized representative at the expense of the owner.] [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §§183-1.5, 183-2)~~

~~[§13-104-12 Animals.]~~ **§13-104-12 Animals.** (a) Dogs, cats, and other animals are prohibited within a forest reserve unless crated, caged, or on a leash, at all times except for hunting dogs when permitted by chapters ~~[122 and 123, Administrative Rules.]~~ 13-122 and 13-123.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas within the forest reserve.

(c) Dogs, cats, or other domestic animals, observed by an authorized representative of the board to be running at large or in the act of killing, injuring, or molesting humans, wildlife, or property, may be disposed of in the interest of public safety and the protection of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-13 Audio devices and noise.]~~ **§13-104-13 Audio devices and noise.** Creating noise or sound within a forest reserve, either vocally or otherwise (~~[i.e.]~~ e.g., public address systems, radios, television sets, musical instruments) or use of any noise producing devices (~~[i.e.]~~ e.g., electric generating plants or other equipment driven by motors or engines) in a manner and at times which creates a nuisance is prohibited. [Eff 9/28/81; comp 10/15/93;

am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[§13-104-14 Explosives.]~~ **§13-104-14 Explosives.**  
The use or possession of fireworks, firecrackers, or  
explosive devices within a forest reserve is  
prohibited. [Eff 9/28/81; comp 10/15/93; am and  
comp ] (Auth: HRS §183-2) (Imp: HRS  
§183-2)

~~[§13-104-15 Disorderly conduct.]~~ **§13-104-15**  
**Disorderly conduct.** Disorderly conduct, as defined in  
section 711-1101, Hawaii Revised ~~[Statutes,]~~ Statutes,  
is prohibited within a forest reserve. [Eff 9/28/81;  
comp 10/15/93; am and comp ] (Auth:  
HRS §183-2) (Imp: HRS §183-2, 711-1101)

~~[§13-104-16 Residence on forest reserve lands.~~  
~~Residing within a forest reserve is prohibited except~~  
~~with written permission from the board.]~~ **§13-104-16**  
**Camping.** No person shall camp, or use recreational  
trailers or other camper units within any forest  
reserve, except with the prior written authorization  
of the board or its authorized representative and as  
permitted by the rules of the department. [Eff  
9/28/81; comp 10/15/93; am and comp ]  
(Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-17 Compliance with laws.]~~ **§13-104-17**  
**Compliance with laws.** All persons entering the  
boundaries of a forest reserve shall comply with all  
federal, state, and county laws, ordinances, and  
rules. [Eff 9/28/81; comp 10/15/93; am and  
comp ] (Auth: HRS §183-2) (Imp: HRS  
§183-2)



## SUBCHAPTER 3

## PERMITS

~~[\$13-104-18 General provisions for permits.]~~

**§13-104-18 General provisions for permits.** (a) The board or its authorized representative may issue the following types of permits:

- (1) Camping;
- (2) Special use;
- (3) Collecting;
- (4) ~~[Commercial harvest;]~~ Commercial; and
- (5) Access.

(b) All permits are subject to the following provisions:

- (1) Permits are subject to denial, cancellation, or termination at any time by the board or its authorized representative upon violation of these rules or any conditions of the permit or any federal, state, or county statutes, ordinances, and rules or for danger to the public or because of natural causes. Persons who have violated permit conditions or the rules may be ordered by the department to leave the forest reserve. Permittees who have violated permit conditions or the rules may be denied future permits for forest reserves or subject to the imposition of additional permit restrictions;
- (2) Permits shall not be transferable~~[-]~~;
- (3) Persons or organizations to whom permits are issued shall be held responsible for all conditions ~~[stipulated]~~ on the permit~~[-]~~;
- (4) All persons eighteen years of age or older shall be eligible to secure a permit and all minors shall be allowed use of the premises; provided that they are under the direct supervision of one adult for every ten

- minors~~[-]~~;
- (5) The size of groups as well as the length of time any permit may be in effect may be limited by the board or its authorized representative~~[-]~~;
  - (6) The board or its authorized representative may require the permittee, at the permittee's own cost, to provide police protection in the interest of the public safety and welfare and for the protection of property when the number of persons using the forest reserve is one hundred or more~~[-]~~;
  - (7) Fees and charges as set by the board may be assessed when permits are granted for the exclusive use of areas or facilities, or when charges are necessary to defray the cost of special facilities, services, or supplies provided by the State, or as otherwise determined by the board or its authorized representative when necessary to carry out the provisions of chapter 183, Hawaii Revised Statutes. [Charges] Fees and charges contained in this chapter may be waived or reduced by the board or its authorized representative if the waiver or reduction is in the public interest~~[-]~~;
  - (8) The board may set and approve a forest product price list. Charges may be assessed when permits are granted for forest products. The forest product price list shall reasonably reflect fair market value and be periodically updated by the board;
  - (9) All permittees ~~[shall]~~, upon request, shall show the permit to any law enforcement officer, the board, or its authorized representative~~[-]~~;
  - (10) By signing the permit and entering into the forest reserve, all persons included on the permit agree to comply with all the terms and conditions of the permit, as well as applicable laws and regulations; and consent

to present the permit to a duly authorized representative of the department upon request; and

- (11) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.  
 [Eff 9/28/81; comp 10/15/93; am and  
 comp ] (Auth: HRS §183-2)  
 (Imp: HRS §§183-1.5, 183-2)

~~[§13-104-19 Camping permits.]~~ **§13-104-19**  
**Camping permits.** (a) All persons, groups, organizations, or associations wishing to camp within a forest reserve shall obtain a camping permit authorizing the use of the specific area and facilities for camping purposes~~[-]~~ for the stated date or dates.

~~[(b)]~~ ~~Camping permits shall be obtained from the district offices of the division during regular working hours of the department.~~

~~(c) Persons applying for a permit shall provide, if requested, identification for all persons included on a permit, satisfactory to the board or its authorized representative.~~

~~(d)]~~ (b) Each camping permit will reserve the use of a designated area for the stated date or dates of use. Camping is permitted only in designated areas or sites.

~~[(e)]~~ (c) No person, group, organization, or association shall remain at any one specific camping site for longer than seven days; provided that the board or its authorized representative may extend the length of stay for good cause~~[-; provided further that the length of stay (including the extension as well as the permitted stay) shall not exceed fourteen days].~~

~~[(f)]~~ (d) After ~~[the expiration]~~ issuance of a camping permit, a period of at least thirty days shall

pass before another camping permit for the same designated area may be issued to ~~[the same person for the same designated area.]~~ any person listed on any previously valid or current camping permit. ~~[This restriction shall apply to all persons named on the expired permit.]~~ The board or its authorized representative may waive a portion of the thirty-day period for good cause.

~~[(g)]~~ (e) ~~[Permits]~~ Camping permits may be denied, canceled, or terminated for the following reasons:

- (1) When the size of the group will exceed or exceeds the capacity of the existing site or facilities;
- (2) When there are inadequate facilities to meet the immediate needs of the camper or campers;
- (3) When repairs or improvements are being made at the campsite; or
- (4) When a state of emergency is declared or for other reasons involving the health, safety, and welfare of the applicants or permittees; ~~[by the board or its authorized representative]~~

upon the declaration of the board or its authorized representative. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[\$13-104-20 Special use permits.]~~ **§13-104-20**  
**Special use permits.** (a) Special ~~[uses are permitted within a forest reserve only by a permit]~~ use permits are only issued by the board or its authorized representative. Special uses are ~~[all types of uses other than]~~ those provided for ~~[herein]~~ in this section and which are considered compatible with the functions and purposes of each individual area, facility, or unit within a forest reserve. Special uses include but are not limited to community activities, such as meetings, weddings, concerts, shows, and other community events; ~~[or activities]~~ and

the scientific collection of plants and animals.

(b) Applications for special use permits shall be received by the board or its authorized representative at least fifteen working days in advance of the date the permit is to be in effect, ~~[unless otherwise received and accepted by the board or its authorized representative.]~~ however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.

(c) A request for a special use permit shall be considered on its own merits, including its potential effect on [the premises, facilities,] forest reserve resources and the public's use and enjoyment of the forest reserve. [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2)  
(Imp: HRS §183-2)

~~[§13-104-21 Collecting permits.]~~ **§13-104-21 Collecting permits.** (a) Persons wishing to collect forest ~~[items]~~ products ~~[(e.g. ti leaves, bamboo)]~~ for personal use and at no charge shall obtain a collecting permit authorizing the collection in a specific area.

~~[(b) Collecting permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~(c) Persons applying for a permit shall provide, their names and addresses and shall produce if requested, identification of all persons named on a permit, satisfactory to the board or its authorized representative.~~

~~(d)]~~ (b) Each application for a collecting permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.

- (c) Collecting permits shall specify:
- (1) The date or dates of collection;
  - (2) The quantities and ~~[items]~~ products to be collected;

- (3) The areas of collection; and
- (4) Any other terms and conditions deemed necessary by the board or its authorized representative.

~~[(+e)]~~ (d) Permits shall not be issued for collecting ~~[items]~~ products for sale.

~~[(+f)]~~ (e) No permits shall be issued for the collection of endangered or threatened wildlife or plants except as provided by chapter ~~[124, Administrative Rules.]~~ 13-124.

(f) No more than one permit within a seven-day period may be issued to the same person or persons, group, organization, or association listed on the permit for collecting any of the same forest products.  
[Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-22 Commercial harvest permits.]~~ **§13-104-22 Commercial permits.** (a) Commercial use permits. The board or its authorized representative may issue commercial use permits.

- (1) Applications for commercial use permits shall be received by the board or its authorized representative at least thirty working days in advance of the date the permit is to be in effect; however, the deadline may be waived by the board or its authorized representative upon a showing of good cause.
- (2) A request for a commercial use permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (3) The value of the commercial activity shall be decided by the board or its authorized representative and shall not exceed \$10,000.
- (4) The time of entry for the commercial activity shall not exceed thirty days,

except that the board or its authorized representative may extend this time for good cause.

~~[(a)]~~ (b) Commercial harvest permits. The board or its authorized representative may issue permits for the purpose of purchasing~~[7]~~ and harvesting~~[7]~~ and removing forest products from a forest reserve ~~[(e.g., timber, seedlings, greenery, tree fern, einder, and lava rock)]~~.

~~[(b)]~~ Permits shall be obtained from the district offices of the division during regular working hours of the department.

~~[(c)]~~ (1) Each application for a commercial harvest permit shall be considered on its own merits, including its potential effect on [the premises] forest reserve resources and the public's use and enjoyment of the forest reserve[-]; provided further that tree harvesting shall be done in accordance with a management plan as required by section 183-16.5, Hawaii Revised Statutes.

~~[(d)]~~ Permits will not be issued for harvesting material for direct resale.

~~[(e)]~~ (2) The value of the raw material to be harvested shall not exceed \$10,000. The quantity to be harvested shall be decided by the board or its authorized representative.

~~[(f)]~~ (3) The time of entry for harvesting shall not exceed [14] fourteen days for permits with designated raw material value not in excess of \$1,000, or [30] thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause.

~~[(g)]~~ (4) No more than one permit within a thirty day period or six permits within a calendar year may be issued to the same person, group, organization, or association for harvesting the same product.

~~[(h)]~~ (5) Each permit shall specify:

- ~~[(1)]~~ (A) The products to be harvested;
- ~~[(2)]~~ (B) The amount to be harvested;
- ~~[(3)]~~ (C) The dollar value of the products;
- ~~[(4)]~~ (D) The designated area to be harvested;
- ~~[(5)]~~ (E) The date or dates the harvesting may take place; and
- ~~[(6)]~~ (F) Any other terms or conditions deemed necessary by the board or its authorized representative.

(c) Commercial salvage permits. The board or its authorized representative may issue commercial salvage permits for the purpose of purchasing and removing dead or hazardous trees.

- (1) A request for a commercial salvage permit shall be considered on its own merits, including its potential effect on forest reserve resources and the public's use and enjoyment of the forest reserve.
- (2) The value of the raw material to be salvaged shall not exceed \$10,000. The quantity to be salvaged shall be decided by the board or its authorized representative.
- (3) The time of entry for salvaging shall not exceed fourteen days for permits with designated raw material value not in excess of \$1,000, or thirty days for permits with designated raw material the value of which exceeds \$1,000 but does not exceed \$10,000, except that the board or its authorized representative may extend this time for good cause. [Eff 9/28/81; comp 10/15/93; am 10/4/05; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[\$13-104-23 Access permits.]~~ **§13-104-23 Access permits.** ~~[(a)]~~ Permits for access to or entry into forest reserves may be required by the board or its authorized representative for the following ~~[purpose:]~~ purposes:

- (1) To comply with the requirements of private



- landowners or lessees who permit access to forest reserves through their land;
- (2) To control the number of people using a forest reserve or an area within a forest reserve in order to minimize ~~[the]~~ any impact upon environmentally sensitive ~~[area;]~~ areas;
  - (3) To control the types of uses of a forest reserve or an area within a forest reserve in order to minimize the dangers of incompatible uses in the same area (e.g., horseback riding and motorcycle riding); ~~[and]~~
  - (4) To control ~~[periods of use]~~ uses of a forest reserve, ~~[especially during periods when fire danger levels are high.]~~ or any portion thereof, which may be under closure or otherwise restricted; and
  - (5) ~~[To collect plants or animals for scientific purposes.]~~ For scientific research activities that are otherwise prohibited by this chapter.

~~[(b) Access permits shall be obtained from the district offices of the division during regular working hours of the department.]~~

~~[(c) Persons applying for an access permit shall provide their names and addresses and shall produce identification satisfactory to the board or its authorized representative. The board or its authorized representative may require the names, addresses, and telephone numbers of all persons included on a permit.]~~ [Eff 9/28/81; am and comp 10/15/93; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

~~[§13-104-24 Commercial activities.]~~ **§13-104-24 Commercial activities.** No person shall engage in commercial activities of any kind in a forest reserve without a written permit from the board or its authorized representative. [Eff 12/9/02; am and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

#### SUBCHAPTER 4

#### FEES AND CHARGES

**§13-104-25 General statement.** (a) This subchapter establishes user fees and charges for services, facilities, and activities for forestry and recreational purposes, where applicable under the jurisdiction of the division.

(b) The fees and charges are:

(1) Collected to offset the expenses of operating, maintaining, and managing the facilities and services;

(2) Fixed with due regard to the primary purposes of providing public outdoor recreational facilities and promoting an appreciation and connection with Hawaii's forests; and

(3) Set by categories.

(c) The acceptance of payment or billings shall not waive the nature of trespass or ratify or permit illegal camping. [Eff and comp ]

(Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-26 Payment.** (a) Method of payment of fees and charges shall be online by credit card or by business check, cashier's check, money order, or cash at division branch offices or the administration office.

(b) All fees shall be paid in advance of issuance of a permit, except as specified by chapter 13-104. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**§13-104-27 Camping and cabin rental fees.** The camping and cabin rental fees shall be set according to the amounts in Schedule A - Camping and Cabin Rental Fees - 12/28/16. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule A</b> <b>Camping and Cabin Rental Fees</b> <b>12/28/16</b>				
	<b>Maximum No. Campsites</b>	<b>Maximum No. Persons per campsite</b>	<b>Resident Fee (\$/night/ campsite)</b>	<b>Nonresident Fee (\$/night/ campsite)</b>
Category 1	Up to 5	Up to 15	\$12*	\$18**
<i>Unimproved campsite or improved campsite with minimal amenities (i.e., trailside camping or a campsite with picnic table and shelter and privy toilet)</i>				
Category 2	1 Cabin	Up to 6	\$30/night per cabin ***	\$50/night per cabin ***
<i>Improved campsite or small cabin that houses no more than 6 persons</i>				
Category 3	1 Cabin	Up to 20	\$60/night per cabin ***	\$90/night per cabin ***
<i>Improved campsite or large cabin that houses 7 or more persons</i>				
* A resident camping permit for up to 6 persons is \$12. Additional persons will cost \$2 per person. ** A nonresident camping permit for up to 6 persons is \$18. Additional persons will cost \$3 per person. ***Fee reflects total cost for cabin rental regardless of number of persons staying overnight.				

**§13-104-28 Commercial use permit fees.**

Commercial use permit fees are listed in Schedule B - Commercial Use Permit Fees - 12/28/16 and shall apply depending on the applicable commercial activity or activities; provided that the requested recreational facility is approved for commercial use by the forestry and wildlife manager. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule B</b> <b>Commercial Use Permit Fees</b> <b>12/28/16</b>	
Base commercial use permit processing fee	\$10
Price per pedestrian	\$5
Price per non-motorized bicycle or horseback rider	\$7
Price per motorized vehicle up to 5 people	\$25
Price per motorized vehicle up to 8 people	\$50
Price per motorized vehicle up to 12 people	\$75
Price per motorized vehicle up to 15+ people	\$100
Price per operator and/or passenger of aerial craft launching from and/or landing in a forest reserve	\$5
Price per campsite, facility, or cabin per day	\$100
Price per commercial film permit	\$100
Price per item/activity (miscellaneous)	\$20

**§13-104-29 Kiln fees.** Kiln fees are listed in Schedule C - Kiln Fees - 12/28/16 and shall be paid no later than fifteen days after kiln services are rendered. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

<b>Schedule C</b> <b>Kiln Fees</b> <b>12/28/16</b>	
<b>Unit</b>	<b>Unit Cost</b>
1 - 900 Board Feet	\$0.70 each
901 - 1000 Board Feet	\$0.60 each
1001 - 1500 Board Feet	\$0.50 each
1501 and up Board Feet	\$0.40 each

**\$13-104-30 Permit processing fees.** The fee for the processing of an access permit for scientific research purposes shall be \$50. The fee for processing any other permit shall be \$10. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**\$13-104-31 Parking and entrance fees.** The fee for parking a vehicle may be assessed at \$5 per vehicle, per day. [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §183-2)

**\$13-104-32 Fee for copies of rules.** The fee per copy of these rules shall be 10 cents per page. No fee shall be charged for copies furnished to federal, state, or local governmental agencies. The fee may be waived in other instances at the discretion of the administrator or the administrator's authorized representative when a waiver is in the public interest." [Eff and comp ] (Auth: HRS §183-2) (Imp: HRS §§91-2.5, 183-2)

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

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

4. These amendments to and compilation of chapter 13-104, 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 January 10, 2010, and filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE  
Chairperson, Board of  
Land and Natural  
Resources

APPROVED AS TO FORM:

---

Deputy Attorney General

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

**A. Discussion and Action on Proposed New HAR  
Title 10 Chapter 4.1, Management of Water  
Systems, promulgated by DHHL**

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

(Hawaii Revised Statutes §201M-2)

**RECEIVED**

By JetaimeA at 11:25 am, Mar 06, 2020

Date: 3/6/2020

Department or Agency: Department of Hawaiian Home Lands

Administrative Rule Title and Chapter: Chapter 10-4.1

Chapter Name: Management of Water Systems

Contact Person/Title: Hokulei Lindsey / Administrative Rules Officer

E-mail: Hokulei.Lindsey@hawaii.gov Phone: 620-9280

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: <https://dhhhl.hawaii.gov/hhc/hawaii-administrative-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.)

\*

\*

\*



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

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

Any small business that is serviced by Department of Hawaiian Home Lands (DHHL or Department) owned water systems will be required to comply with the proposed rules. According to Department records, there are approximately ten potential small businesses serviced by the DHHL Hoolehua drinking water system (PWS 230) on the island of Molokai. The business types are varied, including several farms, an auto repair shop, a bank, and a real estate business. The proposal could adversely affect the small businesses in three ways: first, thru increased water service rates; second if that business consumer were to be charged additional fees due to delinquency in bill payment, water meter obstruction, or because the consumer caused damage to Department property or equipment; and third, if because of delinquency or other non-compliance the business consumer was subject to water service shut off.

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.

Under the proposal, the most immediate direct cost is the increase of water service rates. The Department bills on a bi-monthly basis using an “increasing block rate” structure under which each succeeding block (e.g., 0-10,000 gallons; 10,001-20,000 gallons; etc.) is charged at a higher rate than the previous blocks. Over a ten-year period, water service rates will increase by 20% each year and meter fees will increase 31.5% each year. The table below is a comparison of the old rates and new rates at years 1, 5, and 10 for the non-beneficiary commercial users on the Hoolehua water system. The rates schedule is attached as Exhibit A.

Monthly Water Bill Projections  
For Non-Beneficiary Commercial User Types

User type	Meter size	Average gallons per month per user	FY14 – FY18	FY19	FY23	FY28
Non-Beneficiary/ Commercial	5/8”	11,600	\$26.68	\$34.52	\$71.31	\$106.47
Non-Beneficiary/ Commercial Agriculture	1”	170,000	\$158.00	\$525.62	\$935.75	\$1,457.88

The imposition of fees or fines would be applicable only if there were a delinquency, meter tampering, meter obstruction, or damage to Department property or equipment. The table below lists the additional fees and fines as provided in the proposal:

### Additional Circumstance-Based Fines and Fees

§10-4.1-9 Payment of bills and delinquency	§10-4.1-15 Obstructed meter fine	§10-4.1-16 Tampering prohibited
Late payment fee: 1% of outstanding balance per month; Returned check fee: \$25 (HRS §40-35.5)	Obstruction fine: \$25 per billing period; Removal fee: \$25, if the Department clears the obstruction	All costs related to the repair; Late payment fee: 1% per month

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

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

The Department has not previously imposed fines for delinquency, meter tampering, or meter obstruction. Fees for installation, repairs, replacements, and labor are charged at cost and the proposal does not change that practice nor does it increase those fees per se.

Water service rates for the Hoolehua system were last set in 2004 and spread a ten percent increase over a ten-year period. The charts below show the fee structures once the 2004 increase was fully in place.

### Non-Beneficiary Commercial/Non-Agriculture

Meter service (base) fees

Meter size (inches)	FY 2014 – FY 2018 Base fee
5/8"	\$30.00
3/4"	\$44.00
1"	\$70.00
1 1/2"	\$136.00
2"	\$210.00
3"	\$390.00
4"	\$640.00
6"	\$1,270.00
8"	\$2,000.00

Water service delivery (usage) fees

	Gallons Bi-Monthly	Usage Fee per 1,000 gallons
Tier 1	0 – 10,000	\$1.80
Tier 2	10,001 – 30,000	\$3.35
Tier 3	Over 30,000	\$4.95

### Non-Beneficiary Commercial/Agriculture

Meter service (base) fees

Meter size (inches)	FY 2014 – FY 2018 Base fee
5/8"	\$30.00
3/4"	\$44.00
1"	\$70.00
1 1/2"	\$136.00
2"	\$210.00
3"	\$390.00
4"	\$640.00
6"	\$1,270.00
8"	\$2,000.00

Water service delivery (usage) fees

	Gallons Bi-Monthly	Usage Fee per 1,000 gallons
Tier 1	0 – 10,000	\$1.80
Tier 2	10,001 – 30,000	\$3.35
Tier 3	Over 30,000	\$1.15

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

The imposition of fines would be new. In terms of water rates, the percent increase is spread over a ten-year period to mitigate impact. The base delivery rates will increase by 200% and the base meter service fees will increase by 315%. Spread over ten years, this becomes 20% and 31.5%, each year. The water rates schedule is attached as Exhibit A.

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

The Department is in the process of developing a comprehensive water management program. The purpose of the service rate increase is to decrease the financial shortfall and move towards a self-sustaining or near self-sustaining system. A critical component of comprehensive water management is the legal authority to shut off water service; these rules provide that authority to the Department. The fines are built in for various purposes, one of which is to create intermediate steps before service shut off. Fines are also a standard industry practice imposed to recover costs and encourage conservation.

More specifically, in terms of the increase in water service rates, it has been an extended period, over ten years, since water rates were last set. With an average of only 600 connections, the Hoolehua water system is a very small system. As with most small water systems, the main source of revenue is derived from water rate schedules. Water rates fund daily operations, routine maintenance, repairs, and electricity costs. For the Department, every dollar collected from water rates goes directly to the operation, maintenance, and administration of the system. The service rates set over a decade ago are artificially low and the dollar amount collected falls short of the financial requirements of the system. For example, since 2003, costs for the Hoolehua system have increased by ninety percent while the last rate increase of ten percent was in 2004. The Hoolehua water system was built in the 1930s and will be undergoing several system improvements, expected to be completed by 2021. Although water rates are being increased, the

Department anticipates that the system improvements will achieve significant operational efficiency and ultimately contribute to managing affordability by lowering system costs over the long term.

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

The new rates are based upon administration, operation, and management costs, and take into account industry standard factors of affordability (determined by the Census median income), equity among consumer classes (e.g., residential, agriculture, commercial), and water system sustainability, to inform how water service rates are adjusted, if at all. The fines and fees other than rates were determined using existing methods and criteria including, HRS section 40-35.5, actual cost, and the benchmark of one percent of the outstanding balance.

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

The probable monetary benefit to the Department is a reduction of the water system's financial short fall and corresponding decrease in the subsidy paid by the Department to sustain the system. Funds generated from the service rates, fees, and fines go directly to the administration, operation, and maintenance costs of the water system; water billing ideally covers the cost of delivery. A self-sustaining or near self-sustaining water system is the goal. For the Department that would mean the ability to allocate more funding toward homestead development and furtherance of the Hawaiian Homes Commission Act.

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

The methodology for setting service rates is formulated to mitigate impact; the factor of affordability would prevent exorbitant or inflated rates. The rates schedule further mitigates the impact by spreading the increase out over a ten-year period.

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

The rules are required for best management and the service rate increase is part of that effort. That the rates have not been adjusted for an extended period will impact every consumer on the water system. The proposed rules, however, embody the reality of the cost and complexity of administering, maintaining, and operating a public water system that delivers water for human consumption according to both state and federal clean water regulations. This is especially true for small water systems such as the system in Hoolehua, which averages only 600 connections; economies of scale are lost. The

proposed rules are not unique nor are they particularly stringent in this context; they are standard for rules that govern a public water system.

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.

Under to the Hawaiian Homes Commission Act and the Hawaii State Constitution, the Department's obligation is to the beneficiaries of the Hawaiian Homes Commission Act; this is an obligation governed by trust duties and responsibilities. Flexibility, innovation, and creative compliance methods, therefore, must be considered along with the Department's trust obligations. The proposal provides for some flexibility to all consumers on the Hoolehua water system in the form of a payment agreement for delinquent charges but the most flexible, innovative, and creative compliance methods are available only to beneficiaries of the trust.

Applicable to all consumers on the Hoolehua water system, section 10-4.1-9(c) authorizes a payment agreement between the Department and the consumer to facilitate the payment of delinquent water charges. The section further authorizes that "alternative payment methods" may be included in a payment agreement between the Department and a lessee-consumer. Alternative payment methods are goods that are grown, caught, or produced by the lessee-consumer and donated to the homestead community or services provided to the department free of charge. A lessee-consumer may settle no more than 5% of the delinquent balance by providing subsistence products to the homestead community or in-kind services to the Department. This provision for "alternative payment methods" would apply to a lessee-owned small business.

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

The Department reached out six times to small business consumers on the Hoolehua water system. They were contacted directly by letter, dated November 27, 2017 (attached), which provided information about the proposed rules and requested comments. Several meetings were held on Molokai: two beneficiary consultation meetings held on July 25, 2017 and August 24, 2017; and an informational meeting on November 13, 2017. Notices for those meetings were mailed to beneficiaries on Molokai, included with the water bill, and posted on community bulletin boards on island. A meeting specifically related to the proposed rate increase was held on March 12, 2018; notice for this meeting was mailed with the water bill. In addition to the required open meeting notice, it was announced at the March 12 meeting that the Hawaiian Homes Commission would be voting on the water rates for Hoolehua at their regular meeting held on Molokai on April 16-17, 2018.

- 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.

No written recommendations or comments were received from small businesses and no oral comments were received by anyone identifying themselves as a small business owner.

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 provisions and standards included in the proposed rules are not more stringent than those of other water systems in the state or nationwide. What is articulated in the proposed rules are, in fact, industry standards. The provisions are either the same or very similar to the provisions found in the rules and regulations for the water utilities run by the various counties of the state as well as those rules that govern irrigation water systems operated by the Department of Agriculture.

The remaining questions are Not Applicable because the Department's response to question 8 is "no".

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

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

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

November 27, 2017

Aloha,

The Department of Hawaiian Home Lands is working toward adopting administrative rules that would govern its water systems. You are a consumer on a DHHL owned water system and, as part of the rulemaking process, the DHHL is notifying small businesses who will be impacted by the proposal.

The Department's records indicate that you may be a "small business" under Chapter 201M, Hawaii Revised Statutes. Chapter 201M defines a "small business" as "a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." When developing rules that would impact small businesses, the DHHL is required to evaluate the impact the rules may have on small businesses.

The water systems rules are intended to improve management and increase efficiencies. These rules would work in tandem with several planned system improvements and upgrades.

While there are several key provisions in the draft, you should be aware that new processes would include fees for delinquent payments and fines for meter tampering and meter obstruction. The draft proposal also provides a process that could result in suspension of water service if your water bill is delinquent for two billing cycles.

The complete draft of the rules and supplemental information is available online at <http://dhhl.hawaii.gov/department-of-hawaiian-home-lands-administrative-rules/>. You can also request a hard copy from the nearest DHHL District Office.

Please provide any comments you have by December 11, 2017. You can submit comments on the website, by email at [dhhl.rules@hawaiianhomelands.org](mailto:dhhl.rules@hawaiianhomelands.org); or by mail to P.O. Box 1879, Honolulu, HI 96805. If you have any questions, please contact our Administrative Rules Officer, Hokulei Lindsey, at 808-620-9280.

Sincerely,

Jobie M.K. Masagatani  
Chairman, Hawaiian Homes Commission



# Response to 'Disingenuous' Letter

The issues pointed out in the Aug. 3 letter titled "Demands for Removal of Planning Commission Chair" are disingenuous.

As Vice Chair of the Molokai Planning Commission, I have first-hand knowledge of the items referenced. Today, I am speaking as an individual.

Items that are passed by the Commission are passed by a majority vote, not by the Commission's chair. It is disingenuous to implicate one person when a majority vote is needed to pass any rule.

And for the record, this commission consists of the most "Molokai born and raised" commissioners in the past decade. Trust this commission is genuinely considering all things prior to making a decision.

Because of the escalation during recent public testimony, by the advice

of Corporation Council, the meeting was recessed and police were asked to have a presence to ensure the community's safety.

There is a difference between civil discourse and unruly behavior. It is for this reason that setting guidelines for a public meeting are welcomed and needed. It is something I consistently hear from our greater community who feel discouraged to attend, but should have no less a voice.

Through faith, I have served my country, and today I serve my community. The implied assertions are unmerited. I stand in support of the current chair's abilities as well as the rest of the commissioners.

*Lawrence Kalamakulanakilaokekula  
lakiekie Lasua  
Kalama`ula, Moloka*

## Beware of Internet Scams

This letter is to inform fellow Molokai residents that there is grave danger in what appear to be simple offers on the Internet. I am a senior living on Molokai on very limited income and I've been scammed twice. In spite of my own embarrassment, I want to let the public know how easy it is to get yourself into big danger.

The first time I saw an ad for Meryl Streep and how beautiful she looks. The ad was for a sample of face crème for \$4.99, so I thought, cool! I gave them my credit card number and

I received the products in the mail. I wrote to the Better Business Bureau with all of the information I had, and they contacted me saying there is an epidemic of illusive companies under one umbrella in Asia somewhere that they cannot locate. The phone numbers that are given are bogus. There is no visible name of any company.

Here is the scariest part. Once you authorize the cost of the product sample, you have given them permission to enter your bank account at any time and take whatever they want. They

## Simple Philosophy

Life is a big, beautiful piece of art every day. Life is beautiful and very special, every day is important. Life is unpredictable, we never know what is going to happen day by day.

Live life to the best and appreciate every day. Do good, respectful, happy things every day. We all sculpt our own life. We also have hope, belief to re-sculpt, rebuild, renew our life, from our mistakes we did today, yesterday, and in the past. Keep learning more about our beautiful gifts and talent that we are born with. Whatever we do, do our very best with a positive happy frame of mind every day, and success will always follow us in our lifetime.

One of our important missions in life is to reach out and help, be part of someone else's life. Now, we all can walk the same happy trail of our rich life together — our community. To me, simple philosophy is the true meaning of the word "rich." Rich with the life that God provides for all the human race to survive and be happy with. The land. The ocean. The rich survival of

our beautiful life in this beautiful earth.

Money is part of our life and society. But it's not everything in our life. Look at the leaders of our beautiful country. The are mentally ill with greed, selfishness, money and power, don't care about the welfare of most citizens in our country. These are the people who represent the true meaning of the words mentally ill. Think about it. We are richer than all of them. We live a very happy, simple life in our own beautiful paradise. We help and support each other.

Molokai, always remember our rich survival of our beautiful life is land, ocean. We must plant and farm the land. We must take good care of the ocean, keep it clean. It's the rich survival of our beautiful life.

Have a wonderful and a very pleasant day, every day, with a beautiful Molokai no ka heke smile.

*Saunao Liva*

## DHHL Consultation on Water and Planning

### DHHL News Release

On Aug. 24, Department of Hawaiian Home Lands (DHHL) will conduct a beneficiary consultation meeting to discuss proposed administrative rules for the DHHL Water Systems and DHHL Planning Systems. This is a follow-up to the two meetings held on July 25 on these very same subjects.

These meetings have been held statewide. DHHL wants to ensure that Molokai is provided every opportunity to comment on these proposed rules. The meeting will be held at 6 p.m. at the Kulana OIwi Halau. For information on the proposed rules and comments received already, please see the DHHL website.



DEPARTMENT OF HAWAIIAN HOME LANDS

Adoption of Chapter 10-4.1  
Hawaii Administrative Rules

[ ]

1. Chapter 10-4.1, Hawaii Administrative Rules, entitled "Management of Water Systems", is adopted to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4.1

MANAGEMENT OF WATER SYSTEMS

Subchapter 1 General Provisions

§10-4.1-1	Purpose
§10-4.1-2	Applicability
§10-4.1-3	Definitions
§10-4.1-4	General conditions for water service
§10-4.1-5	Water pressure conditions and elevation agreement
§10-4.1-6	Application for water service
§10-4.1-7	Installation of water service
§10-4.1-8	Responsibility for equipment
§10-4.1-9	Payment of bills and delinquency

§10-4.1-10	Discontinuance of service
§10-4.1-11	Restoration of water service
§10-4.1-12	Meter test and adjustment of bill
§10-4.1-13	Underground leak adjustment
§10-4.1-14	Water charge adjustment
§10-4.1-15	Obstructed meter fine
§10-4.1-16	Tampering prohibited
§10-4.1-17	Accessing the consumer's premises
§10-4.1-18	Cross-connection control and backflow prevention
§10-4.1-19	Interruption of water supply
§10-4.1-20	Meter disconnection or reconnection
§10-4.1-21	Change in service administration fee
§10-4.1-22	Department fire hydrants and fire protection
§10-4.1-23	Water spigots
§10-4.1-24	Consumer's sale of water
§10-4.1-25	Electrical grounding
§10-4.1-26	Unscheduled meter replacement
§10-4.1-27	Compensation
§§10-4.1-28 to 10-4.1-30	(Reserved)

#### Subchapter 2 Hawaiian Home Lands Public Water Systems

§10-4.1-31	Water service rates
§10-4.1-32	Meter reading and rendering of bills
§10-4.1-33	Conservation and emergency measures
§§10-4.1-34 to 10-4.1-40	(Reserved)

#### Subchapter 3 Puukapu Non-Potable Water System

§10-4.1-41	General conditions
§10-4.1-42	Monthly maintenance fee
§10-4.1-43	Conservation measures and emergency conditions
§10-4.1-44	Unauthorized drawing of water

## SUBCHAPTER 1

## GENERAL PROVISIONS

**§10-4.1-1 Purpose.** The purpose of this subchapter is to promote the health, safety, and general welfare of the community by providing standards for governing water service provided by water systems in the exclusive control of the department. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-2 Applicability.** This subchapter shall apply to all water systems under the exclusive control of the department. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-3 Definitions.** As used in this chapter, unless plainly evident from the context that a different meaning is intended:

"Applicant" means any person who submits an application for water service or additional water service.

"Application" means a written request for water service or additional water service.

"Consumer" means the person, firm, corporation, association, or governmental entity, whether owner or tenant, whose name appears on the records of the department as the party responsible and liable for receiving water service from the department.

"Consumer's water system" means the pipes and plumbing extending from the water service connection.

"Cross-connection" means any actual or potential connection between the public water supply and a source of contamination or pollution.

"County" means the county where the department water service is located.

"Department of health" means the State of Hawaii department of health.

"Governmental entity" means any State of Hawaii or county department or office.

"Main" or "main pipe" means the department's supply or distribution pipe from which service connections are made.

"Non-potable water" means water that has not been certified by the department of health as suitable for cooking, drinking, and bathing purposes.

"Potable water" means water that has been certified by the department of health as suitable for cooking, drinking, and bathing purposes.

"Premises" means a parcel of real property and any structures thereon which have water service, will require water service, or requires additional water service.

"Public water system" means a water system which provides water for human consumption as provided by the department of health in title 11, Hawaii administrative rules chapter 20.

"Service lateral" means the main tap and complete installation of pipes, fittings, and appurtenances from the main to and including the meter.

"Water meter" or "meter" means a device that measures the volume of water delivered to any premises.

"Water service" means the delivery of water to any premises.

"Water spigot" means a water spigot or standpipe that is maintained by the department and connected to a public water system for lessee access to potable water.

"Water system" means a network of pipelines, main taps, storage, facilities, pumps, shut-off valve, and other appurtenances, wells, water filtration treatment facilities, or other sources which furnishes a supply of water to the premises. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-4 General conditions for water service.**

(a) Any applicant whose premises is located within service limits established by the department and adjacent to a distribution main where pressure conditions permit may obtain water service, provided that:

- (1) The existing water system servicing the area has adequate physical and legal capacity, as determined by the department, for such intended use without impairing service to existing consumers or future lessees;
- (2) All applicable fees and deposits for such service have been paid in full;
- (3) The applicant is not delinquent on other services in his or her name; and,
- (4) The applicant agrees to abide by the rules, regulations, and policies of the department relating to water service.

(b) Water service shall be restricted to the property for which the application is made.

(c) All water service supplied by the department shall be measured by means of meters furnished by the department and only the department is authorized to install water meters on department water systems.

(d) The department shall determine the final location and size of the service lateral. Service laterals shall be operated and maintained by the department.

(e) The department shall only be responsible for the operation and maintenance of water systems in its exclusive control, which may include contracted operations and maintenance services.

[Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-5 Water pressure conditions and elevation agreement.** (a) The department shall exercise due diligence and reasonable care to maintain adequate pressure in its water mains but accepts no responsibility to maintain such pressure.

(b) Where a premise is situated at such an elevation that it cannot be assured of a dependable supply or of adequate service from the department's distribution system, the consumer, in consideration of water service and connection to the department's system:

- (1) Shall agree to accept such service as the department is able to render from its existing facilities;
- (2) Shall agree to install, if necessary, and maintain at the consumer's expense a tank and pump, with an air gap between the consumer's supply pipe and the department's system, of suitable design and of sufficient capacity to furnish an adequate supply of water; and
- (3) Shall execute a written release in favor of the department for all claims due to any inadequacy in the department's system or inadequacy of water supply to the premise including but not limited to lack of fire department services in the event of a fire.

(c) When the pressure of the department's supply fluctuates or is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing, or relief valves, or both. The department shall not be liable for damage due to pressure conditions or for damages caused by or arising from the failure of, or the defective condition of such pressure regulators or relief valves, or for damage that may occur through the installation, maintenance, or use of such equipment. [Eff ]

(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-6 Application for water service. (a)**

Each prospective consumer shall complete a standard application form for the water service desired. Prospective consumers shall assume responsibility for

the payment of future charges for service at the location identified on the application before water is turned on for any use. The department shall inform the applicant in writing that the application is complete and accepted or if the application is deficient, what specific information is necessary to complete the application. The department shall assign an account number when the application is complete. The person, entity, or organization executing the application form shall be liable for the payment of all charges for water service at the designated location including a meter charge with each billing cycle as provided in section 10-4.1-31 and 10-4.1-42.

(b) Charges for service shall begin when the service lateral and the consumer's water system are physically joined and water is made available to the consumer, and will continue until:

- (1) The consumer makes a written request to discontinue service;
- (2) A judicial order to discontinue service is issued; or
- (3) The department discontinues service for failure of the consumer to comply with the provisions of this subchapter.

(d) When an application for water service is made by a former consumer who was responsible for and failed to pay all bills for water service previously rendered, regardless of location or time incurred, the department may refuse to furnish service to the premises of the applicant until the outstanding bills are paid.

(e) A consumer taking possession of the premises and using water without having made application for the transfer of water service shall be held liable for the water delivered from the date of the last recorded meter reading. If application for transfer is not made, and accumulated bills for water service are not paid upon presentation, the water service may be discontinued ten business days after written notice is sent to the consumer. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-7 Installation of water service. (a)**

When an application for water service has been approved, water service shall be installed as approved. There shall be one meter for each service, unless the department, because of operating necessity, installs a combination meter, or two or more meters in parallel. All meters shall be tested for accuracy before installation. All meters shall be installed along the property boundary, unless, due to operating necessity or other extenuating situations, the department approves installation of the meter elsewhere.

(b) It is the consumer's responsibility and expense to install their supply pipe and water system, to connect such system to the department's service lateral, and to install an approved backflow prevention device on the consumer's system on the downstream side of the meter. The department may provide backflow prevention devices to lessees as a means to protect the public water system, however the cost of installation shall be paid by the consumer within thirty days of installation. The consumer's water system shall, at all times, remain the sole property of the consumer, who shall be responsible for its maintenance, repair, and replacement.

(c) A readily accessible shutoff valve controlling all outlets shall be installed by the department on the consumer's water service supply pipe at a location to be determined by the department. In addition, the department may install a shutoff valve before the meter for the use of employees of the department. If a replacement of the shutoff valve is necessary, it shall be installed by the department and paid for by the consumer.

(d) The department may make the connection to the consumer's water service supply pipe once the consumer installs the supply pipe at the approved location.

(e) Only the department may connect or disconnect the water service to or from the department's main.



(f) When the proper size of service lateral for any premises has been determined and the department has made installation at the location specified by the consumer, the department has fulfilled its obligations insofar as the size of the service and the location thereof are concerned. If the consumer desires a change in size of the service lateral or a change in the location thereof, the consumer shall bear all costs of such change.

(g) Whenever a check valve or pressure reducing valve is installed on the consumer's cold water supply line between the meter and the hot water storage tank or heater, there shall be installed on the consumer's hot water distribution system a suitable pressure relief valve.

(h) Once installed, any costs associated with the repair or replacement of damaged or missing meters and services will be charged to the consumer. Such costs include but are not limited to gaskets, meter boxes, lid inserts, meters, pressure regulator valves, related labor, equipment, vehicles, and materials. This does not include replacement of meters that are operating outside of tolerances. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-8 Responsibility for equipment.** (a) At the consumer's own risk and expense, the consumer shall furnish, install, and keep in good, safe, and operating condition all equipment that may be required for receiving, controlling, applying, and utilizing water. The department shall not be responsible for any loss or damage caused by the improper installation of such equipment, or the negligence, want of proper care, or wrongful act of the consumer.

(b) Water service may be discontinued to any consumer whose water system includes plumbing fixtures or water containers in any form, or of any use, which in the opinion of the department may contaminate the department's water supply or may endanger the public

water supply from a public health standpoint. Any such discontinuation of service shall continue until such dangerous fixtures or uses have been corrected, removed or discontinued, and the department is assured that the dangerous fixtures or uses will not be reinstalled or resumed.

(c) The department shall not be responsible for damage to property caused by spigots, faucets, valves, and other equipment that may be open when water is turned on at the meter either when turned on originally or when turned on after temporary shutdown.

(d) All service laterals are the property of the department and shall be operated and maintained by the department.

(e) All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or any other purpose, shall continue to be the property of the department, and the department may access the consumer's premises without consent whenever necessary to inspect, maintain, repair, replace, or remove the equipment. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the same.

(f) Any cost to repair damaged water mains, service laterals, valves, fire hydrants, or other property of the department shall be paid for by the party responsible for the damage. The consumer shall be liable for any damage to a meter or other equipment or property of contractors, licensees or permittees, on the consumer's premises, and the department shall be promptly reimbursed by the consumer for any such damage upon presentation of the bill thereof. In the event settlement for such damage is not made within thirty days, the department may discontinue water service to the premises according to 10-4.1-10.

(g) When a meter is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay for all costs required to repair the meter. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-9 Payment of bills and delinquency.** (a)

All bills shall be due and payable within twenty-one days from the bill date. Payment shall be made at the office of the department or, at the department's option, to duly authorized collectors of the department. Any bill not paid within thirty days from the bill date, shall be considered delinquent and the water service shall be subject to shut-off. There shall be a service charge for payments made by check or electronic debit which have been dishonored for any reason. The service charge shall be as set in section 40-35.5, HRS. On accounts where payments have been dishonored more than four times in one calendar year, the department may require payment on the account to be made by cash, by certified or cashier's check or by money order, and may require a deposit equal to the highest amount billed in the last twelve months to be held.

(b) An account is delinquent when it is not paid in full within thirty days after the bill date. A late payment charge shall be assessed at an amount of one per cent for each month or fraction thereof against the delinquent balance. When a delinquent account remains unpaid twenty-one days after the second regular billing, water service for the account may be discontinued.

(c) The department may enter into a payment agreement with a consumer to facilitate the payment of delinquent water charges. The terms of a payment agreement between the department and a lessee-consumer may include alternative payment methods and shall not exceed the term of five years. Current charges shall continue to be paid when due. The agreement shall be signed by the department and the consumer, and breach of such an agreement by the consumer shall result in further collection efforts including disconnection.

(1) Alternative payment methods are goods that are grown, caught, or produced by the consumer and donated to the homestead community on island or services provided by

the consumer free of charge to the department. Goods shall be dropped off at the district office at a time determined by the district office supervisor for distribution among beneficiaries. Services shall be provided to the department as determined by the district office supervisor.

- (2) The value of the alternative payment methods rendered shall not exceed five per cent of the delinquent amount. All terms regarding alternative payment methods, including the goods or services or both to be donated, valuation, and dates and times of service or drop off shall be included in the payment agreement. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-10 Discontinuation of service.** (a) The department may refuse or discontinue water service for any of the following reasons:

- (1) Non-payment of bills or fees. If the consumer fails to pay any sums due, the department may discontinue service five business days after written notice is given to the consumer.
- (2) Noncompliance with rules and regulations. If the consumer fails to comply with any of the department's rules and regulations and noncompliance is not corrected within five days after written notice is given to the consumer, the department may discontinue service.
- (3) Unauthorized use of water. Without notice, the department may refuse or discontinue water service to any premises or consumer to protect itself against fraud, abuse or unauthorized use of water. For unauthorized use of water, a surcharge may be assessed as provided in section 10-4.1-31 and 10-4.1-42.

- (4) Wasteful use of water. Where negligent or wasteful use of water exists on any premises and such conditions are not corrected within five business days after written notice is given to the consumer, the department may discontinue service.
- (5) Service detrimental to others. The department may refuse to furnish water and may discontinue the service to any premises where the demands of the consumer will result in inadequate service to others.

(b) Where discontinuation of water service for any of the above reasons is proposed, the department shall, prior to the proposed shut off, give the consumer written notice at least five business days before shut off. The notice shall specify the reasons for the proposed shut off as well as inform the consumer of the right to dispute the shut off by making appropriate request to the department at the address or phone number provided on the notice. The notice shall further inform the consumer that once water service has been discontinued, water service may be restored but only in accordance with section 10-4.1-11.

(c) If the consumer wishes to dispute the shut off, the consumer shall within five business days from the date of the notice of shut off, request a billing conference. Once requested, the billing conference shall be scheduled at the earliest reasonable opportunity for the consumer and in no case more than ten days from the request and the consumer shall be given the option of having the conference over the phone or in person with a district office supervisor from another district office that manages a department water system. The district office supervisor conducting the billing conference shall not have previously been involved in the case, shall objectively review the basis for water shut off, shall be subject to all state ethics rules on conflicts of interest, and shall exercise impartial

judgment in deciding the merits of the consumer's request for reinstatement of water service.

- (1) At the billing conference, the consumer shall have the right to submit evidence, present and cross examine witnesses, and bring a representative to aid in presenting the case. The consumer shall have the right to see the department's records concerning the account and shall have the right to reasonable explanation for any matter concerning the proposed discontinuance of service. The district office supervisor conducting the billing conference shall be empowered to correct any errors in billing and to take whatever remedial action is necessary if the consumer presents evidence that would demonstrate by a preponderance of the evidence that the consumer is not responsible for conditions leading to the department's decision to shut off service other than non-payment of the water bill. The district office supervisor conducting the billing conference shall make a written decision within three working days of the conference.
- (2) If the consumer is dissatisfied with the decision from the billing conference, the consumer shall have the right within five business days of receipt of the written decision to appeal the matter to the chairman or the chairman's designee. The amount due shall be paid into an escrow trust account after the billing conference with the district office supervisor and shall not be postponed pending the appeal. The chairman or the chairman's designee shall review the consumer's written appeal and the billing conference record and decision for compelling factual, legal, or procedural errors, or any combination

thereof, and render a final written decision affirming the district office supervisor's written decision or remanding the matter to the district office supervisor for further handling pursuant to the chairman's or the chairman's designee's written decision and direction on appeal. The decision of the chairman shall be final.

(d) A charge of \$150 shall be added to each account in which service is discontinued if the consumer or other party cuts the lock and turns the meter on without prior approval of the department. The meter shall be removed and the water service capped off. Water service shall not be reconnected until the consumer has paid the past due water charges, water disconnection charges, and the meter disconnection and reconnection charges.

(e) An account that remains disconnected or suspended because of delinquent payment shall continue to accrue monthly base rate service charges as well as late fees.

(f) A consumer about to vacate any premises supplied with water by the department shall give written notice of their intention to vacate, specifying the date service should be discontinued. If the consumer fails to give such notice, the consumer shall be responsible for all water service furnished to such premises until the department has received a notice of discontinuance. Before buildings are demolished, the department shall be notified so the water service can be shut off.

(g) The department may remove a meter for non-use after one year of non-use. A consumer whose meter is removed for non-use forfeits all previous fees and reapplication shall be treated as a new service connection with applicable costs. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-11 Restoration of water service.** Water service shall not be resumed until all of the consumer's delinquent accounts, including all charges, fees, and reinstallation costs, including one hour of labor, and materials, transportation, and any other overhead costs for the meter reinstallation and reactivation, have been paid in full or the consumer has entered into and signed an approved payment plan.  
[Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-12 Meter test and adjustment of bill.**

(a) Any consumer who has a reasonable doubt of the accuracy of the meter serving his or her premises may request a test of the meter. The consumer may request to be notified as to the time of the test and may witness the test. No charge shall be made for meter tests unless such tests are requested more often than once every twelve months.

(b) If, as a result of the test, the meter is found to register more than five percent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption, for a period not exceeding six months, unless it can be proven that the error was due to some cause, the date of which can be fixed, then the overcharge shall be computed back to, but not beyond, such date.

(c) The consumer has sole control of the water delivered beyond the department's meter and the department is not responsible for the maintenance and repairs to pipes and fixtures beyond the meter.

(d) If the meter fails to register due to any cause except the non-use of water, an average bill may be rendered. Such average bill will be subject to equitable adjustment taking into account all factors before, during, and after the period of said bill.

[Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)



**§10-4.1-13 Underground leak adjustment.** (a) If a consumer experiences a leak within their water line, the consumer may request the department provide a leak adjustment for excessive bills provided a leak adjustment was not granted to the consumer within the twelve month period prior to the request and the leak was reported to the department and repaired within thirty days of detection. The adjustment shall be one-half of the excess consumption over a normal bill.

(b) No additional refunds shall be given.

(c) If there is not an existing valve on the consumer side of the meter, there shall be no credit processed on the account until a valve is installed.

(d) Department personnel shall be dispatched to inspect the consumer's meter to verify the leak has been repaired. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-14 Water charge adjustment.** Errors in billing or collection shall be corrected in a timely manner by the department. Resulting credits on accounts or refunds shall be made as expeditiously as possible. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-15 Obstructed meter fine.** (a) The department shall charge the consumer an obstructed meter fine of twenty-five dollars per billing period when access to the water meter is significantly obstructed by landscaping or other barriers and the meter cannot be read. This fine shall be applied only after the property owner has been notified, via a door hanger, that the obstruction exists and that the problem must be corrected by the time of the next meter reading.

(b) If the consumer fails to remove the obstruction, the department may remove the obstruction

and bill the consumer twenty-five dollars for the cost of remediation. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-16 Tampering prohibited.** (a) Any person found tampering with service laterals, water meters, the valve, or stopcock before the meter shall be guilty of a misdemeanor, pursuant to section 701-107(3), HRS, and shall be liable for all costs associated with any repair to the service lateral, water meter, valve, or stopcock.

(b) A late payment charge shall be assessed at the rate of one per cent for each month or fraction thereof against costs associated with repairs for tampering that go unpaid for thirty days following the date of billing. After sixty days, the delinquency shall be reported to the commission and the amount due turned over to collections. Further legal action may be taken with commission approval.

[Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-17 Accessing the consumer's premises.** Any properly identified officer or employee of the department shall have the right of ingress to and egress from the consumer's premises at any reasonable hour, and at any hour during an emergency, for any purpose reasonably connected to the protection of the public drinking water system and furnishing of water to said premises and the exercise of all rights secured to it by law or this subchapter. If the officer or employee is prevented from carrying out the duties, the department may shut off water service to said premises five business days after written notice

is given to the consumer. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-18 Cross-connection control and backflow prevention.** (a) No cross-connections shall be made without the written consent of the department.

(b) It is unlawful for any person to make, maintain, or cause temporarily or permanently, any cross-connection that has a potential for backflow between their plumbing pipes or water fixtures and the department's water system. Existing cross-connections between the department's water system and any auxiliary water supply shall be eliminated or protected by means of an approved backflow prevention assembly. Cross-connection control and backflow prevention requirements for facilities and premises shall be in accordance to this subchapter.

(c) The department requires installation of an approved backflow prevention assembly on the consumer's side of the meter at the consumer's expense before service will be provided. The department may provide for the installation of an approved backflow prevention assembly to homestead lots in the service area.

(d) If uninterrupted water service is necessary, an additional backflow prevention assembly may be installed in an approved manner to ensure continued water service whenever inspection, testing and repair procedures is being performed on any one of these assemblies.

(e) The backflow prevention assembly installed in accordance with these rules shall, unless otherwise approved by the department in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible, and with adequate working room for inspections, testing, and repairing.

(f) All backflow prevention devices shall be tested at least once annually and as often as required

by the department where successive tests indicate repeated failure. Repairs, replacement of parts, or any other maintenance shall be made whenever deemed necessary by the department and at the expense of the consumer. The annual test shall be the responsibility of the consumer and shall be made in accordance with methods approved by the department. Upon request by the department, the consumer shall present an affidavit certifying that there are no cross-connections of the type prohibited under this rule on the premises or describing in detail all nonconforming connections or installations.

(g) Records of tests, repairs, parts, and inspections shall be made on forms prescribed by the department and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in termination of service or the department making the tests, repairing and replacing any equipment, and charging the cost to the consumer.

(h) When a backflow prevention assembly fails in service, the consumer shall notify the department. Repairs are the responsibility of the consumer. A certified general tester shall perform the testing. Backflow prevention assembly test forms shall be completed and sent to the department for confirmation that the device has been properly repaired and functions as required. Inspection and approval by the department shall be conducted before the device is put back into operation.

(i) When the department encounters water uses that represent a clear and immediate hazard to the department's water supply that cannot be immediately abated, the department shall terminate water service at the premises immediately. Written notice shall be given to the consumer after water service termination.

(j) For other situations requiring backflow protection where there is not apparent and immediate hazard to the water supply, the department may terminate water service to a consumer's premises after proper notification has been sent.

(k) Conditions relative to the installation and maintenance of cross-connection control and backflow prevention referred to in this section shall be subject to change to meet changing requirements of federal, state, and county laws, ordinances, and rules. [Eff ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-19 Interruption of water supply. (a)**

While the department shall exercise reasonable diligence and care to deliver an adequate supply of potable water under reasonable pressure, the department shall not be financially liable for any direct or consequential damages resulting from water supply interruption, shortage, insufficiency of supply, inadequate or excessive water pressure, leakage on the consumer's premises, or temporary colored and turbid water quality conditions caused by emergency repair of water mains. The department further disclaims all warranties, expressed or implied, and reserves the right to shut off water mains for repairs, extensions, or alterations, and to terminate water service as provided herein for conservation measures, during emergency conditions, and for other reasons deemed by the department to be necessary and proper without notice.

(b) The department may shut off water from the mains without notice for making repairs, extensions, alterations, or for other reason. Consumers depending upon a continuous supply of water shall provide for their own emergency water storage and any check valves or other devices necessary for the protection of plumbing or fixtures against failure of the pressure or supply of water in the department's mains. Repairs or improvements shall be completed as rapidly as practicable. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-20 Meter disconnection or reconnection fees.** (a) The department shall charge a fee equal to one hour of labor and overhead costs to those consumers requesting disconnection or reconnection of a water meter when not related to an account delinquency. The department shall apply such charges to the consumer's account.

(b) Upon request and payment of a turn off fee the department shall turn off the water at the meter during regular business hours. Upon request and payment of a turn on fee, the department shall turn on the water at the meter during regular business hours. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-21 Change in service administration fee.** (a) The department shall levy a charge when a change in service status requires administrative action or a special meter reading by department personnel.

(b) When a change in account status requires a special water meter reading by the department a fee equal to one hour of labor and costs shall be charged to the consumer. When a change in account status does not require a special water meter reading by the department the standard change of owner fee shall be charged to the consumer. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-22 Department fire hydrants and fire protection.** (a) Any use of a fire hydrant, fire protection reservoir, or the taking of water from one for purposes other than fire protection by persons other than authorized employees of the fire department or of the department is prohibited without a written permit from the department. The fire department shall have the prior right to use any hydrant at any time and shall have the authority to remove peremptorily, if necessary in case of emergency, any connection

approved by the department. The fire department shall notify the department when use of water during non-fire events, including training, is contemplated. Hydrant main line valves shall not be used to control flows. The fire department shall coordinate with the department during a fire emergency to prevent damage to the water system.

(b) The department may provide water to a governmental entity provided the governmental entity first submits a written hydrant permit application and agrees to all the terms and conditions contained therein including but not limited to notifying the department when any use of water is contemplated, paying a security deposit for a meter assembly and backflow prevention device and utilizing the meter assembly and backflow prevention device. Any failure of the permittee to properly utilize the meter assembly to record water taken through the fire hydrant shall constitute a violation of the hydrant permit and shall immediately terminate the hydrant permit and the permittee's right to draw water. Hydrant permits shall not be issued for a period longer than six months. Renewal shall be allowed on a case by case basis.

(c) Any damage to fire hydrants, and any consequent resulting loss or damage to property, or any injury to persons arising from or out of the damage to fire hydrants shall be paid for by the person or legal entity responsible for the damage. All repairs for any damage to fire hydrants shall be paid by the person or entity responsible for the damage.

(d) Any persons or entities, or both, found to have used, obstructed, or tampered with a department fire hydrant without the express written consent of department shall be assessed fees and charges including the estimated amount of the water taken, water discharged by the department to clear the mains, labor and materials, and administrative costs. Each invoice not paid within ten calendar days of date thereon will accrue a late charge equal to five per cent of the unpaid balance at the time it becomes

delinquent and an additional five per cent for each month delinquent thereafter.

(e) The department shall, if it approves the request for a change in location of a hydrant, change such location; provided, that all labor, material, equipment, and all other costs and charges are paid in advance by the consumer. [Eff ]

(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-23 Water spigots.** (a) The department may provide water spigots connected to public water systems. The water spigot shall be labeled with the appropriate public water system number as issued by the department of health. Each water spigot, and water spigot area, shall be maintained by the department in a manner suitable for lessee access to potable water.

(b) Each spigot shall be metered and the commission shall set the maximum amount that may be drawn from each spigot during a single billing cycle.

(c) The department shall manage access to the spigot by reasonable means.

(d) The department may restrict spigot use during time of water restrictions.

(e) The department guarantees potable water only to the point of withdrawal from the public water system. [Eff ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-24 Consumer's sale of water.** Subject to civil or criminal prosecution or both, unless specifically agreed upon by the commission, the consumer shall not sell any water received or purchased from the department. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)



**§10-4.1-25 Electrical grounding. (a)**

Protective grounding of alternating current secondary distribution circuits made to the water system shall conform in all details with the national electrical code of the national board of fire underwriters and with the county building code where the water system is located.

(b) The department shall not be responsible for any damage or injury caused by any electrical grounding.

(c) No grounding of direct current to any portion of the water system shall be permitted.

(d) No grounding other than as provided in this section shall be made to any portion of the water system without the department's written approval.

(e) The department shall not be responsible for the maintaining of a continuous metallic water piping system and reserves the right, without liability to public utility electric companies, electric consumers, or any other agency, consumer, or individual, to create a physical break in its service laterals and mains, or to incorporate non-metallic pipes and appurtenances in its system and to make joints of any materials, without regard to their efficiency as conductors of electricity and without giving notice.

[Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-26 Unscheduled meter replacement.**

If a consumer requests a meter replacement prior to the scheduled routine replacement, the consumer will be billed for the service call plus the current cost of the meter. As is the case with all new meters, upon installation the meter becomes the property of the department. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-27 Compensation.** Employees of the department are strictly forbidden to demand or accept personal compensation for services rendered.  
[Eff \_\_\_\_\_] (Auth: HHC Act §222) (Imp: HHC Act §221)

§§10-4.1-28 to 10-4.1-30 (Reserved)

## SUBCHAPTER 2

## HAWAIIAN HOME LANDS PUBLIC WATER SYSTEMS

**§10-4.1-31 Water service rates.** (a) The department shall conduct a cost of service study annually, based upon enterprise accounting, and a water service rates analysis at least every three years.

(b) Water service rates for each department owned public water system shall be established by the commission and attached to this chapter. Effective July 1, 2019, once each fiscal year the commission may adjust base water service charges by no more than ten per cent per thousand gallons of water delivered. Effective upon approval by the commission, water service rates are set as follows:

- (1) The table entitled, "Hoolehewa Water System Service Rates Approved on April 17, 2018", dated April 17, 2018, attached as Exhibit "A" at the end of this chapter and made part of this chapter.
- (2) The table entitled, "Kawaihae Water System Service Rates Approved on May 14, 2018", dated May 14, 2018, attached as Exhibit "B" at the end of this chapter and made part of this chapter.
- (3) The table entitled, "Anahola Water System

Service Rates Approved on August 21, 2018", dated August 21, 2018, attached as Exhibit "C" at the end of this chapter and made part of this chapter. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-32 Meter reading and rendering of bills.**

(a) Meter readings and billings shall be on at least a bi-monthly basis, except for closing of accounts for special conditions with the approval of the department.

(b) Closing bills for a period shorter than the regular billing period shall be determined by the sum of the charges per water meter reading and prorating of the monthly service charge. If a meter cannot be read, an estimated bill shall be rendered following acceptable practices using the reading, where available, of the same time the previous year.

(c) Bills for metered water service shall be on a per meter basis. If the consumer has more than one metered installation on the premises, each meter shall be billed separately. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-33 Conservation and emergency measures.**

(a) Whenever, in the department's opinion, special conservation measures are advisable to forestall water shortage or an emergency, the department may restrict the use of water by any means or method of control. The department shall also have the right to limit the quantity of water taken from any of its facilities. In determining the priorities in restricting the use of water, the health and safety of the public shall be given first consideration over other uses.

(b) When the department's water supply usage exceeds the rate of resupply, the commission may declare a water shortage or emergency and further

restrict the use of water by any means or method of control.

(c) The department shall notify consumers of emergency conditions by written communication through mailing, electronic posting, or the newspaper, or combination thereof. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

§§10-4.1-34 to 10-4.1-40 (Reserved)

### SUBCHAPTER 3

#### PUUKAPU NON-POTABLE WATER SYSTEM

**§10-4.1-41 General conditions.** (a) The water supplied by the Puukapu non-potable water system is intended to be used only for pastoral uses consistent with pastoral leases. Consumers may not use water for any other purpose except with the express written consent of the department. The department makes no guarantee, warranty, or representation, expressed or implied, as to the quality, quantity, flow rate, condition, or fitness of the water supplied for any use or purpose.

(b) The department shall deliver water to the lot of each consumer at the ground elevation and at the outlet site as the department may establish upon each consumer's land convenient with the operation of the department's irrigation system, and it shall be the responsibility of each consumer to provide for the distribution of water upon the consumer's lot by the consumer's own method. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-42 Monthly maintenance fee.** (a) The lease shall provide service conditions and for the assessment of the monthly maintenance fee set as follows: the table entitled, "Puukapu Maintenance Fee" Approved on May 19, 2014 and Extended on May 15, 2018", dated May 15, 2018, attached as Exhibit "D" at the end of this chapter and made part of this chapter. [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-43 Conservation measures and emergency conditions.** (a) Whenever, in the department's opinion, special conservation measures are deemed necessary to forestall a water shortage and a consequent emergency, the department may restrict or ration the use of water by any method or means of control. Livestock watering consumers may be required to install an automatic water flow control device to prevent waste or continued overflow from livestock drinking troughs. Each device shall be approved by the department prior to installation and shall be tested periodically to determine its functionality.

(b) The department reserves the right in times of declared emergency to allow the use of water for emergency purposes. Charges for the water used shall be established by the commission based on the nature of the emergency and attendant circumstances.

(c) During periods of special conservation measures, the department shall develop notices and criteria for the manner in which water will be delivered, restricted, and allocated for the duration for the emergency. Violations of the restrictions or allocations may result in the discontinuance of service, additional water toll surcharges, or the removal of the water connection.

(d) Upon declaration of emergency conditions and implementation of mandatory conservation measures (i.e., ten per cent, twenty per cent, or thirty per cent cutbacks), consumers exceeding the level of

mandatory cutback shall be assessed a surcharge as established by the commission. [Eff ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-44 Unauthorized drawing of water.** (a)  
No person or entity shall be permitted to draw water from any part of the system without the written consent of the department. No approval shall be granted in cases where, in the opinion of the department, the drawing of water may adversely affect the water service extended by the department to lessees.

(b) Approvals given by the department under this section are subject to revocation upon thirty days written notice." [Eff ] (Auth: HHC Act §222) (Imp: HHC Act §221)

2. The adoption of chapter 10-4.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

\_\_\_\_\_  
WILLIAM J. AILA, JR., Chairman  
Hawaiian Homes Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

HOOLEHUA WATER SYSTEM SERVICE RATES  
APPROVED ON APRIL 17, 2018

**Lessee Service Rates:**

Lessee water service delivery (usage) tiers:

	<b>Gallons Bi-Monthly</b>
Tier 1	0 - 10,000
Tier 2	10,001 - 25,000
Tier 3	Over 25,000

Residential lessee meter service (base) fees:

<b>Meter size (inches) Bi-Monthly</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
5/8"	\$6.21	\$6.82	\$7.43	\$8.04	\$8.65	\$9.26	\$9.87	\$10.48	\$11.09	\$11.70
3/4"	\$7.76	\$8.53	\$9.29	\$10.05	\$10.82	\$11.58	\$12.34	\$13.10	\$13.87	\$14.63
1"	\$12.75	\$14.01	\$15.26	\$16.51	\$17.77	\$19.02	\$20.27	\$21.53	\$22.78	\$24.04
1 1/2"	\$24.40	\$26.80	\$29.19	\$31.59	\$33.99	\$36.39	\$38.79	\$41.18	\$43.58	\$45.98
2"	\$33.27	\$36.54	\$39.81	\$43.08	\$46.35	\$49.62	\$52.89	\$56.16	\$59.43	\$62.70
3"	\$66.54	\$73.08	\$79.62	\$86.16	\$92.70	\$99.24	\$105.78	\$112.32	\$118.86	\$125.40
4"	\$121.99	\$133.98	\$145.97	\$157.96	\$169.95	\$181.94	\$193.93	\$205.92	\$217.91	\$229.90
6"	\$216.26	\$237.51	\$258.77	\$280.02	\$301.28	\$322.53	\$343.79	\$365.04	\$386.30	\$407.55
8"	\$332.70	\$365.40	\$398.10	\$430.80	\$463.50	\$496.20	\$528.90	\$561.60	\$594.30	\$627.00

Residential lessee water service delivery (usage) fees:

<b>Per 1,000 gallons</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
Tier 1	\$1.53	\$1.65	\$1.76	\$1.87	\$1.99	\$2.10	\$2.22	\$2.33	\$2.44	\$2.56
Tier 2	\$2.06	\$2.22	\$2.37	\$2.52	\$2.67	\$2.83	\$2.98	\$3.13	\$3.29	\$3.44
Tier 3	\$2.43	\$2.61	\$2.79	\$2.97	\$3.15	\$3.33	\$3.51	\$3.69	\$3.87	\$4.05

(CONTINUED)

Agriculture lessee meter service (base) fees:

<b>Meter size (inches) Bi-Monthly</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
5/8"	\$6.21	\$6.82	\$7.43	\$8.04	\$8.65	\$9.26	\$9.87	\$10.48	\$11.09	\$11.70
3/4"	\$7.76	\$8.53	\$9.29	\$10.05	\$10.82	\$11.58	\$12.34	\$13.10	\$13.87	\$14.63
1"	\$12.75	\$14.01	\$15.26	\$16.51	\$17.77	\$19.02	\$20.27	\$21.53	\$22.78	\$24.04
1 1/2"	\$24.40	\$26.80	\$29.19	\$31.59	\$33.99	\$36.39	\$38.79	\$41.18	\$43.58	\$45.98
2"	\$33.27	\$36.54	\$39.81	\$43.08	\$46.35	\$49.62	\$52.89	\$56.16	\$59.43	\$62.70
3"	\$66.54	\$73.08	\$79.62	\$86.16	\$92.70	\$99.24	\$105.78	\$112.32	\$118.86	\$125.40
4"	\$121.99	\$133.98	\$145.97	\$157.96	\$169.95	\$181.94	\$193.93	\$205.92	\$217.91	\$229.90
6"	\$216.26	\$237.51	\$258.77	\$280.02	\$301.28	\$322.53	\$343.79	\$365.04	\$386.30	\$407.55
8"	\$332.70	\$365.40	\$398.10	\$430.80	\$463.50	\$496.20	\$528.90	\$561.60	\$594.30	\$627.00

Agriculture lessee water service delivery (usage) fees:

<b>Per 1,000 gallons</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
Tier 1	\$1.53	\$1.65	\$1.76	\$1.87	\$1.99	\$2.10	\$2.22	\$2.33	\$2.44	\$2.56
Tier 2	\$2.06	\$2.22	\$2.37	\$2.52	\$2.67	\$2.83	\$2.98	\$3.13	\$3.29	\$3.44
Tier 3	\$0.82	\$0.88	\$0.94	\$1.00	\$1.06	\$1.12	\$1.19	\$1.25	\$1.31	\$1.37

(CONTINUED)



**Non-Beneficiary Service Rates:**

Non-Beneficiary water service delivery (usage) tiers:

	<b>Gallons Bi-Monthly</b>
Tier 1	0 – 10,000
Tier 2	10,001 – 30,000
Tier 3	Over 30,000

Non-Beneficiary commercial / non-agriculture meter service  
(base) fees:

<b>Meter size (inches) Bi-Monthly</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
5/8"	\$40.35	\$50.70	\$61.05	\$71.40	\$81.75	\$92.10	\$102.45	\$112.80	\$123.15	\$133.50
3/4"	\$59.18	\$74.36	\$89.54	\$104.72	\$119.90	\$135.08	\$150.26	\$165.44	\$180.62	\$195.80
1"	\$94.15	\$118.30	\$142.45	\$166.60	\$190.75	\$214.90	\$239.05	\$263.20	\$287.35	\$311.50
1 1/2"	\$182.92	\$229.84	\$276.76	\$323.68	\$370.60	\$417.52	\$464.44	\$511.36	\$558.28	\$605.20
2"	\$282.45	\$354.90	\$427.35	\$499.80	\$572.25	\$644.70	\$717.15	\$789.60	\$862.05	\$934.50
3"	\$524.55	\$659.10	\$793.65	\$928.20	\$1,062.75	\$1,197.30	\$1,331.85	\$1,466.40	\$1,600.95	\$1,735.50
4"	\$860.80	\$1,081.60	\$1,302.40	\$1,523.20	\$1,744.00	\$1,964.80	\$2,185.60	\$2,406.40	\$2,627.20	\$2,848.00
6"	\$1,708.15	\$2,146.30	\$2,584.45	\$3,022.60	\$3,460.75	\$3,898.90	\$4,337.05	\$4,775.20	\$5,213.35	\$5,651.50
8"	\$2,690.00	\$3,380.00	\$4,070.00	\$4,760.00	\$5,450.00	\$6,140.00	\$6,830.00	\$7,520.00	\$8,210.00	\$8,900.00

Non-Beneficiary commercial / non-agriculture water service  
delivery (usage) fees:

<b>Per 1,000 gallons</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
Tier 1	\$2.21	\$2.63	\$3.04	\$3.46	\$3.87	\$4.28	\$4.70	\$5.11	\$5.53	\$5.94
Tier 2	\$4.12	\$4.89	\$5.66	\$6.43	\$7.20	\$7.97	\$8.74	\$9.51	\$10.28	\$11.06
Tier 3	\$6.09	\$7.23	\$8.37	\$9.50	\$10.64	\$11.78	\$12.92	\$14.06	\$15.20	\$16.34

(CONTINUED)

Exhibit "A"  
April 17, 2018

Non-Beneficiary commercial / agriculture meter service (base)  
fees:

<b>Meter size (inches) Bi-Monthly</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
5/8"	\$40.35	\$50.70	\$61.05	\$71.40	\$81.75	\$92.10	\$102.45	\$112.80	\$123.15	\$133.50
3/4"	\$59.18	\$74.36	\$89.54	\$104.72	\$119.90	\$135.08	\$150.26	\$165.44	\$180.62	\$195.80
1"	\$94.15	\$118.30	\$142.45	\$166.60	\$190.75	\$214.90	\$239.05	\$263.20	\$287.35	\$311.50
1 1/2"	\$182.92	\$229.84	\$276.76	\$323.68	\$370.60	\$417.52	\$464.44	\$511.36	\$558.28	\$605.20
2"	\$282.45	\$354.90	\$427.35	\$499.80	\$572.25	\$644.70	\$717.15	\$789.60	\$862.05	\$934.50
3"	\$524.55	\$659.10	\$793.65	\$928.20	\$1,062.75	\$1,197.30	\$1,331.85	\$1,466.40	\$1,600.95	\$1,735.50
4"	\$860.80	\$1,081.60	\$1,302.40	\$1,523.20	\$1,744.00	\$1,964.80	\$2,185.60	\$2,406.40	\$2,627.20	\$2,848.00
6"	\$1,708.15	\$2,146.30	\$2,584.45	\$3,022.60	\$3,460.75	\$3,898.90	\$4,337.05	\$4,775.20	\$5,213.35	\$5,651.50
8"	\$2,690.00	\$3,380.00	\$4,070.00	\$4,760.00	\$5,450.00	\$6,140.00	\$6,830.00	\$7,520.00	\$8,210.00	\$8,900.00

Non-Beneficiary commercial / agriculture water service delivery  
(usage) fees:

<b>Per 1,000 gallons</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
Tier 1	\$2.21	\$2.63	\$3.04	\$3.46	\$3.87	\$4.28	\$4.70	\$5.11	\$5.53	\$5.94
Tier 2	\$4.12	\$4.89	\$5.66	\$6.43	\$7.20	\$7.97	\$8.74	\$9.51	\$10.28	\$11.06
Tier 3	\$6.09	\$7.23	\$8.37	\$9.50	\$10.64	\$11.78	\$12.92	\$14.06	\$15.20	\$16.34

(END Exhibit "A")

KAWAIHAE WATER SYSTEM SERVICE RATES  
APPROVED ON MAY 15, 2018

**Residential Lessee Service Rates:**

Residential lessee meter service (base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$49.07	\$63.37	\$77.70	\$92.06	\$106.46	\$120.90	\$135.37	\$149.88	\$164.42	\$179.01

Residential lessee service delivery (usage) tiers:

	Gallons Bi-Monthly
Tier 1	0 - 10,000
Tier 2	10,001 - 30,000
Tier 3	30,001 - 80,000
Tier 4	Over 80,000

Residential lessee service delivery (usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$3.67	\$4.73	\$5.81	\$6.88	\$7.95	\$9.03	\$10.11	\$11.20	\$12.28	\$13.37
Tier 2	\$4.92	\$6.35	\$7.79	\$9.23	\$10.68	\$12.12	\$13.58	\$15.03	\$16.49	\$17.95
Tier 3	\$6.89	\$8.90	\$10.92	\$12.94	\$14.96	\$16.99	\$19.02	\$21.06	\$23.10	\$25.15
Tier 4	\$8.30	\$10.73	\$13.15	\$15.58	\$18.02	\$20.46	\$22.91	\$25.37	\$27.83	\$30.30

(CONTINUED)

**Kailapa Community Association Service Rates:**

Kailapa Community Association meter service (base) fees:

<b>Meter size (inches) Bi-Monthly</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
5/8"	\$49.07	\$63.37	\$77.70	\$92.06	\$106.46	\$120.90	\$135.37	\$149.88	\$164.42	\$179.01

Kailapa Community Association water service delivery (usage)  
tier:

	<b>Gallons Bi-Monthly</b>
Tier 1	9,999,999

Kailapa Community Association water service delivery (usage)  
fees:

<b>Per 1,000 gallons</b>	<b>FY 19</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>
Tier 1	\$11.41	\$14.73	\$18.06	\$21.40	\$24.75	\$28.11	\$31.47	\$34.84	\$38.22	\$41.61

(END Exhibit "B")

ANAHOLA WATER SYSTEM SERVICE RATES  
APPROVED ON AUGUST 21, 2018

**Residential Lessee Service Rates:**

Residential lessee meter service (base) fees:

Meter size (inches)	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
5/8"	\$28.08	\$32.16	\$36.24	\$40.32	\$44.40	\$48.48	\$52.56	\$56.64	\$60.72	\$64.80
3/4"	\$37.44	\$42.88	\$48.32	\$53.76	\$59.20	\$64.64	\$70.08	\$75.52	\$80.96	\$86.40
1"	\$58.50	\$67.00	\$75.50	\$84.00	\$92.50	\$101.00	\$109.50	\$118.00	\$126.50	\$135.00
1 1/2"	\$105.30	\$120.60	\$135.90	\$151.20	\$166.50	\$181.80	\$197.10	\$212.40	\$227.70	\$243.00
2"	\$175.50	\$201.00	\$226.50	\$252.00	\$277.50	\$303.00	\$328.50	\$354.00	\$379.50	\$405.00
4"	\$514.80	\$589.60	\$664.40	\$739.20	\$814.00	\$888.80	\$963.60	\$1,038.40	\$1,113.20	\$1,188.00

Residential lessee water service delivery (usage) tiers:

METER SIZE	TIER 1	TIER 2	TIER 3
	Gallons Bi-monthly	Gallons Bi-monthly	Gallons Bi-monthly
5/8"	0 – 20,000	20,001 – 40,000	> 40,000
3/4"	0 – 70,000	70,001 – 140,000	> 140,000
1"	0 – 200,000	200,001 – 400,000	> 400,000
1 1/2"	0 – 600,000	600,001 – 1,200,000	> 1,200,000
2"	0 – 1,200,000	1,200,001 – 2,400,000	> 2,400,000
4"	0 – 6,000,000	6,000,001 – 12,000,000	> 12,000,000

Residential lessee water service delivery (usage) fees:

Per 1,000 gallons	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
Tier 1	\$3.23	\$3.70	\$4.17	\$4.64	\$5.11	\$5.58	\$6.04	\$6.51	\$6.98	\$7.45
Tier 2	\$3.74	\$4.29	\$4.83	\$5.38	\$5.92	\$6.46	\$7.01	\$7.55	\$8.10	\$8.64
Tier 3	\$5.27	\$6.03	\$6.80	\$7.56	\$8.33	\$9.09	\$9.86	\$10.62	\$11.39	\$12.15

(CONTINUED)

**Agricultural Lessee Service Rates:**

Agricultural lessee meter service (base) fees:

<b>Meter size (inches)</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>	<b>FY 29</b>
5/8"	\$28.08	\$32.16	\$36.24	\$40.32	\$44.40	\$48.48	\$52.56	\$56.64	\$60.72	\$64.80
3/4"	\$37.44	\$42.88	\$48.32	\$53.76	\$59.20	\$64.64	\$70.08	\$75.52	\$80.96	\$86.40
1"	\$58.50	\$67.00	\$75.50	\$84.00	\$92.50	\$101.00	\$109.50	\$118.00	\$126.50	\$135.00
1 1/2"	\$105.30	\$120.60	\$135.90	\$151.20	\$166.50	\$181.80	\$197.10	\$212.40	\$227.70	\$243.00
2"	\$175.50	\$201.00	\$226.50	\$252.00	\$277.50	\$303.00	\$328.50	\$354.00	\$379.50	\$405.00
4"	\$514.80	\$589.60	\$664.40	\$739.20	\$814.00	\$888.80	\$963.60	\$1,038.40	\$1,113.20	\$1,188.00

Agricultural lessee water service delivery (usage) tiers:

<b>METER SIZE</b>	<b># of structures</b>	<b>TIER 1</b>	<b>TIER 2</b>
		<b>Gallons Bi-monthly</b>	<b>Gallons Bi-monthly</b>
5/8"	N/A	0 – 25,000	> 25,000
3/4"	1	0 – 25,000	> 25,000
3/4"	2	0 – 50,000	> 50,000
1 1/2"	1	0 – 25,000	> 25,000
1 1/2"	2	0 – 50,000	> 50,000
2"	1	0 – 25,000	> 25,000
2"	2	0 – 50,000	> 50,000

Agricultural lessee water service delivery (usage) fees:

<b>Per 1,000 gallons</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>	<b>FY 26</b>	<b>FY 27</b>	<b>FY 28</b>	<b>FY 29</b>
Tier 1	\$3.23	\$3.70	\$4.17	\$4.64	\$5.11	\$5.58	\$6.04	\$6.51	\$6.98	\$7.45
Tier 2	\$0.82	\$0.94	\$1.06	\$1.18	\$1.30	\$1.41	\$1.53	\$1.65	\$1.77	\$1.89

(END Exhibit "C")

PUUKAPU MAINTENANCE FEE  
APPROVED ON MAY 19, 2014 AND EXTENDED ON MAY 15, 2018

COST COMPONENT	RATE PER MONTH
• Standby Charge: 4-Inch Master Meter \$255.00 per month. $\$255.00/184 \text{ lots} = \$1.39 \text{ per lot}$	\$ 1.39
• Flat Rate Water Charge	\$ 18.00
• Electricity Charge (\$1,692/40 users)	\$ 42.30
• Operations and Maintenance (10,761/184 users)	\$ 58.48
• Potable Water via Spigot (600 gpd/40 users)	\$ 2.24
<b>TOTAL</b>	<b>\$122.41</b>

One-time equipment and installation costs:

EQUIPMENT/INSTALLATION	COST
5/8" Meter	\$114.00
Backflow Preventer	\$675.00
<b>TOTAL</b>	<b>\$789.00</b>

(END Exhibit "D")





## **V. Administrative Matters**

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

- 1. Discussion and Action on the Board's 2020 Draft *201M-7 Periodic Review; Evaluation Report* for Submission to the Hawaii State Legislature pursuant to Section 201M-7, Hawaii Revised Statutes**



**HAWAII  
SMALL BUSINESS  
REGULATORY REVIEW BOARD  
DRAFT**

**Periodic Review; Evaluation Report**

**In Compliance with  
Regulatory Flexibility Act  
Section 201M –7,  
Hawaii Revised Statutes**

**2020**

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## MESSAGE FROM DIRECTOR



As the director of the Department of Business, Economic Development and Tourism, I am pleased to extend my appreciation to the members of the Small Business Regulatory Review Board for their continued hard work and commitment to improve the regulated climate for Hawaii's small business community.

Mahalo!

Michael McCartney  
Director



## SMALL BUSINESS REGULATORY REVIEW BOARD

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Harris Nakamoto  
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Jonathan Shick  
*O'ahu*

Director, DBEDT  
*Voting Ex Officio*

## MESSAGE FROM CHAIR



This Report consists of existing Hawaii Administrative Rules that both State and County departments have determined to impact small business and the reasons for the rules' continued implementation. It is in accordance with the Board's effort to reduce negative small business impact and to improve rule-making procedures.

In 2003, the Board began its state-wide rule-review process with fourteen departments submitting 345 rules that impact small business and the purpose for their continuation. After modification of many of these rules in 2005, eleven departments provided the Board with 237 rules. Upon the review of each of the 237 rules, the Board recommended a full analysis on 49 of them. This has been narrowed down to 15 rules the Board believes warrant modifications. Pages 27 through 43 of this Report provide the Board's recommendations on the final 15 rules.

Board members continue to donate numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the economic climate for small businesses in Hawaii. I congratulate each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

I extend a special Mahalo to Governor Ige, Director McCartney, and to all the State and County departments that submitted the requested information to this board.

*Robert Cundiff, Chair, SBRRB, 2020*

## OVERVIEW

### Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

*(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.*

Response: In accordance with Section 201M-7(a), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) No later than June 30<sup>th</sup> of each year, a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) No later than June 30<sup>th</sup> of each odd-numbered year, a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

*(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology,*

*economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.*

Response: In accordance with Section 201M-7(b), in May 2019, the SBRRB received the following “Regulation for Review” from Mr. Alton Miyasaka who requested that the Board review whether all bottomfish restricted fishing areas should be opened and/or disestablished under HAR Title 13 Chapter 94, Bottomfish Management.

The Board sent a letter to DLNR/BLNR suggesting that a periodic review be performed for HAR Section 13-94(8)(d), Bottomfish restricted fishing areas and for the conservation areas under “Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010” to determine how the restrictions may be less burdensome on small business.

Correspondence was received from DLNR stating, “pending careful monitoring over time of the impact of opening up four BRFAs on bottomfish stocks, both site-based and fisher-based, and the economics of the deep-7 bottomfish fisher, the judicious approach is to open these four, not all twelve, BRFAs at this time.”

In August 2019, the Board reviewed DLNR’s response and in September a letter was sent to Mr. Miyasaka with DLNR’s response, suggesting that he continue to gather additional facts and data to support discussions with DLNR.

*(c) The board may solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule’s effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.*

Response: In accordance with Section 201M-7(c), the SBRRB receives and reviews testimonies on proposed and amended Hawaii Administrative Rules (HAR) at monthly board meetings pursuant to Chapter 92, HRS.



## ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Existing Rules, Rules that were Amended or to be Amended, and Rules to be Repealed (July 2018 to June 2020)
<b>STATE DEPARTMENTS</b>	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	7
DEPARTMENT OF AGRICULTURE	7
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE	0
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	5
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	38
PUBLIC UTILITIES COMMISSION	24
DEPARTMENT OF DEFENSE	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH	19
DEPARTMENT OF HUMAN SERVICES	4
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	10
DEPARTMENT OF LAND AND NATURAL RESOURCES	2
DEPARTMENT OF PUBLIC SAFETY	0
DEPARTMENT OF TAXATION	10
DEPARTMENT OF TRANSPORTATION	2
UNIVERSITY OF HAWAII	0
<b>COUNTIES</b>	
HAWAII COUNTY	24
MAUI COUNTY	17
KAUAI COUNTY	2
CITY AND COUNTY OF HONOLULU	50

# STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

## *Department of Accounting and General Services (DAGS)*

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying a rules' continued implementation:

### Stadium Authority

#### **1. HAR Title 3 Chapter 70-7(a) and 70-8 – Processing of Applicants and Deposit**

Justification - These two sections provide and define the procedure by which the Stadium Authority shall follow in its processing of applications and collection of deposits for proposed events held at Aloha Stadium. The amendment establishes a non-refundable portion of the deposit to ensure consistency in application by the Stadium Authority and commitment on the part of the Applicant in requesting to reserve a date for its event.

This section also expands on the options for acceptable deposit payment options to include those payments that are established by the Authority.

Continued implementation is necessary to ensure consistency in application of policies and procedures related to remittance of a deposit and the non-refundable portion, thereof.

#### **2. HAR Title 3 Chapter 70-11(a) – Rental Charges, Payment**

Justification - This amendment removes the word “proper” and expands both the Stadium Authority’s ability to partition areas and set rates for portions of the stadium that reside inside of the turnstile. Implementation of this amendment provides a wider range of space options for Applicants seeking areas to rent inside of the turnstile but not requiring the entire interior bowl area and its respective rental fee.

Continued implementation is necessary to offer a wider range of options for both the Applicant and the Stadium Authority at more reasonable rental rates.

#### **3. HAR Title 3 Chapter 70-11(a)(8) – Rental Charges, Payment**

Justification - This amendment expands the opportunity to increase utilization of the Stadium Authority’s Hospitality room during non-peak hours by establishing a tiered fee schedule based on the number of participants using the room. A tiered non-peak fee schedule is expected to incentivize user-groups to utilize the hospitality room at a rental rate that is commensurate with the size of their group.

Continued implementation provides the general public with more options at a more reasonable rental rate.

#### **4. HAR Title 3 Chapter 70-11(a)(9) – Rental Charges, Payment**

Justification - This amendment establishes a rate for areas of the stadium that are not specifically identified in the schedule of charges.

Continued implementation provides clarity and consistency when applying Chapter 3-70-11.

**5. HAR Title 3 Chapter 70-11(g) – Rental Charges, Payment**

Justification - This amendment specifically deletes “the National Football League Pro Bowl Game,” which has been determined to be redundant language that can already capture this event within the existing language of the section.

Continued implementation provides clarity and consistency in negotiating and applying rental fees with large national and international events as opposed to naming specific events in the HAR that are interested in having their event at the Aloha Stadium.

**6. HAR Title 3 Chapter 70-23(6) – Miscellaneous Provisions**

Justification - This amendment establishes and specifies bag policy, outerwear, and stroller policy and requirements.

Continued implementation is necessary to ensure the safety and security of the general public.

DAGS Stadium Authority Administrative Rules, as amended, do not affect small business.

**Central Services Division**

**7. HAR Title 3 Chapter 111 – State Facilities and Grounds**

Justification - Defines the allowable use and activities that may be held at Washington Place. Allows DAGS to make available, at a reasonable rental fee, for public, private and community use, Washington Place and its grounds. Allows the use of Washington Place and its grounds for activities that do not interfere with the normal and usual activities of the property and its occupants.

The rules, as amended, do not affect small business.

***Department of Agriculture***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules’ continued implementation:

**1. HAR Title 4 Chapter 71-1 – Objectives**

Justification - Adds “associated risks to animal and public health and safety” as an additional basis for restricting or prohibiting import of specific non-domestic animals.

**2. HAR Title 4 Chapter 71-2 – Definitions**

Justification – Replaces the word “chairman” in the definition of “advisory subcommittee” with the word “chairperson” to conform to the correct term used elsewhere in chapter 4-71, HAR. Also replaces the word “municipal” in section 4-71-3.1, “User permit fees,” with the broader term, “government,” to be consistent with amendments to section 4-71-6.5, HAR, “Permitted introductions,” regarding “government” zoos and “government use.”

Establishes a definition for "dangerous wild animals" and identifies specific species, including, but not limited to, lions, tigers, elephants, bears, and alligators, as "dangerous wild animals."

**3. HAR Title 4 Chapter 71-3 – Permits**

Justification – Clarifies that violation of permit conditions may result in citation or in cancellation of a permit, or both. Deletes "dangerous wild animals" from the animals allowed for import under short-term permit for performance or exhibition in circuses and carnivals but provides that "dangerous wild animals" may be imported for performance in commercial filming for television or movies, subject to qualification for the performance exemption and subject to permit conditions adequate to address any associated risks.

**4. HAR Title 4 Chapter 71-4.1 – Maximum time period for permit approvals**

Justification - Clarifies that short-term special permits, as well as short-term permits for certain animals, not just for performing animals, must be processed within 120 days.

**5. HAR Title 4 Chapter 71-5 – Notice of Quarantine**

Justification - Adds "risk to animal or public health and safety" as another consequence of uncontrolled introduction of non-domestic animals, in addition to danger to agricultural and related industries.

**6. HAR Title 4 Chapter 71-6.5 – Permitted Introductions**

Justification – Allows government agencies to import animals on the List of Conditionally Approved Animals, which includes animals allowed for import for individual possession, businesses, and institutions.

Expands the purposes for which animals on the List of Restricted Animals (Part B) may be imported from currently allowed purposes (i.e., private and commercial use, including zoological parks, or aquaculture production) to include government use.

Replaces the term "municipal" zoos with the broader term "government" zoos. Clarifies that, in addition to universities and government agencies, other institutions may import restricted list animals for research, and that universities and government agencies may import restricted list animals for medical and scientific purposes as well as for research, as determined by Board of Agriculture. Clarifies that permits may be approved by the chairperson, as well as by the branch chief or Board of Agriculture, as specified by rules.

Clarifies that site approval is required prior to the issuance of any permit issued for import of animals on the restricted lists and unlisted animals. Clarifies that the transfer or sale of unlisted animals under permit is allowed, provided the proposed transferee can satisfy conditions for transfer and obtain a permit for possession.

Restates, in the lists of restricted animals that contain the individual species designated as "dangerous wild animals," that these species are prohibited for short-term performance or exhibition in circuses, carnivals or state fairs, but are allowed for short-term performance for commercial filming, for exhibition in government zoos or for other purposes permitted in the rule. Updates section 4-71-6.5 to reflect the revised list. Deletes Nile tilapia, *Oreochromis niloticus*, from the List of Restricted Animals (Part A) and adds this fish to the List of Restricted Animals.

(Part B) to allow its import for aquaculture production. Deletes House cricket, *Acheta domesticus*, from the List of Restricted Animals (Part A) and adds this insect to the List of Restricted Animals (Part B) to allow its import as feed for certain insectivorous zoo animals.

**7. HAR Title 4 Chapter 71-7 – Bond of Certain Animals**

Justification - Deletes the word "performing" to expand the bond requirement to any animal used in a circus, carnival, or commercial filming, as appropriate.

### ***Department of the Attorney General***

The Department of the Attorney General (the "Department") has no plans to amend or repeal any rule based upon any new, amended, or repealed statute. The Department has not adopted any rules during the prior year that affect small business and, consequently, there is no report describing the specific public purpose or interest for the adoption of rules last year.

### ***Department of Budget and Finance***

Department of Budget and Finance reports that no departmental administrative rules have been adopted during the prior year that affect small business.

### ***Department of Business, Economic Development, and Tourism***

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed based upon any new, amended or repealed statute:

#### Hawaii Technology Development Corporation

- 1. HAR Title 15 Chapter 32 – HI Small Business Innovation Research and Small Business Technology Transfer Grant Program (SBIR/STTR)**
- 2. HAR Title 15 Chapter 34 – Alternative Energy Research and Development Program (Office of Naval Research)**
- 3. HAR Title 15 Chapter 35 – Research & Development Grant Program (R&D Tax Credit Grant)**
- 4. HAR Title 15 Chapter 33 – Hawaii Manufacturing Development Program (Manufacturing Grant)**

#### State Energy Office

- 5. HAR Title 15 Chapter 37 -- Solar Water Heater Variance**

Justification - DBEDT is obligated to follow the final judgment of Circuit Court Judge Jeffrey Crabtree in "Hawaii Solar Energy Association and Sierra Club v. DBEDT," Civil No. 18-1-1398-09 (JPC), ordered on April 29, 2019. According to the final judgment, the public purposes are to increase the use of renewable energy to protect our environment, reduce pollution, make housing more affordable, enhance Hawaii's local economy and reduce the installation of gas-tankless instantaneous water heaters in new Hawaii single-family dwellings.

The amendments include three new requirements for using the gas-tankless instantaneous water heater as justification for a solar water heater variance: 1) The party making the request will be paying the utility bill; 2) The applicant demonstrated that a Solar Water Heater is not as cost effective; and 3) The gas-tankless instantaneous water heater is approved by Underwriters Laboratories, Inc.

UPDATE: As of 2020, the amendments to Chapter 15-37 are in the process of revisions. Therefore, new proposed amendments will be forthcoming to the SBRRB.

## ***Department of Commerce and Consumer Affairs***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

### Professional and Vocational Licensing Division

#### **1. HAR Title 16 Chapter 89 – Nurses**

Justification – The purpose of this chapter is to implement licensing and regulation of the professions. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to better serve and protect the community. A Small Business Impact Statement dated November 27, 2017 was sent to the SBRRB; on November 28, 2017, the SBRRB raised no objections to the proposed rule amendments, stating that the rules do not fall under its purview.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

### Division of Financial Institutions (DFI)

#### **2. HAR Title 16 Chapter 24 – Money Transmitters**

Rules are being reviewed for updates needed to conform to HRS Chapter 489D and DFI's current processes. Anticipated areas of amendment include bond and security device requirements, hourly exam fee, and application processes.

#### **3. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions**

Rules are being reviewed for updates needed to conform to HRS Chapter 412 and DFI's current processes. Anticipated areas of amendment include deleting outdated references to certain fees, and application processes.

#### **4. HAR Title 16 Chapter 28 – Escrow Depositories**

Rules are being reviewed for updates needed to conform to HRS Chapter 449 and DFI's current processes. Anticipated areas of amendment include fidelity bond and E&O provisions, and application processes.

#### **5. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)**

DFI plans to move forward with a public hearing on proposed rules for Chapter 454F, HRS. The rules primarily concern the Mortgage Loan Recovery Fund and have been reviewed by the SBRRB.

#### Professional and Vocational Licensing Division

**6. HAR Title 16 Chapter 71 - Certified Public Accountants and Public Accountants**

The Board drafted amendments to the rules, which have been reviewed by LRB, and will be submitted to the SBRRB in 2020 for review.

**7. HAR Title 16 Chapter 72 – Acupuncture Practitioners**

The Board is currently working on a draft.

**8. HAR Title 16 Chapter 73 – Barbers**

**Agency's Justification**

The purpose of the rules is to implement licensing and regulation of barbers and rules under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1994.

**2006 Recommendation**

The Agency indicated that the rules are in the process of being amended and are expected to be finalized within two years. The SBRRB is in concurrence with the Agency that the rules should be amended.

**Response from Agency**

The Agency plans to amend the rules to address public health and safety issues such as the exclusion or controlled use of implements, equipment, and activities that have been shown to adversely affect consumers if used or if used improperly. Additionally, descriptions of allowable exceptions to the place of practice will be expanded, and descriptions of exemptions from licensure will be included.

The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007. The Agency has since updated this date by the latest, December 2009, and indicated that there has been activity on the amendments. The SBRRB is in concurrence and will follow-up with the Agency.

**Final Commentary**

As of 2020, the Board plans to work on a draft.

**9. HAR Title 16 Chapter 74 - Boxing**

**Agency's Justification**

The purpose of the rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1981 and amended in 1991.

**2006 Recommendation**

The rules are arduous and long; the Agency has indicated that the rules are in the process of being amended and are expected to be finalized within a year. The Review Board is in concurrence with the Agency that the rules should be amended.

**Response from Agency**

DCCA intends to amend the rules to: (1) remove outdated requirements that are no longer relevant; (2) update and conform the rules to the Federal Boxing Safety Act of 1996; and (3) implement statutory changes made by Act 135, Session Laws of Hawaii (SLH) 2004. The Agency's targeted date for transmitting the draft rules to the

Department of the Attorney General for review is December 2007. SBRRB is in concurrence with the Agency.

### **Final Commentary**

A discussion with DCCA in 2018 indicated the following – The Boxing Commission has met only a few times since 2011 due to the lack of boxing events. Amendments were drafted, however, the Commissioners termed out and the new Commissioners requested that the process begin all over again. Another new draft is currently being worked on; no timeframe for completion has been given.

The Commission is working on a draft to amend the boxing rules by: (1) updating the rules to conform with current practices in the sport as the rules haven't been amended since 1991; (2) removing unnecessary amateur rules as the Commission has delegated the supervision of amateur boxing to a nationally recognized amateur athletic association as allowed under HRS section 440-30; and (3) making amendments throughout the chapter for clarity and style. The targeted date for transmitting the rule package to the Department of the Attorney General for review was fall 2019.

#### **10. HAR Title 16 Chapter 76 – Chiropractors**

Discussions are underway to consider amendments.

#### **11. HAR Title 16 Chapter 77 – Contractors**

A public hearing was held in November 2017 (Work Incidental and Supplemental). Final version to be sent to Governor for signature. The Board is working on a set of draft rules to update the specialty contractor classifications.

#### **12. HAR Title 16 Chapter 78 – Cosmetology**

The Board is currently working on a draft.

#### **13. HAR Title 16 Chapter 79 - Dentists and Dental Hygienists**

The Board is currently working on a draft to clarify the anesthesia/sedation privilege and facility permit renewal.

#### **14. HAR Title 16 Chapter 81 – Elevator Mechanics**

The Board is currently working on a draft.

#### **15. HAR Title 16 Chapter 83 – Hearing Aid Dealers and Fitters**

##### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of hearing aid dealers and fitters under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1982 and amended in 1994.

##### **2006 Recommendation**

Since the rules were last amended 12 years ago, there have been huge changes in the industry. Full analysis and update should be performed.

##### **Response from Agency**

The SBRRB expressed concerns that the rules were last amended 12 years ago. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency intends to amend the rules to: (1) conform to the changes made by Act 88,



SLH 1997 relating to establishing experience requirements for licensure and clarifying provisions for direct supervision of unlicensed individuals: (2) identify and clarify the examination and passing score required for licensure; (3) repeal references relating to re-examination; and (4) clarify the license renewal and license restoration requirements.

The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was November 2008. An update by the Agency has revealed that the rule revisions are complete and are expected to be provided to the Review Board by June 2009. The SBRRB is in concurrence and will follow-up with the Agency.

### **Final Commentary**

A new examination by the International Hearing Society (considered the national examination) has been procured and shall be administered via the University of Hawaii testing centers and therefore the rules must be updated to: (1) incorporate the new examination, specify the examination provider or its successor, and to set forth examination filing and registration procedures in Subchapter S; (2) create a new subchapter 8 to address renewal and restoration requirements; create a new subchapter 6 to set forth and address the scope of practice of a hearing aid dealer and fitter; and (3) make other revisions throughout the chapter to update the rules to address current industry practices in the profession, and for clarity and style.

Anticipated completion of rule packet in fall 2020.

### **16. HAR Title 16 Chapter 84 – Massage Therapy**

The Board is currently working on a draft.

### **17. HAR Title 16 Chapter 85 – Medical Examiners**

Awaiting enactment of 2019 Senate Bill 1406, which deletes the need for rules.

### **18. New - Mixed Martial Arts**

The Program is currently working on a draft.

### **19. HAR Title 16 Chapter 86 – Motor Vehicle Dealers and Salesmen**

#### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of motor vehicle dealers and salesmen under the department's regulatory authority; they are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1993.

#### **2006 Recommendation**

The rules were last amended 13 years old. Full analysis and update should be performed.

#### **Response from Agency**

Because the rules were last amended 13 years ago, SBRRB recommended a full analysis and update be performed. The Agency does not envision submitting proposed rules sooner than December 2008 due to pending issues for the Motor Vehicle Industry Licensing Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to “dealer” (issues such as wholesale, retail, more than two vehicle sales per year, etc.), “premise” (issues such as approved zoning), “salesperson” (the effects of disclosure relating to criminal conviction), “consumer consultant,” and “bond.”

An update from the Agency revealed that the rule revisions are actively being worked on every other month when the board meets; a draft is expected to be provided to the Review Board by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

#### **Final Commentary**

As of 2020, the Board is currently working on a draft.

### **20. HAR Title 16 Chapter 87 – Motor Vehicle Repair Dealers and Mechanics**

#### **Agency’s Justification**

The purpose of the rules is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. They were established in 1976 and amended in 1989.

#### **2006 Recommendation**

The rules were last amended 15 years ago. Full analysis and update should be performed.

#### **Response from Agency**

Because the rules were last amended 15 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not anticipate submitting proposed rules sooner than November 2008 due to pending issues for the Motor Vehicle Repair Industry Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to “mechanic” (license types, motorcycle examination and experience requirements, etc.), “repair dealer” (requirements for place of business), “written estimate required and waiver of estimate,” and “supervisory mechanic or head mechanic.”

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

#### **Final Commentary**

As of 2020, the Board is currently working on a draft.

### **21. HAR Title 16 Chapter 88 – Naturopaths**

The Board is currently discussing whether to proceed with rule amendments.

### **22. HAR Title 16 Chapter 89 – Nurses**

10/17/18- Governor signed. 10/27/18 – adopted.

### **23. HAR Title 16 Chapter 92 – Optometrists**

The Board is currently discussing proposed rule amendments.

**24. HAR Title 16 Chapter 94 – Pest Control Operators**

The Board received SBRRB approval and Governor's approval to hold a public hearing.

**25. HAR Title 16 Chapter 95 – Pharmacy and Pharmacists**

The Board is currently discussing whether to proceed with rule amendments.

**26. HAR Title 16 Chapter 96 – Pilotage**

The Board is currently working on a draft.

**27. HAR Title 16 Chapter 97 – Private Detectives and Guards**

The Board is currently working on a draft.

**28. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**

The Commission is currently working on drafts to repeal chapter 99 and replace it with 3 new chapters 99.1, 99.2, and 99.3.

**29. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**

The Board is currently discussing whether to proceed with rule amendments.

**30. HAR Title 16 Chapter 101 – Veterinarians**

**Agency's Justification**

The purpose of the rules is to implement licensing and regulation of veterinarians under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. They were established in 1967 and amended in 1986.

**2006 Recommendation**

The rules were last amended 20 years ago. Full analysis and update should be performed.

**Response from Agency**

Because the rules were last amended 20 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency intends to align the rules with changes that have been made to licensing qualifications on the national level relating to the: (1) content and format of the national licensing examination; (2) nationally-recognized foreign graduate program; and (3) qualifications of graduates of veterinary medical programs at schools outside of the U.S. and those that are not approved by the American Veterinary Medical Association. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007.

An update from the Agency revealed that the rule revisions are expected by December 2009; SBRRB is in concurrence and will follow-up with the Agency.

**Final Commentary**

As of 2020, the Board is currently working on a draft.

**31. HAR Title 16 Chapter 106 – Timesharing**

**Agency's Justification**

The purpose of the rules is to implement licensing and regulation of timesharing under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. They were established in 1980 and amended in 1990.

**2006 Recommendation**

The rules are necessary to protect the general; the rules were last amended 16 years ago. Full Analysis and update should be performed.

**Response from Agency**

Because the rules were last amended 16 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency plans to propose amendments that will: (1) simplify requirements (e.g. repeal certain renewal requirements such as submitting a title report for developers); (2) repeal unnecessary requirements (e.g. no longer require the filing of advertising and promotional materials); and (3) delete requirement that were repealed in the statute. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was August 2008.

The Agency revealed that the rules are actively being worked on with the industry and that revisions are expected by June 2009; SBRRB is in concurrence and will follow-up with the Agency

**Final Commentary**

A discussion with DCCA in 2018 has indicated that the amendments of the rules were stalled but currently industry concerns have been resolved. The amendment is expected to be finalized, but no date has been given.

As of 2020, the Board is currently working on a draft.

**32. HAR Title 16 Chapter 110 – Physical Therapy**

The Physical Therapy Board plans to work on a draft.

**33. HAR Title 16 Chapter 114 – Real Estate Appraisers**

The Board is currently working on a draft.

**34. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects**

The Board is working on a draft to propose licensure for Fire Protection and Environmental engineers, and proposing CE requirements for architects.

**35. HAR Title 16 Chapter 116 – Travel Agencies**

The Program is working on a draft to propose housekeeping amendments to address branch offices and separate client trust accounts.

**36. HAR Title 16 Chapter 119 – Condominium**

The Commission is currently working on a draft, new chapter of rules.

Cable Television Division (CATV)**37. HAR Title 16 Chapter 131 – Designation and Selection of Access Organizations**

CATV continuing work on draft language to update chapter and amend HAR§ 16-131-70 to conform to HRS§ 440G-8.3, which allows the DCCA Director to designate public, educational, and governmental access organizations exempt from HRS Chapter 103D.

## Business Registration Division (BREG)

### **38. HAR Title 16 Chapter 39 - Securities**

BREG is currently working on a draft to address the use of senior designations, and changes to the federal securities laws.

## ***Public Utility Commission***

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F) to Department of Commerce and Consumer Affairs (DCCA). Because the numbering system for the Hawaii Administrative Rules uses different numbers for different departments. The B&F rules are in Title 6, and the DCCA rules are in Title 16.

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

#### **1. HAR Title 16 Chapter 601 – Rules of Practice and Procedure before the Public Utilities Commission**

Moved from B&F to DCCA to change the numbers, required the simultaneous repeal of the existing chapters at B&F and adoption of new chapters in the DCCA. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

#### **2. HAR Title 6 Chapter 603 – Motor Carrier Tariffs and Schedules Agency's Justification**

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically, those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. They were established in 1994.

#### **2006 Recommendation**

Rules are twelve years old; full analysis and update should be performed.

#### **Response from Agency**

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not

required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation currently. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

#### **Final Commentary**

As of 2020, moved from B&F Title 6 to DCCA Title 16.

To change the numbers required the simultaneous repeal of the existing chapters in the B&F title and adoption of new chapters in the DCCA title. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

### **3. HAR Title 6 Chapter 65 – Water Carriers**

#### **Agency's Justification**

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. The rules have not been amended since first promulgated in 1976.

#### **2006 Recommendation**

Rules are over 30 years old; full analysis and update should be performed.

#### **Response from Agency to Review Board's Recommendation**

The Commission has determined that HAR Chapter 6-65, "Water Carriers" does not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

#### **Final Commentary**

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

As of 2020, moved from B&F Title 6 to DCCA Title 16.

To change the numbers required the simultaneous repeal of the existing chapters in the B&F title and adoption of new chapters in the DCCA title. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

**4. HAR Title 16 Chapter 608 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**

Moved from B&F to DCCA to change the numbers, required the simultaneous repeal of the existing chapters at B&F and adoption of new chapters in the DCCA. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

**5. HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**6. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers**

**Agency's Justification**

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS Section 271-1. The rules were established in 1992.

**2006 Recommendation**

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

**Response from Agency**

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation. The recommendation, as described above,

does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Thus, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

#### **Final Commentary**

As of 2020, to be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**7. HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**8. HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**9. HAR Title 6 Chapter 76 – Shared Tenant Service**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**10. HAR Title 6 Chapter 77 – Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards**

To be repealed; superseded by statute (and Federal letter taking over). See Session Laws of Hawaii 2009, Act 25.

**11. HAR Title 6 Chapter 79 – Aggregator and Operator Service**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**12. HAR Title 6 Chapter 80 – Competition in Telecommunications Services**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**13. HAR Title 6 Chapter 81 – Universal Service Fund**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**14. HAR Title 6 Chapter 82 – Pay Telephone Service**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.



**15. HAR Title 6 Chapter 83 - Hawaii One Call Center Subsurface Installation Damage Prevention Program**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**16. HAR Title 16 Chapter 602 - Rules and Regulations to be Observed by Motor Carriers**

From Title 6-62, with changes. PUC is working on a draft which, among other things, is expected to: simplify insurance form requirements, update insurance coverage amounts, allow flexibility in vehicle marking requirements, clarify seating capacity definition, and make motor carrier fee language consistent with HRS 271-36.

**17. HAR Title 16 Chapter 610 – Water Service**

This will be a new chapter. Rules are under development.

**18. HAR Title 16 Chapter 630 – Wastewater Service**

This will be a new chapter. Rules are under development.

**19. HAR Title 16 Chapter 660 – Standard for Electric and Gas Utility Service**

From Title 6-60. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**20. HAR Title 16 Chapter 673 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**

From Title 6-73. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**21. HAR Title 16 Chapter 674 – Standards for Small Power Production and Co-generation\* (\*Pursuant to HRS§ 91-3(f), the Commission proposes to repeal HAR §6-74-7.)**

From Title 6-74. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**22. HAR Title 16 Chapter 676 – Shared Tenant Service**

From Title 6-76. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**23. HAR Title 16 Chapter 679 – Aggregator and Operator Service**

From Title 6-79. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**24. HAR 16 Chapter 680 – Competition in Telecommunications Services**

From Title 6-80. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**25. HAR 16 Chapter 681 – Universal Service Fund**

From Title 6-81. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**26. HAR 16 Chapter 682 – Pay Telephone Service**

From Title 6-82. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**27. HAR 16 Chapter 683 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**

From Title 6-83. Rules will be reviewed for conformity with current codes, standards, and other requirements.

***Department of Defense***

Department of Defense performed an extensive review of existing rules and statutes that resulted in the conclusion that there were no amendments or repeals made during 2017. In addition, a comprehensive survey of bills was introduced in 2018, sent to the Governor, and all Acts signed into law revealed none that would affect small business.

***Department of Hawaiian Home Lands (DHHL)***

DHHL currently does not have any administrative rules to be amended or repealed, based upon any new, amended, or repealed statute; and DHHL did not adopt any rules during the prior year.

***Department of Health (DOH)***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

**1. HAR Title 11 Chapter 11 – Sanitation**

Justification – No effect on small businesses; items included in this chapter are found in other Rules.

**2. HAR Title 11 Chapter 55 – Water Pollution Control**

Justification – The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are those businesses within the State of Hawaii that require coverage under an NPDES permit and are subject to HAR Chapter 11-55 and any revisions. This may include large, medium, and small businesses.

**3. HAR Title 11 Chapter 106 – Background Checks**

Justification – The proposed rule may positively affect small businesses which provide home-based residential care or care through agencies licensed or certified by the department by verifying compliance with minimum standards for the provision of care.

**4. HAR Title 11 Chapter 118 – Disinterment Permits**

Justification – No ascertainable small business impact as determined by the SBRRB.

**5. HAR Title 11 Chapter 25 – Certification of Public Water System Operators**

Justification – The proposed changes will not affect the agency's nor the operators' responsibilities, functions or operations, as they are administrative in nature with no change to federally mandated certification requirements. The proposed certification fee

increases will impact operators' or water systems' finances depending on the number of licenses held.

A Small Business Impact Statement was submitted on October 30, 2013, to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M. It was reviewed by the members who unanimously recommended that the proposed rules proceed to public hearing.

**6. HAR Title 11 Chapter 157 – Immunization and Examination**

Justification – DOH met with the SBRRB on July 19, 2017 regarding proposed amendments to this chapter. Upon review, board members unanimously agreed to support the proposal to proceed with public hearing. SBRRB has subsequently requested a "Post Hearing Statement," which was presented to SBRRB at the March 21, 2019 meeting.

**7. HAR Title 11 Chapter 160 – Medical Use of Cannabis**

Justification – The fiscal impacts of the rule amendments will be negligible. There may be an increase in the collection of registration fees from out-of-state patients. These fees are deposited into the Medical Cannabis Registry and Regulation Special Fund. DOH anticipates that the current staff positions and funding will be enough to handle the increase in application processing but will monitor the volume of additional work created by the out-of-state program.

The proposed rule amendments will allow visitors to continue their medical use of cannabis on their trips to Hawaii. Qualifying out-of-state patients and their caregivers will be permitted to purchase limited amounts of medical cannabis from Hawaii dispensaries. However, the overall economic impact to the State is unknown and expected to be limited.

**8. HAR Title 11 Chapter 178 – Clean and Sober Homes Registry**

Justification – No effect on small business.

**9. HAR Title 11 Chapter 186 – Certificate of Need**

Justification – No effect on small business.

**10. HAR Title 11 Chapter 200 – Environmental Impact Statement**

Justification – These rules affect small business. All concerns were brought to the SBRRB in DOH's report and the SBRRB approved the rules in its January 2019 meeting.

**11. HAR Title 11 Chapter 260.1 to 279.1 -- Solid Hazardous Waste**

Justification – No direct fiscal impact.

**12. HAR Title 11 Chapter 800 -- Home and Community Based Case Management Agencies and Community Care Foster Family Homes**

Justification – This chapter replaced HAR 17-1454 from the DHS, and duties were transferred to DOH.

**13. HAR Title 11 Chapter 700 – Home Care Agencies**

Justification – The rule may positively affect small businesses, which are home care agencies, by providing to the public a means of verifying compliance with minimum

standards for the provision of home care. The public may be more accepting of home care agencies and choose to become home care agency clients.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute.

**14. HAR Title 11 Chapter 100.2 & 100.1 – Adult Residential Care Homes**

Justification – These rules establish the minimum standards and requirements for the licensure of adult residential care homes (ARCH) and expanded ARCHs in order to protect the health, safety, welfare and civil rights of the residents residing in the ARCH and expanded ARCH.

No negative fiscal impacts are anticipated; there may be some fiscal impact to licensed care homes who currently do not have liability insurance and will need to obtain such insurance.

**15. HAR Title 11 Chapters 5 – Environmentally-related Illness and Injury Reporting**

Justification – Amendments update requirements for the reporting of designated heavy metal and pesticide lab results to include all results. This will allow the DOH to assess environmentally related illness and injury trends and patterns statewide. The amendments improve the quality of reported data and update the acceptable methods of reporting.

The proposed rule changes will save laboratories and health care professionals time by allowing electronic reporting. DOH already has Electronic laboratory reporting configured so it will add no additional costs to switch to electronic transmission. Point of Care users may need to spend approximately one-half hour every two weeks filling out a validated electronic spreadsheet or mailing their lab results to the department.

**16. HAR Title 11 Chapter 20 – Public Water Systems**

Justification – Amendments to this chapter were made to conform to federal regulations codified in the following subparts of Title 40, Part 141 Code of Federal Regulations, revised as of July 1, 2015. The consequence of not changing these rules is a loss of primary enforcement authority, or "primacy," for the State drinking water program. Right now, the State takes the lead in enforcing both federal and state drinking water requirements.

The implementation of the rule amendments will not create undesirable long- or short-term economic impacts to the public. On the contrary, the amendments will provide additional protection for affected consumers of the State's drinking water, thus further enhancing Hawaii's image as a pristine, world class tourist destination.

The new rules consist almost exclusively of federally mandated regulations which afford the State no discretion to consider less restrictive alternatives. The two State-specific changes are meant to correct: 1) a procedural error; and 2) an incorrect Federal reference.

**17. HAR Title 11 Chapters 148.1 - Certification of Adult Foster Homes**

Justification – Amendments provide clarity on certification requirements, includes requirements established by the legislature such as liability insurance coverage and requirements for unannounced inspections. It also includes language required by the

U.S. Centers for Medicare & Medicaid Services (CMS) on home and community based residential settings.

The new rules continue to establish minimum standards and requirements for the certification of AFH to protect the health, safety, welfare and civil rights of the residents residing in the AFH.

No negative fiscal impacts to DOH are anticipated. There may be some fiscal impacts to the adult foster home caregivers who do not have liability and automobile insurance to the covered amounts required.

**18. HAR Title 11 Chapters 218 - Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf, Blind**

Justification – The amendments make improvements to the Hawaii Quality Assurance System (HQAS) test process; separate the issuance of a state credential from the issuance of a certification via the HQAS test; and implement changes to strengthen and emphasize the purpose of the rules, which is to establish guidelines to ensure the rights of consumers to effective communication.

The amendments will not add a significant economic burden on sign language interpreters who are independent contractors. Sign language interpreters charge a two-hour minimum fee ranging from \$27.00 to \$75.00 an hour, not including travel charges such as mileage and parking.

Enrollment in the continuing education program to maintain the Hawaii State Sign Language Interpreter Credential for two years is automatic upon the issuance of the credential, which is a \$50.00 fee. This will allow independent contractors with a Hawaii State Sign Language Interpreter Credential to continue operations of their own businesses.

**19. HAR Title 11 Chapter 280.1 – Underground Storage Tanks**

Justification – The primary purpose of the proposed changes is to further protect Hawaii's environment and natural resources, especially Hawaii's groundwater by requiring all large capacity underground storage tank (UST) systems to be located below, or makai of, the department's Underground Injection Control line.

Additional changes are proposed to make non-substantive corrections to improve the clarity of existing requirements; make edits to ensure that the state regulations are fully consistent with the federal UST regulations; clarify notification and reporting requirements; and integrate the existing statutory prohibition regarding USTs near the shoreline into the regulations.

The changes make the state regulations the same as the federal requirements for under-dispenser containments (UDC) in 40 CFR §280.20(f)(2), which require either visual access or monitoring with a sensor. It is difficult to predict the way in which this rulemaking effort will influence the United States Navy, as the operator of the tanks most likely to be affected by the proposed rules, with respect to their long-term strategic plans for the operation of military installations in Hawaii.

DOH is not required to prepare a Small Business Impact Statement for the proposed rule changes as they will not affect small businesses, as this is defined in A§201 M-1, HRS.

## ***Department of Human Services***

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

1. **HAR Title 17 Chapter 798.2** – Child Care Services
2. **HAR Title 17 Chapter 891.1** – Registration of Family Child Care Homes
3. **HAR Title 17 Chapter 895** – Licensing of Infant and Toddler Child Care Centers
4. **HAR Title 17 Chapter 896** – Licensing of Before and After School Child Care Facilities

### Hawai'i Public Housing Authority (HPHA)

HPHA does not have any administrative rules that affect small business.

## ***Department of Land and Natural Resources***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 13 Chapter 74 – Commercial Marine License and Dealer Report**  
Justification – Division of Aquatic Resources (DAR) amended its Commercial Marine License (CML) fee from \$50 to \$100. The public purpose for raising the fee was to ensure that DAR had enough funds to operate its Commercial Fisheries Program. The program was short on revenues because of a lawsuit and settlement that required DAR to reduce the nonresident CML fee from \$200 to \$50 to match the resident fee.
2. **HAR Title 13 Chapter 230-256 – Division of Boating & Ocean Recreation (DOBOR)**  
Justification – DOBOR amendments established a weekly reporting deadline for commercial marine dealers. The public purpose was to ensure timely catch reporting, particularly for the bottom fish fishery, which is jointly managed by State and Federal agencies and is currently under an annual catch limit (ACL).

It is critical to keep accurate and timely catch information to monitor the ACL to have a reliable prediction of when the limit is approaching and to take the steps to close the fishery before the ACL is reached. Timely dealer information verifies the reported catch information to ensure data accuracy.

## ***Department of Labor and Industrial Relations***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 12 Chapter 22 - Wage determinations and the administration and enforcement of Chapter 104**  
Justification - The amendment and compilation of Chapter 22 (effective 7/23/18) brought the rules in-line with the numerous statutory changes since the last update (4/1/96),

provided new rules for new statutory provisions, and modified the rules to improve the administration and enforcement of the statute.

**2. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 50 General Provisions**

Justification - Clarified one definition "Appeals Board."

**3. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 52.1 Recording and Reporting Occupational Injuries and Illnesses**

Justification - Updated the incorporation of the 2016 published edition of Title 29, Part 1904 of the Code of Federal Regulations (CFR) to the 2017 edition of Title 29, Part 1904 of the CFR.

**4. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 56 Program Fees and Library Policies**

Justification – Increased fees for federal conformance using the Bureau of Labor Statistics Consumer Price Index calculator.

**5. HAR Title 12 Subtitle 8 Part 2 – General Industry Standard, Chapter 60 General Safety and Health**

Justification – Lowers the exception number of employees an employer has to have for a required written Safety and Health Program from twenty-five (25) to ten (10), updates the incorporation of the 2012 published edition of Title 29, Part 191 O of the Code of Federal Regulations (CFR) to the 2017 edition of Title 29, Part 191 O of the CFR, and updates air contaminant limits for beryllium and beryllium compounds and updates CFR references for talc and tremolite.

**6. HAR Title 12 Subtitle 8 Part 3 –Construction standards, Chapter 110 General Safety and Health Requirements**

Justification – Lowers the exception number of employees an employer must have for a required written Safety and Health Program from twenty-five (25) to ten (10), adds an exception from having written records of the daily safety and health inspections is added for projects employing three (3) or less persons, and updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1926 of the CFR to the 2017 edition of Title 29, Part 1926 of the CFR.

**7. HAR Title 12 Subtitle 8 Part 5 – Occupational Safety and Health Standards for Shipyard Employment, Chapter 170 Shipyards**

Justification – Updates HIOSH's incorporation of the 2012 published edition of Title 29, Part 1915 of the CFR to the 2017 edition of Title 29, Part 1915 of the CFR.

8. **HAR Title 12 Subtitle 8 Part 6 – Marine Terminals, Chapter 180 Marine Terminals**  
Justification – Updates HIOSH's incorporation of the 2012 published edition of Title 29, Part 1917 of the CFR to the 2017 edition of Title 29, Part 1917 of the CFR.
9. **HAR Title 12 Subtitle 8 Part 7 – Safety and Health Regulations for Longshoring, Chapter 190, Longshoring**  
Justification – Updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1918 of the CFR to the 2017 edition of Title 29, Part 1918 of the CFR.
10. **HAR Title 12 Subtitle 8 Part 8 – Other Safety and Health Standards, Chapter 208 Occupational Safety and Health Standards for Agriculture**  
Justification – Updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1928 of the CFR to the 2017 edition of Title 29, Part 1928 of the CFR.

### ***Department of Public Safety (DPS)***

DPS does not have any information to provide as requested by the SBRRB. DPS follows statutes and rules administered by the DAGS and the State Procurement Office in dealing with small businesses.

### ***Department of Taxation (DoTax)***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 18 Chapter 231 - Administration of Taxes**  
Justification – Under prior rules, DoTax could only revoke an abandoned license by either mailing a notice of intent to revoke the license to the taxpayer or by publishing the intent to revoke the license in the newspaper for two consecutive weeks. DoTax must process hundreds of thousands of abandoned licenses and mailing notices or publishing notices in the newspaper is expensive and time consuming. These rules allow DoTax to revoke abandoned business tax licenses in a timely and cost-effective manner.  
  
DoTax adopted administrative rules relating to revocation of tax licenses, effective March 17, 2018. The adopted rules amend section 18-231-3-14.17, HAR by allowing DoTax to revoke certain business tax licenses for abandonment by publishing notice of intent to revoke the licenses on DoTax's website for a period of 45 days prior to the revocation.
2. **HAR Title 18 Chapter 231 - Administration of Taxes**  
Justification - The adopted rule allows DoTax to create a registry of taxpayer representatives, which should benefit the public.

DoTax adopted a new administrative rule allowing it to require any person who represents a taxpayer in front of DoTax to register with DoTax, effective March 17, 2018; the new rule is section 18-231-3-14.26, HAR.



**3. HAR Title 18 Chapter 231 - Administration of Taxes**

Justification - Under prior rules, EFT Program participants were required to submit payments due on their periodic tax returns electronically, but any payments made as part of an annual reconciliation return were not required to be made electronically. The new rules require that payments made as part of annual reconciliation return also be made electronically.

DoTax adopted administrative rules related to electronic funds transfer (EFT Program), which became effective March 17, 2018. The rules amend section 18-231-9.9-03, HAR, to require participants in the EFT program to make all payments for applicable tax type(s), including those based on an annual return electronically.

**4. HAR Title 18 Chapter 235 - Income Tax Law**

Justification - The rules prevent taxpayers with substantially large gross business income from taking large business deductions to reduce net income below \$30,000 and receive Income and General Excise Tax benefits designed for persons and businesses incapable of generating substantial income for themselves due to disability.

DoTax adopted administrative rules related to persons totally disabled and substantial gainful business or occupation, which became effective April 20, 2019. The rules amend section 18-235-1.1 4(d), HAR, by amending the definition of the term "substantial gainful business or occupation."

Under prior rules, there was a presumption that any individual whose earned income is greater than \$30,000 in a taxable year is engaged in a substantial gainful business or occupation, and thus is not totally and permanently disabled. Earned income is defined to include net earnings from self-employment.

Under the new rules, the definition of earned income includes gross earnings from self-employment rather than net, if those gross earnings are \$60,000 or greater. The rules also specify that all entities shall be disregarded for purposes of calculating such gross or net earnings.

**5. HAR Title 18 Chapter 235 - Income Tax Law**

Justification - The rules treat all taxpayers equally regarding automatic extensions of time to file and clarify how to calculate properly estimated tax liability.

DoTax adopted administrative rules related to automatic extensions of time to file an income tax return, which became effective April 20, 2019. The rules amend section 18-235-98 HAR to allow corporations, LLCs, partnerships, and other non-individual taxpayers an automatic six-month extension to file their income tax returns without being required to file an application first.

Prior to these rules, individual taxpayers were granted the automatic six-month extension, but non-individuals were required to apply to be granted to the six-month extension. Additionally, the rules clarify how to calculate properly estimated tax liability, which must be paid on the due date prescribed for the filing of the return.

**6. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - The rules provide clarity for how to allocate gross income and gross proceeds to each county and eliminate unnecessary additional nexus analysis.

DoTax adopted administrative rules related to the county surcharge on general excise tax (GET), which became effective March 17, 2018. The adopted rules amend section 18-237-8.6-01 through 18-237-8.6-10, HAR, to provide the method of allocating gross income and gross proceeds to each county. The proposed rules simplify the allocation method by eliminating the "nexus" analysis.

**7. HAR Title 18 Chapter 237 - General Excise Law**

Justification - The rules provide clarity for how to determine whether gross income derived from service or contracting is exempt from the GET.

DoTax adopted administrative rules related to the exemption for gross income received from services exported out of state, which became effective March 17, 2018. The adopted rules add new sections 18-237-29.53-01 through 18-237-29.53-13, HAR, which clarify how to determine whether gross income derived from services or contracting is exempt from the GET as exported services or contracting. The rules include numerous examples for additional clarity.

**8. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - The rules provide clarity for how to determine where income from intangible property is sourced for GET purposes.

DoTax adopted administrative rules related to determining where intangible property is used, which became effective April 20, 2019. The adopted rules add a new section, 18-237-29.57-01, which defines where intangible property is used for purposes of the GET exemption for gross income received from intangible property used outside the State under section 237-29.57, HRS.

Specifically, the proposed rules define where intangible property is used based on whether the customer is a business, individual, military, or government.

**9. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - In certain audit situations where a tax benefit is dependent on the actions of more than one taxpayer, such as a GET deduction for subcontracting, DoTax must examine more than one taxpayer's return to properly review and assess the appropriate tax. This rule codifies DoTax's position that such examination is allowed under the law and makes that position clear to the public.

DoTax adopted administrative rules related to disclosure of return information to persons with a material interest in a tax return, which became effective February 3, 2019. The adopted rules add a new section, 18-237-34-13 HAR, to define a "person with a material interest" in a return or return information to include persons whose tax liability is based on gross income, deductions, exemptions or tax liability reported by the taxpayer.

**10. HAR Title 18 Chapter 237D -Transient Accommodations Tax**

Justification - The rules provide clarity and public notice for how the Department will enforce Act 204. In addition, Act 204 gives DoTax the authority to issue citations and fines to operators of transient accommodations and operators of websites or publications who violate these requirements. As an appeal of such a citation would be considered a "contested case" under chapter 91, HRS, DoTax could not begin enforcing this law and

issuing citations until procedures for such an appeal were published by rule. The proposed rules provide that necessary appeal procedure.

DoTax adopted administrative rules related to Act 204, SLH 2015, which became effective February 3, 2019. The adopted rules make numerous amendments, additions and deletions to sections 18-237D-4-01 through 18-23 7D-4-35, HAR.

The rules implement Act 204, which requires that operators of transient accommodations designate an on island local contact and display that contact's name, phone number and email address inside the unit and provide that information either in online advertisements or to the guest upon check-in. Act 204 also requires that a unit's Transient Accommodations Tax license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link. These rules provide the procedures by which DoTax enforces the requirements of Act 204.

### ***Department of Transportation (DOT)***

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

#### Highways Division

##### **1. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles**

Justification - A new subsection will be added to the rules that addresses the inspection of special interest vehicles. This change will make inspecting these vehicles easier for the inspectors because the rules will provide better guidance and more details pertaining to items to inspect on these vehicles. This change will have negligible impact on the stations that inspect special interest vehicles.

#### Airports Division

##### **2. HAR Title 19 Chapter 20.1 – Commercial Services at Public Airports**

Justification - This rule change clarifies that services provided or facilitated by digital network or a TNC may be permitted under Chapter 19-20.1 and will clarify the terms and conditions of the permits. In addition, the rule change will also address the expressed desires of the companies and air passengers to have these services available at the public airports.

The economic impact to the State is characterized by the revenue earned by the Airports Division, the increased opportunity for new companies and permittees to operate at the public airports, and most important, the increase in options relative to ground transportation services available to air passengers (both residents and visitors), who use the public airports. These public airports cannot be part of an efficient global air transportation organization if ground transportation options are limited. With this rule change, the Airports Division will be able to include TNC operations in the ground transportation choices available to arriving air passengers and the traveling public, meeting their expectations and demands.

## ***University of Hawaii (UH)***

UH confirms that it currently has no administrative rules affecting small business, and that it has not amended or repealed any rules in the past year based upon any new, amended, or repealed statute impacting small business.

However, UH is currently engaged in rulemaking to adopt a proposed new Chapter 26 of HAR Title 20, regarding public and commercial access to University-managed lands on Mauna Kea. When adopted, these rules will impact small business, as they provide in part for the regulation of commercial tour operators.

The proposed rules were discussed with the SBRRB at its meeting of June 20, 2018. At that time, SBRRB approved going forward with public hearings on the proposed rules. UH has subsequently conducted eight public hearings on the rules, as well as two consultation meetings with the current Mauna Kea commercial tour operators. A detailed report on these activities was provided to the Board; adoption occurred in the summer of 2019.

## Follow-up on Prior SBRRB Administrative Rule Reviews

The following fifteen (15) Hawaii Administrative Rules were previously reviewed by the SBRRB. Current updates are noted.

### *Department of Agriculture*

#### Division of Measurement Standards

##### **1. HAR Title 4 Chapter 93 – Packaging and Labeling**

Justification - This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

2006 Recommendation - Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency - A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - A discussion with DOA in 2018 revealed that the rules are in process of being reviewed and will be updated accordingly; no date for completion was determined.

As of the printing of this report, there were no changes or updates to the rules.

#### Division of Plant Industry

##### **2. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules**

Justification - This rule provides for export plant and plant products inspectional and disinfestation treatment services that meet the requirements of the state or country of destination. Agriculture is an important economic industry to the State of Hawaii.

From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant

products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country.

To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule.

Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met, or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

2006 Recommendation - Rule amendments were submitted to the SBRRB in 2006; however, the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB agrees the rule should be reviewed and revised.

Response from Agency - This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries.

The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

Final Commentary - A discussion with DOA in 2018 revealed that the rules are currently "frozen" in terms of modification however because the statute governing these rules reflect a change in fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

As of the printing of this report, there were no changes or updates to the rules.

#### Division of Animal Industry

### **3. HAR Title 4 Chapter 16 – Cattle, Sheep, and Goats**

Justification - The rules refer to the regulation of cattle, sheep and goats. Proposed will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. Amendments will also update the existing rules to allow Hawaii to remain consistent with the National Scrapie Eradication Program, require additional testing for incoming cattle, and additional permit requirements for incoming livestock as well as qualifications.

A quarantine order put in place for the intrastate movement of sheep and goats has reduced the urgency to amend the rules as the Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2008.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended.

2006 Recommendation - The rules are 25 years old; the rules are in process of being updated.

Final Commentary - A discussion with DoAg in 2018 indicated that these rules were under review and in the process of being updating for several years; a completion of the updates is expected in 2020.

As of the printing of this report, there were no changes or updates to the rules.

#### **4. HAR Title 4 Chapter 17 – Swine**

Justification - This rule authorizes DoAg to undertake disease control measures intended to control and eradicate certain disease of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated the rules are in process of being amended.

2006 Recommendation - The rules are 25 years old; the rules are in process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Final Commentary - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

As of 2020, there were no changes or updates to the rules.

#### **5. HAR Title 4 Chapter 23 – Horses**

Justification - This rule controls the importation of diseases and pests that affect horses. Preventing the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. As

most of horses in Hawaii are pets, there is little impact on small business by these import requirements.

The rules were established in 1949 and last amended in 1981. On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation - The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

As of 2020, there were no changes or updates to the rules.

### ***Department of Commerce and Consumer Affairs***

#### **6. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts**

Justification - The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

2006 Recommendation - This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency - The SBRRB recommended that a full analysis and update be performed. DCCA plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. DCCA's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008. The SBRRB is in concurrence with the Agency.

Final Commentary - A discussion with DCCA in 2018 indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

As of 2020, there were no changes or updates to the rules.

#### **7. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks**

Justification - The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

2006 Recommendation - There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.



Response from Agency - The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be performed. DCCA has reviewed the rules and determined that no substantive amendments are necessary at this time. DCCA has received an average of 18 complaints a year - there are approximately 325 registered activity desks over the past four years. Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company.

The SBRRB is in concurrence with DCCA. Although DCCA determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, it will again, be approached by the SBRRB.

Final Commentary - A discussion with DCCA in 2018 indicated that these rules are not in the process of being amended. They will be reviewed in the near future; at that time, a determination will be made if modifications are warranted.

As of 2020, there were no changes or updates to the rules.

## Department of Health

### Medical Division

#### 8. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes

Justification - The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities.

These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

2006 Recommendation - Standards have changed, and enforcement of the rules is different since the rules were established in 1992. Therefore, some provisions should be deleted. Reanalysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - As of 2020, DOH's website continues to show the rules are "pending amendment & compilation."

## **9. Chapter 11-95 – Freestanding Surgical Outpatient Facilities**

Justification - The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised, and federal reimbursement will not be realized. The rules were established in 1986.

2006 Recommendation - Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

Final Commentary - As of 2020, DOH's website continues show the rules are "pending repeal and replacement by Chapter 92."

## **10. Chapter 11-96 – Freestanding Adult Day Health Centers**

Justification - The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees and the public. The rules were established in 1991.

2006 Recommendation - The Agency has indicated that the rules need revisions; rules are 15 years old. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding; the SBRRB concurs.

Final Commentary - As of 2020, there were no changes or updates to the rules.

## **11. Chapter 11-97 – Home Health Agencies**

Justification - These rules outline licensing requirements for Home Health Agencies (HHA) and defines penalty for those who violate this chapter. HHA has the option of being Medicare/Medicaid certified to receive reimbursement, and there is an increasing interest for HHA's that receive private funding, to be licensed, to be reimbursed by private insurance and/or long-term care insurance. Such licensing not only insures the health and safety of patients, employees and the public, but also looks toward reducing the abuse and exploitation of the elderly. The rules were established in 1982.

2006 Recommendation - DOH indicated the rules need revisions; rules are 25 years old and exhibit inconsistent standards – standards and accreditation need to be in place. The SBRRB agrees with DOH that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Currently, procedures are being enforced that are not reflected in the rules. If enforcement is being sought, those procedures should be incorporated in the rules. The SBRRB strongly recommends that these rules are amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to DOH outlining this request with a copy sent to the Governor.

Final Commentary - As of 2020, there were no changes or updates to the rules.

## **12. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded**

Justification - The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

2006 Recommendation - Agency has indicated that the rules need revisions; rules are over 20 years old. The SBRRB agrees with DOH that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules are updated because there is a greater population within the community, so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the

SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary - As of 2020, there were no changes or updates to the rules.

## **Environmental Division**

### Noise, Radiation and Indoor Air Quality Branch

#### **13. Chapter 11-39 – Air Conditioning & Ventilation System**

Justification - The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

2006 Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Final Commentary - As of 2020, DOH's website continues to show rules are "pending repeal/replacement by Chapter 48."

#### **14. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules**

Justification - The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

2006 Recommendation - These rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to public hearing.

Final Commentary - As of 2020, there were no changes or updates to the rules.

#### **15. Chapter 11-45 – “Radiation Control”**

Justification - The rules are required for core public health. The rules set minimum standards for all persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

2006 Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Final Commentary - As of 2020, DOH's website continues to show the rules are "pending amendment & compilation."

# COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

## Hawaii County

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

### Office of the Prosecuting Attorney

#### 1. Hawaii County Charter Article IX, Chapter 28 - HRS 28-1

Justification – The Office of the Prosecuting Attorney is the legal agency responsible for prosecuting all violations of State and County laws, ordinances, rules and/or regulations on behalf of the Big Island Community.

The purpose of this chapter is to seek accountability for those who violate the law in our county, aid those impacted by criminal conduct, and work with the community to solve crime related problems.

### Department of Liquor Control

#### 2. Hawaii County Charter Chapter 13-7 / HRS 281 Intoxicating Liquor

Justification – Rules and regulations of the Liquor Commission of the Department of Liquor Control of the County of Hawaii, State of Hawaii. Rules and Regulations of the Liquor Control Adjudication Board of the Department of Liquor Control of the County of Hawaii.

Post prohibition government regulation for the responsible and safe manufacture, distribution and sale of intoxicating liquor.

### Environmental Management

#### 3. Hawaii County Code Relating to Refuse, Chapter 20

Justification – Public health and safety; protect, preserve and enhance the environment.

#### Hawaii County Code Relating to Sewers, Chapter 21

Justification – Much of the Code section is applicable due to public health and safety.

### Department of Water Supply (DWS)

#### 4. Charter 8-2 (b), HRS 54 Water Systems Rules and Regulations of the DWS

Justification – Management, control, and operation of the waterworks of the County for the purpose of supplying water to the public in the County.

### Finance Department

#### 5. HRS 103D, Rule 4 – Purpose of Materials, Supplies, Equipment and Services

Justification – Required for compliance with HRS 103D. Promote fair procurement practices.

#### 6. HRS 103D, Rule 5 – Value Engineering Incentive

Justification – Required for compliance with HRS 103D. Provide savings to the County.

7. **HRS 286, Part VI, Rule 11 – Motor Vehicle Driver Licensing**  
Justification – Required for compliance with HRS 286. Provide licensing procedures.
8. **HRS 287, Rule 12 – Motor Vehicle Responsibility Act**  
Justification – Required for compliance with HRS 287. Insure drivers have financial responsibility.
9. **HRS 286-51, Rule 13 – Motor Vehicle Registrations**  
Justification – Required for compliance with HRS 286-51. Provide vehicle registration schedule.
10. **HRS 286-53 and 249, Rule 14 – License Plates**  
Justification – Required for compliance with HRS 286-53 and 249. Provide issuance procedures.
11. **HRS 249-9.1 and 249-9.2, Rule 15 & 16 – Special License Plates**  
Justification – Required for compliance with HRS 249. Provide issuance procedures.
12. **Hawaii County Code, Chapter 18, Rule 17 - Taxicabs**  
Justification – Required for compliance with Hawaii County Code 18. Public safety.
13. **HRS 286-53.5, 53.6, Rule 18 – Registration of Fleet Vehicles**  
Justification – Required for compliance with HRS 286-53.5, 53.6. Provide issuance procedures.
14. **HRS 289-7, Rule 19 – Licenses for Businesses Engaged in Purchasing or Selling Used Vehicle Parts, Vehicle Salvage, etc.**  
Justification – Provide requirements and procedures.
15. **Hawaii County Code 19-60, Rule 30 – Real Property Tax Dedicated Agricultural Use**  
Justification – Required for compliance with HCC 19-60. Provide requirements and procedures.
16. **Hawaii County Code 16-57, Rule 34 – Real Property Tax Non-Dedicated Agricultural Use**  
Justification – Required for compliance with HCC19-57. Provide requirements and procedures.
17. **Hawaii County Code, Chapter 19, Rule 35 – Real Property Tax Exemption for Certain Improvements**  
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.
18. **Hawaii County Code, Chapter 19, Rule 38 – Real Property Tax Designation as Wasteland Development Property**  
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.

### **Hawaii Fire Department**

#### **19. Hawaii County Code – Chapter 26 – Article 1, Hawaii County Fire Code**

Justification – Government regulation of the sale, distribution, standby, maintenance, permitting, access, notification requirements of structures, private and commercial.

#### **20. Hawaii County Code – Chapter 26 – Article 2, Fireworks Code**

Justification – Government regulation of the sale, distribution, storage, licensure, and prohibitions attributed to fireworks.

#### **21. Hawaii County Code – Chapter 132 – Fire Protection**

Justification – Government regulation regarding powers of the Fire Chief, investigation rights, entry, duties of owners, penalties, submission of building plans.

#### **22. Hawaii County Code – 132D – Fireworks**

Justification – Government regulation regarding the permission and prohibitions of fireworks use, sale, distribution, permitting, storage, display fireworks, pyrotechnics, and liabilities.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

### **Environmental Management**

#### **23. Hawaii County Code Relating to Refuse, Chapter 20**

Justification – Chapter 20, Article 6 – Ban of polystyrene containers used food service providers, 20-62

#### **24. Hawaii County Code Relating to Sewers, Chapter 21**

Justification – Chapter 21, Article 4 – Anticipate further amendment to address Recycled Water rates; Chapter 21, Article 1 – Add definition of “recycled water,” Section 21-2; Chapter 21, Article 6 – Add new article for “Recycled Water System and Connections.”

## **City and County of Honolulu**

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules’ continued implementation:

### **Honolulu Fire Department**

#### **1. HAR Chapter 12-44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems**

Justification - Adopted on March 13, 2018

### **Budget and Fiscal Services Administration (BFS), Real Property Assessment Division**

#### **2. Agricultural Land Dedication Assessment – Title 4; Subtitle 5; Chapter 11; Sections 1-13**

Justification –These rules are intended to implement the provisions of Section 8-7.3, Revised Ordinances of Honolulu, relating to the dedication of land for ranching or other agricultural uses. Agreement of the rules.



**3. Tax Moratorium on Building – Rehabilitation Projects – Title 5; Subtitle 5; Chapter 12; Sections 1-7**

Justification – These rules are intended to clarify and implement Section 8-7.1(g), of the Revised Ordinances of Honolulu, which provides that the assessed valuation of certain building shall not be increased if the increase is due to improvements on buildings undertaken or made by the owner-occupant pursuant to the requirements of any urban redevelopment, rehabilitation or conservation project under the provisions of Part II of Chapter 53, Hawaii Revised Statutes; the property tax moratorium being for a period of seven (7) years as prescribed in section 4-12-6 of these regulations.

**4. Wasteland Development Classification Property Assessment – Title 4; Subtitle 5; Chapter 13; Sections 1-9**

Justification – These rules are intended to clarify and implement the provisions of Sections 8-8.1 to 8-8.8, Revised Ordinances of Honolulu, relating to the development of land classified as wasteland development property.

**5. Urban District Open Space Land Dedication – Title; Subtitle 5; Chapter 14; Sections 1-9**

Justification – These rules are intended to clarify and implement the provisions of Section 8-10.13, Revised Ordinances of Honolulu, which exempts from real property taxation, such portions of land in urban districts which are dedicated for landscaping, open spaces, public recreation or other similar uses and are approved by the director for such use or uses.

**6. Low and Moderate – Income Rental Housing Exemptions – Title 4; Subtitle 5; Chapter 15; Sections 1-9**

Justification – These rules are intended to clarify and implement the provisions of Sections 8-10.20 and 8-10.21, Revised Ordinances of Honolulu, which exempt low and moderate-income rental housing projects developed, owned, and operated by a nonprofit or limited distribution mortgagor or by a qualified entity from taxation.

**7. Historic Residential Property Deductions – Title 4; Subtitle 5; Chapter 16; Sections 1-11**

Justification – These rules are intended to implement the exemption provisions of Section 8-10.22, Revised Ordinances of Honolulu 1990, as amended, (hereinafter referred to as “ROH”) relating to the dedication of historic residential properties. [Eff. SEP 25 2011] (Auth: ROH § 8-10.22, RCH § 4-105 )(Imp. ROH§ 8-1 0.22)

**8. Assignment of Real Property Tax Appeal Cases – Title 4; Subtitle 5; Chapter 17; Sections 1-4**

Justification – These rules are promulgated in compliance with Subsection 8-12.7(b), Revised Ordinances of Honolulu, and are intended to govern the assignment of real property tax appeal cases to the Boards of Review. In assigning appeal cases, the primary goal is to minimize delays in the appeal process and to reduce the backlog of appeal cases.

**9. Assessment Notice and Assessment List – Title 4; Subtitle 5; Chapter 18; Sections 1-6**

Justification – These rules are intended to establish the procedures relating to the preparation of the Notice of Assessment and the Assessment List under Section 8-2.1 and Section 8-2.2, respectively, Revised Ordinances of Honolulu 1978 (1983 Edition).

**10. Valuation of OFF-BASE Military Housing Projects – Subtitle 5; Chapter 21, Sections 1-7**

Justification – The purpose of this chapter is to implement and clarify the provisions of Section 8-10.18 Lessees of Exempt Real Property, Revised Ordinances of Honolulu 1990, as amended (“ROH”), pertaining to the assessment of exempt real property by establishing the methodology that shall be used to determine the fair market value of military housing projects situated on federal property lease to a private person that are located outside of a military base and are subject to the Nation Defense Authorization Act for Fiscal Year 2006, P.L. 104-106, Title XXVIII, Subtitle Military Housing Privatization Initiative (codified at 10 U.S.C Sections 2871-2885, as amended).

**11. Classification of Condominiums – Subtitle 5; Chapter 130; Sections 1-4**

Justification – The purpose of this chapter is to implement and clarify the provisions of Section 8-7.1(c)(3)(A), Revised Ordinances of Honolulu (“ROH”), relating to the classification of condominium units upon consideration of the unit’s actual use and the effect on classification of a condominium unit which is used by occupants in a manner similar to a short-term use by transient hotel guests, or which qualifies for a home exemption. [Eff SEP 2 9 2007] {Auth: ROH §8-7.1, RCH 4-105) (Imp. ROH §8-7.1)

**Department of Parks and Recreation (DPR)**

**12. Amended Rules and Regulations Governing Motorized and Glider Model Airplane Activities on City Park Properties**

Justification – The rules govern model airplane flying at designated park areas under the jurisdiction of the DPR.

**13. Rules and Regulations Governing the Use of the Koko Head District Park Bicycle Motor Cross (BMX) Track**

Justification – The rules govern the use of BMX Track.

**14. Rules and Regulations Governing Model Boat Activities On, In and Under any Situs Owned or Controlled by the City and County of Honolulu**

Justification – The rules govern model boat activities on, in and under any situs owned or controlled by the City and County of Honolulu.

**15. Camping**

Justification – The rules make public parks readily accessible to residents and the public at large; prevent camping in public parks that are not designated as campground; prevent the storage of personal property in public parks which interferes with the rights of others to use the public parks; provide equitable opportunities to use campgrounds through a reservation system.

**16. Rules and Regulations Governing the Construction and Operation of Canoe Shelters on City Park Properties**

Justification – The rules govern the construction and operation of canoe shelters on City park properties.

**17. Carnival Rules and Regulations**

Justification – The rules govern carnivals and any other recreational activities having amusement rides on a temporary or permanent basis held in public parks under the jurisdiction, management, and operation of the department of parks and recreation.

**18. Rules, Regulations, Charges and Fees for Use of Recreational Facilities for Special Events**

Justification – The rules establish fees and charges for the use of department recreational facilities for special events and to establish rules and regulations that govern issuance of special event permits.

**19. Recreation Child Care Programs**

Justification – The rules establish guidelines and procedures for recreation child care programs conducted by or on behalf of DPR to ensure that recreation child care programs are designed and conducted to promote the physical, emotional, and social well-being and development of children.

**20. Rules and Regulations on Procedures for the Closure of Designated City Parks at Night Due to Illegal Activities**

Justification – The objectives of the rules are to establish uniform procedures for closing designated problem City parks during the night hours; to prevent costly damages to City park recreational facilities, prevent disturbances to nearby residents, and to make the facilities a safer environment for all park users.

**21. Amended Rules and Regulations Relating to the Limited Commercial Use of Parks and Park Facilities**

Justification – The rules allow certain commercial activities in limited numbers and under controlled conditions within selected park areas under the management and control of the DPR.

**22. Amended Rules and Regulations Governing Commercial Scuba Diving (to include Snuba) and Snorkeling Activities in Hanauma Bay Nature Park**

Justification – The rules govern commercial scuba diving, snuba and snorkeling activities in Hanauma Bay Nature Park.

**23. Amended Rules and Regulations Governing Commercial Windsurfing Activities in Kailua Beach Park**

Justification – The rules govern commercial windsurfing activities in Kailua Beach Park.

**24. Amended Rules and Regulations Governing Commercial Filming (TV, Movie, Stills)**

Justification – The rules govern commercial filming activities in City parks properties.

**25. Amended Rules and Regulations Governing Commercial Scuba Diving (to include Snuba) and Snorkeling Activities in City Beach Parks Located in Other than State Conservation Districts**

Justification – The rules govern commercial scuba diving, snuba and snorkeling activities in City beach parks located within State Conservation Districts (except Hanauma Bay Nature Park, Koko Head Sandy Beach Park, and Makapuu Beach Park).

**26. Amended Rules and Regulations Governing Commercial Swimming and Surfing Instructions in City Beach Parks**

Justification – The rules govern commercial swimming and surfing instructions in City beach parks.

**27. Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks**

Justification – The rules govern recreational stops by commercial tour companies in city parks.

**28. Rules and Regulations Governing Commercial Hiking Tours at Hanauma Bay and the Adjacent Area Within the Conservation District**

Justification – The rules govern commercial hiking tours at Hanauma Bay and the adjacent area within the conservation district.

**29. 1984 Amended Rules and Regulations for Community Recreational Gardening Program**

Justification – The rules govern the operation and management of all community recreational gardening projects under the DPR.

**30. Amended Rules and Regulations Relating to Craft Fairs and Art Marts Held on City Parks Properties**

Justification – The objectives of the rules are to ensure that only bona fide, nonprofit organizations are granted temporary concessions to conduct craft fairs and art marts on City parks properties; and to ensure that the handcrafted items and works of art on sale are made, created or fashioned by the person selling them.

**31. Rules and Regulations Relating to Rulemaking Proceeding, Declaratory Rulings, and Government Records and Information**

Justification – The objective of the rules is to establish guidelines and procedures governing the manner which persons may obtain information from the department; petition for the adoption, amendment, or repeal of rules; or petition for a declaratory order by the director.

**32. Rules Governing Dogs in Public Parks**

Justification – This chapter governs dogs in public parks under the jurisdiction, management, and operation of the parks department and recreation.

**33. Rules and Regulations Relating to the Limited Vehicular Traffic on the Access Road between the upper and lower portions of Hanauma Bay Beach Park**

Justification – The purpose of these rules is to govern the use and to protect the health, safety and welfare of the park users and define the specific users authorized the use of the access road. It also provides through a concessionaire a means for the handicapped, elderly and others who choose to ride rather than negotiate the steep access road on foot.

**34. Amended Rules and Regulations Relating to Visitor Use Levels and Controls at Hanauma Bay Nature Preserve**

Justification – The purpose of the rules is to control usage of Hanauma Bay Nature Preserve and the level of visitors to insure preservation of unique resource.

**35. Rules and Regulations Relating to Hang Glider and Ultra-Light Aircraft Activities held on City Parks Properties**

Justification – The objective of the rules is to control hand glider and ultra-light aircraft activities held on City parks properties and to protect the City and County of Honolulu against liability.

**36. Rules and Regulations Governing Helicopter and Parachute Landings on City and County of Honolulu park Properties**

Justification – The rules apply to helicopter and parachute landings on public parks under the control, management and operation of the DPR.

**37. Rules for Ho'omaluhia**

Justification – The purpose of the rules is to govern the use and protection of the Ho'omaluhia system.

**38. Leisure Services Incentive Fund Rules and Regulations**

Justification – The purpose of the rules is to govern the establishment and administration of a Leisure Services Incentive Fund where City funds will be matched with community contributions for the improvement of recreation and park facilities.

**39. Amended Rules and Regulations Regarding Use of Malls**

Justification – The rules govern the effective control and coordination in the use of malls; use of malls to promote the safety, health, and welfare of the public; use of malls compliance with the purposes for which they were established; and use of malls to promote the interest of the malls district, or any other community endeavors sponsored, undertaken or promoted by duly established organizations.

**40. Rules and Regulations Governing Parking in City and County of Honolulu Park Properties**

Justification – The rules protect City park properties by providing control and to promote the safe enjoyment of public parks by the public by providing guidelines for use and reservation of parking facilities.

**41. Rules and Regulations for Participating Vendors of the People's Open Market Program**

Justification – The rules govern the participating vendors of the People's Open Market Program.

**42. Amended Rules and Regulations Governing Picnic Activities at City Parks**

Justification – The rules govern all picnic activities at City Parks.

**43. Rules and Regulations Governing Recreational Activities, Including Fund-raising Activities Sponsored by Community Organizations, Associations, Groups or Individuals; Sports Activities Conducted by Either a League, Organization, Association, Group or Individual; Meetings, Gatherings or Other Similar Activity held by Organizations, Associations or Groups, Nonrecreational Public Service Activities, Meetings, and Gathering held by Organizations, Communities or Groups on City Park Properties**

Justification – The rules govern recreational activities, including fund-raising activities sponsored by community organizations, associations, groups or individuals; sports activities conducted by either a league, organization, association, group or individual; meetings, gatherings or other similar activity held by organizations, associations or groups, nonrecreational public service activities, meetings, and gatherings held by organizations, communities or groups on City park properties.

**44. Rules and Regulations Governing Right-of-Entry to City Park Properties**

Justification - The rules regulate access to and the use of City park properties by contractors, utility companies, residents whose property abuts City park properties, and other government agencies for construction and repair work, including the installation and repair of utility lines.

**45. Sale or Distribution of Expressive Materials**

Justification - This chapter recognizes and sets forth the rights and privileges of individuals or groups to distribute expressive materials in parks designated in this chapter under the jurisdiction, management, and operation of DPR.

**46. Shore Water Events**

Justification – The rules govern the use of City beach parks and other beach properties under the control of the DPR to provide access to conduct shore water events.

**47. Rules and Regulations Relative to the Issuance of Reservation Permits for the Use of Public Tennis Courts Located in Public Parks of the City and County of Honolulu**

Justification – The rules govern the issuance of reservation permits for the use of public tennis courts located in public parks under the direct control, management and operation of DPR.

**48. Rules and Regulations Regarding the Pruning of Exceptional Trees**

Justification – The rules and govern the planting and maintenance of street trees.

**Department of Facility Maintenance (DFM)**

**49. Title 14, Chapter 6 – Storm Water System**

Justification – The proposed rules shall apply to the actions of the Director and Chief Engineer of the Department of Facility Maintenance in the administration and enforcement of Chapter 14, Revised Ordinances of Honolulu, 1990, as amended, governing the enforcement and appeals process for Storm Water Quality violations, as it relates to permits issued, illegal connections and illicit discharges that enter or tie into the City and County of Honolulu's Municipal Separate Storm Sewer System (MS4).

**Department of Customer Services (CSD)**

**50. Title 9, Subtitle 1 Motor Vehicle, Licensing and Permits Part 1 Business Licenses and Permits Chapter 1 – Taxicabs**

Justification – The rules govern the procedures to be followed for the issuance of the taxicab business license and taxicab driver's certificate, the design of the signs on taxicabs, and maximum fares, baggage charge, and airport surcharges.

**County of Maui**

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

**Department of Parks and Recreation**

**1. Maui County Code 13.04A.300D; Parks and Recreational Facilities – Rules of Practice and Procedure for Commercial Ocean Recreational Activity Permits**

Justification - These rules regulate commercial ocean recreational activities in, on, or over County beach parks and other properties under the control of the department of parks and recreation. The interest served by these rules is that of the community to ensure equitable access and use of the county beach parks.

The rules apply specifically to businesses that have applied for this permit type and utilize county beach parks for lessons and as an available access point for the ocean.

#### **Department of Public Works**

**2. Maui County Code 16.26B.105.3.3; Title MC-15, Subtitle 01, Chapter 101 – Rules Pertaining to Plan Review Waiver Building Permits**

Justification - The rules set forth the procedures for obtaining plan review waiver building permits. The rules have a positive effect on small business as they are often used for tenant improvements so that businesses can get started faster.

#### **Department of Water Supply**

**3. Maui County Code 14.01.060; County Water Code General Provisions – Water source development agreements with private entities**

Justification – The rules describe requirement for council approval by resolution for any water source development agreement with private entities

**4. Maui County Code 14.04.010; County Water Code Water Services – General Conditions**

Justification – The rules are necessary to obtain water service.

**5. Maui County Code 14.04.020; County Water Code Services – Fire Protection Requirements for Building Permit Applications**

Justification - The rules describe adequate fire protection review and administration as it relates to building permit applications.

**6. Maui County Code 14.04.030; County Water Code Services – Water service – Application**

Justification – The rules require the water service application process.

**7. Maui County Code 14.04.040; County Water Code Services – Water service – Installation**

Justification - The rules describe requirements for water service installation.

**8. Maui County Code 14.04.050; County Water Code Services – Water pressure and elevation conditions**

Justification – The rules describe responsibility for maintenance of adequate pressure in the water distribution system.

**9. Maui County Code 14.04.060; County Water Code Water Services – Responsibility for equipment**

Justification - The rules describe conditions and consequences of consumer related equipment installation and maintenance.

10. **Maui County Code 14.05; County Water Code Subdivision Water System Requirements – Rules for Subdivision Water System Requirements**  
Justification - These rules provide processes, standards, and related penalties for subdivision water systems.
11. **Maui County Code 14.06A; County Water Code Water Conservation and Control of Water Usage During Water Shortage – Water Conservation and Control of Water Usage During Water Shortage**  
Justification – These rules provide definitions, policies, procedures and related penalties for water shortage events.
12. **Maui County Code 14.07; County Water Code Water System Development Fees – Water System Development Fees**  
Justification - The rules authorize the department to collect fees for water system improvements and establish related accounting mechanisms.
13. **Maui County Code 14.08; County Water Code Restrictions on Use of Potable Water for Golf Courses – Restrictions on Use of Potable Water for Golf Courses**  
Justification - The rules prohibit use of potable water for irrigation and other nondomestic uses at new golf courses.
14. **Maui County Code 14.10; County Water Code Water Rates and Fees – Water Rates and Fees**  
Justification – The rules describe rates, fees, waivers, and other charges for water service.
15. **Maui County Code 14.11; County Water Code Appeals to the Board of Water Supply – Appeals to the Board of Water Supply**  
Justification – The rules describe the appeal process.
16. **Maui County Code 14.12; County Water Code Water Availability – Water Availability Policy**  
Justification - The rules describe verification of reliable water supply before subdivision approval and related exemptions.

#### **Department of Liquor Control**

17. **HAR Title 8 Chapter 101, 102 – Rules Governing the Manufacture and Sale of Intoxicating Liquor of the City of Maui**  
Justification – The board reviewed the proposed amendments after public hearing. Upon review, the members unanimously agreed to forward amendments for adoption.

### **County of Kaua'i**

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

#### **Department of Liquor Control**

1. **Rule 2.5 License application; notice of hearing; affidavits**



Justification – The rules remove the requirement of obtaining tax clearance from the Internal Revenue Service.

**Office of Economic Development**

**2. Ordinance 1041, Bill No. 2720 Chapter 23-3.8 – Chapter 23, Kaua'i County Code 1987, as Amended, Relating to Sunshine Markets**

Justification – The ordinance governs the addition of products able to be sold at the County of Kaua'i Sunshine Markets and adds definitions.



Department of Business, Economic Development & Tourism  
**Small Business Regulatory Review Board**

***No. 1 Capitol District Building  
250 South Hotel Street, 5<sup>th</sup> Floor  
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Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)  
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## **VI. Legislative Matters**

- A. Update on the following Legislative Measures:**
  - a. Governor's Message 672, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, gubernatorial Nominee, Mary Albitz, for a term to expire June 30, 2024**
  - b. Governor's Message 673, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Nancy Atmospera-Walch, for a term to expire June 30, 2024**
  - c. Governor's Message 674, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Robert Cundiff, for a term to expire June 30, 2024**
  - d. Governor's Message 675, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Taryn Rodighiero, for a term to expire June 30, 2023**
  - e. Governor's Message Submitting for Consideration for the Gubernatorial Nomination of James Lee to the Small Business Regulatory Review Board for a term estimated to expire June 30, 2024**

# GM672

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, MARY ALBITZ, for a term to expire 06-30-2024.  
Report Title: Small Business Regulatory Review Board  
Description:  
Companion:  
Package:  
Current Referral: EET  
Introducer(s):

<u>Sort by</u> <u>Date</u>	Status Text
3/30/2020	S Received.
5/11/2020	S Referred to EET.
5/8/2020	S The committee(s) on EET has scheduled a public hearing on 05-14-20 1:00PM in conference room 016.
5/14/2020	S The committee(s) on EET deferred the measure until 05-18-20 4:00PM in conference room 016.

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

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## GM672

# GM673

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, NANCY ATMOSPORA-WALCH, for a term to expire 06-30-2024.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EET

Introducer(s):

<u>Sort by</u> <u>Date</u>	<b>Status Text</b>
3/30/2020	S Received.
5/11/2020	S Referred to EET.
5/8/2020	S The committee(s) on EET has scheduled a public hearing on 05-14-20 1:00PM in conference room 016.
5/14/2020	S The committee(s) on EET deferred the measure until 05-18-20 4:00PM in conference room 016.

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

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## GM673

# GM674

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, ROBERT CUNDIFF, for a term to expire 06-30-2024.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EET

Introducer(s):

<a href="#">Sort by Date</a>	Status Text
3/30/2020	S Received.
5/11/2020	S Referred to EET.
5/8/2020	S The committee(s) on EET has scheduled a public hearing on 05-14-20 1:00PM in conference room 016.
5/14/2020	S The committee(s) on EET deferred the measure until 05-18-20 4:00PM in conference room 016.

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

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## GM674

# GM675

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, TARYN RODIGHIERO, for a term to expire 06-30-2023.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EET

Introducer(s):

<u>Sort by</u> <u>Date</u>	Status Text
3/30/2020	S Received.
5/11/2020	S Referred to EET.
5/8/2020	S The committee(s) on EET has scheduled a public hearing on 05-14-20 1:00PM in conference room 016.
5/14/2020	S The committee(s) on EET deferred the measure until 05-18-20 4:00PM in conference room 016.

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

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## GM675