

**Small Business Regulatory Review Board Meeting**

**November 21, 2019**

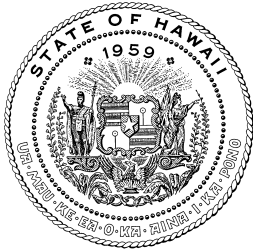
**10:00 a.m.**

**Leiopapa A Kamehameha Building**

**(State Office Tower)**

**Conference Room 405 – 235 South Beretania Street,**

**Honolulu, HI 96813**



## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

### AGENDA

**Thursday, November 21, 2019 ★ 10:00 a.m.**

**Leiopapa A Kamehameha Building - State Office Tower  
Conference Room 405  
235 South Beretania Street, Honolulu, HI 96813**

**David Y. Ige**  
*Governor*

**Michael McCartney**  
*DBEDT Director*

#### Members

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

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

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

**Harris Nakamoto**  
*O'ahu*

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

**Mary Albitz**  
*Maui*

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

**Jonathan Shick**  
*O'ahu*

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

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

#### **II. Approval of October 17, 2019 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 234, Section 26, **Fees and Charges**, promulgated by Department of Land and Natural Resources (DLNR) – **Discussion Leader – Mary Albitz**
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, promulgated by Department of Taxation (DoTax), as follows – **Back-up Discussion Leader – Will Lydgate**
  - a. Chapter 231, Administration of Taxes, Section 3-14.17, **Revocation of licenses because of abandonment**
  - b. Chapter 235 Income Tax Law:
    - 1. Proposed New Section 3-01, **Distribution of credit for partnerships, S corporations, estates, and trusts;**
    - 2. Proposed New Section 17-01 through 17-19, **Motion picture digital media, and film production income tax credit**
  - c. Chapter 243 Fuel Tax Law:
    - 1. Section 4-01, **Refund of fuel taxes in excess of 1 cent per gallon for certain fuels used for operating agricultural equipment in areas other than upon the public highways of the State;**
    - 2. Section 4-02, **Refund of fuel tax on diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than upon the public highways of the State**
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 20 Chapter 26 **Public and Commercial Activities on Mauna Kea Lands**, promulgated by University of Hawaii – **Discussion Leader – Nancy Atmospera-Walch**

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

- A. Discussion and Action on Proposed Amendments to HAR Title 13, Subtitle 11, Chapter 256, Section 73, **Kaneohe Bay Ocean Waters**, promulgated by DLNR – **Discussion Leader – Mary Albitz**
- B. Discussion and Action on Proposed Amendments to HAR Title 13, Chapter 146, Section 6, **Fees**, promulgated by Department of DLNR – **Discussion Leader - Mary Albitz**

**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:
  - a. Discussion and Action on the Board's Draft *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f) HRS
  - b. Meetings with Board Members and State Department Directors

**VI. Next Meeting:** Thursday, December 12, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

**VII. Adjournment**

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

## **II. Approval of October 17, 2019 Meeting Minutes**

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - DRAFT

October 17, 2019

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 10:03 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Carl Nagasako

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walch

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF SEPTEMBER 19, 2019 MINUTES**

Mr. Shick made a motion to accept the September 19, 2019 minutes, as presented.  
Ms. Albitz seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department and Parks and Recreation

Discussion leader and Second Vice Chair Lydgate summarized the past several years of Kauai's boating activities and noted that the proposed rules before this Board received much discussion among the commercial boaters before and after the public hearing.

Mr. Patrick Porter, Director of the County of Kauai's Department of Parks and Recreation, explained there are two government entities that govern the commercial boating activity in Hanalei Bay, Kauai - the State's Department of Land and Natural Resources and the County's Department of Parks and Recreation. Additionally, commercial boating activities

are governed by the County Planning Department's Special Management Area (SMA) when commercial boating permits are requested.

The Department of Parks and Recreation reviewed the proposed administrative rules with Mr. Mel Wills and other commercial boaters. Although many, but not all, of the recommendations by the commercial boaters were agreed upon, it now appears that the stakeholders are at a place where they are content with the rule proposal as presented.

In addition to various formatting changes made to the rules after the public hearing, other changes include modifying the period that commercial boating activities would be permitted, i.e., one-half hour before sunrise and one-half hour after sunset. Also included in the changes was an additional area for loading and unloading of passengers and provisions.

Testifier Mr. Mel Wills, North Shore Boat Representative from Holo Holo Charters - Hanalei, appreciated this Board for all the work it has done for the commercial boaters. After several meetings with the County, Mr. Wills believes everyone is "on board" with all but one of the rule changes. The only request left to resolve, on behalf of the boaters, is to remove the "no Sundays" restriction in the rules to read "commercial boating activities must comply with the SMA permit."

Mr. Porter explained, and Second Vice Chair Lydgate concurred, that eliminating the Sunday restriction in the rules was one recommendation requested by the commercial boaters that could not be incorporated into the rules despite the business community's strong interest in the ability to operate on Sundays. This is because it is a condition of the SMA use permit, governed by the Planning Department. Therefore, because the SMA use permit has its own internal approval process, whatever is decided by Planning would trump any items not in alignment of the final agreement.

Mr. Porter added that although all trailer parking was in the mauka lot of the road, the County of Kauai recently purchased the road's makai side. Pursuant to the sales agreement, there can be no commercial boating activity in this area from 10:00 PM to 5:00 AM, which must be complied with; however, this restriction has brought concerns to the dynamics and use of the park.

Although this restriction is currently being enforced, Mr. Wills explained that the land in question is where the boaters originally operated from, and this activity went away with the sale of the property. While no rental cars, tour buses, or vendors are allowed on this property, commercial boaters are parking on a public road in front of residential homes, which is clearly not the best placement for the boaters to park equipment and vehicles.

Regarding a question by Ms. Albitz about egress and ingress, Mr. Wills responded that these terms were not defined for passengers, only for equipment and use of the ramp. Although there was some concern by Parks and Recreation, these issues were worked out prior to this meeting.

Upon reviewing the information at hand, Chair Cundiff stated that there are potentially two options Board members can take. The first option is to defer the Board's action until a later meeting and pass the rules out upon review of the "final" version. The second option is to pass the rules out as presented to the Mayor with the recommendation to accept the rules subject to any changes made by the County of Kauai's Planning Department.

Second Vice Chair Lydgate made a motion to move the proposed administrative rule amendments onto the Mayor for adoption subject to any subsequent changes made by the County of Kauai's Planning Department. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

**B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 5, Environmentally-Related Illness and Injury Reporting, promulgated by Department of Health (DOH)**

Discussion leader Mr. Nakamoto followed-up with Ms. Diana Felton, DOH's State Toxicologist, the purveyor of the proposed rules. The amendments, which are after the public hearing, relate to the mandatory reporting of exposure to certain heavy metals and pesticides.

All the affected businesses (i.e., laboratories) were contacted by DOH to make sure they were aware of the changes and to follow the new requirements. As there was no attendance at the public hearing and no comments were submitted, DOH felt comfortable with proceeding with finalizing the proposed changes.

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

**IV. ADMINISTRATIVE MATTERS**

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

**a. Discussion of Board Member Nominations pursuant to Section 201M-5, (b) HRS, Small Business Regulatory Review Board; Powers**

Chair Cundiff announced that there are currently two board member positions at-large. Both require the Senate's nomination and can represent any county. Recommended names may be provided to the Senate by this Board; the Senate President will review them and either concur or not.

There are also three members with terms expiring June 30, 2020, Ms. Albitz, Ms. Atmospera-Walch, and Chair Cundiff. Ms. Albitz and Ms. Atmospera-Walch have already registered with the Boards & Commissions. In addition, Mr. Nakamoto's term is being "held over" until June 30, 2021.

Chair Cundiff noted that Mr. Shick had entertained an interested party in becoming a member but was not in attendance today; he encouraged Mr. Shick to follow-up with the individual. He also encouraged all the members to try to identify potential nominees that might be a good fit for this Board. Mr. Shick confirmed that Hawaii Chamber of Commerce is currently attempting to recruit potential board members. He is also working with his BNI Chapter to see if nominees can be found.

Also, Second Vice Chair Lydgate has an upcoming meeting with the president of the Kauai Chamber of Commerce to see if he may be able to stir up some interest in membership. In addition, Ms. Albitz has been actively looking for potential members.

Mr. Nakamoto made a motion to send to the Governor a letter of support for the nomination of Ms. Albitz to be a member of this Board. Vice Chair Yamanaka seconded the motion and all Board members agreed, except for Ms. Albitz who abstained.

Mr. Shick made a motion to send to the Governor a letter of support for the nomination of Ms. Nancy Atmospera-Walch to be a member of this Board. Mr. Nakamoto seconded the motion and the Board members unanimously agreed.

Second Vice Chair Lydgate made a motion to send to the Governor a letter of support for the nomination of Mr. Robert Cundiff to be a member of this Board. Mr. Nakamoto seconded the motion and all Board members agreed, except for Mr. Cundiff who abstained.

Regarding the monthly board meetings, Chair Cundiff stated that Deputy Director Randall Tanaka expressed an interest in this Board conducting a meeting on a neighbor island, i.e., Kauai or Maui.

Second Vice Chair Lydgate believed it is a great idea that the Board meet on a different neighbor island once a year. Mr. Nakamoto concurred and suggested that while on a neighbor island that the Board engage with a neighbor island chamber of commerce. Mr. Nagasako interjected that the Board's budget is \$12,000 and most of the funds are spoken for.

Deputy Attorney General Polk-Waihee mentioned that should the Board go to a neighbor island, the Board's work, Sunshine Law and ethics must all be balanced and adhered to; the Board's finances are also an issue. Chair Cundiff suggested that the Board investigate this matter in an executive session at a future meeting for legal advice and discussion.

b. Meetings with Board Members and State Department Directors

Ms. Albitz is meeting with DLNR today. Chair Cundiff met with Director McCartney who is extremely supportive of this Board.

**V. NEXT MEETING** – The next meeting is scheduled for Thursday, November 21, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.



**VI. ADJOURNMENT** – Mr. Nakamoto made a motion to adjourn the meeting and Mr. Shick seconded the motion; the meeting adjourned at 10:47 a.m.

DRAFT

### **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 234, Section 26, Fees and Charges, 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:** DLNR Division of Boating and Ocean Recreation

**Administrative Rule Title and Chapter:** Title 13, Chapter 234, Section 13-234-26

**Chapter Name:** Fees and Charges

**Contact Person/Title:** Todd Tashima/Legal Research Specialist

**Phone Number:** 808-587-0142

**E-mail Address:** todd.h.tashima@hawaii.gov **Date:** October 30, 2019

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

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

☒ **Yes**      ☐ **No**

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

I. Rule Description: ☐ **New**    ☐ **Repeal**    ☒ **Amendment**    ☐ **Compilation**

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

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

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

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

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

☐ **Yes**      ☒ **No**

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

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

☐ **Yes**      ☒ **No**

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

\* \* \*

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

DOBOR engaged Cruise Lines International Association-Alaska (CLIA-Alaska) to discuss their concerns and recommendations.

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

No, proposed changes were likely to result in a net loss for the State with respect to passenger fees for DOBOR facilities.

**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.**

DOBOR sent notices to businesses in billing statements and through email to inform them of proposed amendments since October 2017. DOBOR made draft rules available online at its website and also made desk copies available at all DOBOR district offices.

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

CLIA-Alaska was the only entity to submit testimony at public hearing. CLIA-Alaska recommended a one year delay for increasing certain fees that would be applicable to cruise vessels.

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

DOBOR estimated that CLIA-Alaska's proposals would result in a net loss with respect to passenger fees for DOBOR facilities.

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

(i) Attended the public hearing: 0

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 1

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

(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.

Proposed changes were likely to result in a net loss for the State with respect to passenger fees for DOBOR facilities.

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>

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to section 13-234-26

Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-234-26, Hawaii Administrative Rules, is amended to read as follows:

§13-234-26 Passenger fees. (a) Any passenger or cruise vessel ~~[which is]~~ used for private gain ~~[and]~~ that does not have a valid mooring permit or commercial permit and ~~[which]~~ uses state small boat harbors, property, or facilities ~~[shall pay the following fees in addition to any other fees required by this chapter:]~~

- ~~(1) Per passenger (includes in transit) --  
embarking to or from shore to  
ship.....\$2~~
- ~~(2) Passengers in transit on a vessel on a  
continuous trip whose point of origin and  
termination is a state small boat harbor, a  
total of disembarking and embarking at each  
port per passenger.....\$1.50~~
- ~~(3) Passengers] for embarking and disembarking  
passengers [on occasional and infrequent  
use] on a special charter [when] approved in  
[advance of voyage as provided in]  
accordance with section 13-231-  
57(c) (3) [.....\$1.50]  
shall pay \$2.00 per passenger.~~

(b) ~~[Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:]~~

- ~~(1) Passenger vessels engaging only in  
interisland commerce:.....\$ .30~~
- ~~(2) Passenger vessels engaging in international  
or inter-state commerce:.....\$1.00~~

~~Vessels operated by a federal or state agency are exempt from the provisions of this subsection.] Any passenger or cruise vessel which uses a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender while moored offshore shall pay a fee per passenger as follows:~~

~~(1) For Lahaina small boat harbor..\$3.00 per day~~

~~(2) For all other small boat harbors or facilities.....\$2.00 per day~~

~~(c) Passenger counts shall be determined by a vessel's passenger list. A passenger or cruise vessel required by this section to pay passenger fees shall file [A] a report [shall be filed] with the department on a form acceptable to the department within thirty [days after the date of embarking or disembarking of passengers over state facilities] calendar days after the vessel departs a state small boat harbor or state boating facility, and [the] any charges due shall be remitted along with the report.~~

~~(d) Fees required by this section shall be in addition to any other fees required by this chapter.~~

~~(e) Vessels operated by a federal, state, or county agency in an official capacity shall be exempt from the provisions of this section. [Eff 2/24/94; am~~

~~] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

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

3. The amendments to section 13-234-26, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Cindy Y. Young  
Deputy Attorney General

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

#### **B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, promulgated by DoTax, as follows:**

##### **a. Chapter 231 Administration of Taxes, Section 3-14.17, Revocation of licenses because of abandonment;**

##### **b. Chapter 235 Income Tax Law**

**1. Proposed New Section 3-01, Distribution of credit  
for partnerships, S corporations, estates, and  
trusts;**

**2. Proposed New Section 17-01 through 17-19,  
Motion picture digital media, and film production  
income tax credit;**

##### **c. Chapter 243 Fuel Tax Law**

**1. Section 4-01, Refund of fuel taxes in excess of 1  
cent per gallon for certain fuels used for  
operating agricultural equipment in areas other  
than upon the public highways of the State**

**2. Section 4-02, Refund of fuel tax and diesel oil and  
liquefied petroleum gas used for operating motor  
vehicles in areas other than upon the public  
highways of the State**



**RECEIVED**

*By JetaimeA at 9:40 am, Oct 31, 2019*

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

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

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** October 31, 2019

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-231, Hawaii Administrative Rules (HAR), by amending section 18-231-3-14.17. Under current rules, a person whose tax license is revoked by the Department because of abandonment has 90 days after the Department posts notice of its intent to revoke the license to petition the Department not to revoke the license. The proposed rule changes this period of time to 45 days to mirror the period for which the intent to revoke must remain posted under subsection (d) of this section. The proposed rules also make nonsubstantive cleanup amendments to correct cross-references to other sections.

**I. Rule Description:** ☐ New ☐ Repeal ☒ Amendment ☐ Compilation

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

The Department invited public comment at the public hearing held on October 14, 2019.

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

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

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers on September 13, 2019.

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

The Department did not receive any comments.

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

N/A

4. The number of persons who:
  - (i) Attended the public hearings: 0
  - (ii) Testified at the hearing: 0
  - (iii) Submitted written comments: 0

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

No.

**RECEIVED**

*By JetaimeA at 9:45 am, Oct 31, 2019*

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

SUMMARY

1. §18-231-3-14.17 is amended.

**§18-231-3-14.17 Revocation of licenses because of abandonment. \*\*\***

(e) If a licensee:

(1) Disputes that the license has been abandoned, or

(2) Claims that the department may not revoke the license because of a reason stated in section 237-9(d), 237D-4(f), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than forty-five days after the publication of the notice described in subsection (d).

\*\*\*\*

[Eff 6/18/94; am 3/17/2018; am ] (Auth:  
HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp:  
HRS §§231-3(14), 237-9, 237D-4, 251-3)

## DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

1. Section 18-231-3-14.17, Hawaii Administrative Rules, is amended by amending subsection (e) to read as follows:

"(e) If a [~~person whose license is revoked~~]  
licensee:

- (1) Disputes that the license has been abandoned, or
- (2) Claims that the department may not revoke the license because of a reason stated in section [~~237-9(e), 237D-4(g),~~] 237-9(d), 237D-4(f), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than [~~ninety~~] forty-five days after the publication of the notice described in subsection (d)." [Eff 6/18/94; am 3/17/2018; am \_\_\_\_\_]  
(Auth: HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b))  
(Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-231, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised

Statutes, and filed with the Office of the Lieutenant Governor.

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Director  
Department of Taxation

APPROVED AS TO FORM:

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Deputy Attorney General

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

#### **B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, promulgated by DoTax, as follows:**

**a. Chapter 231 Administration of Taxes, Section 3-14.17,  
Revocation of licenses because of abandonment;**

**b. Chapter 235 Income Tax Law**

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for partnerships, S corporations, estates, and  
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**2. Proposed New Section 17-01 through 17-19,  
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**c. Chapter 243 Fuel Tax Law**

**1. Section 4-01, Refund of fuel taxes in excess of 1  
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**2. Section 4-02, Refund of fuel tax and diesel oil and  
liquefied petroleum gas used for operating motor  
vehicles in areas other than upon the public  
highways of the State**

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

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

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-235

**Chapter Name:** Income Tax Law

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** October 31, 2019

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-235, Hawaii Administrative Rules (HAR), by adding a new section 18-235-3-01. The new section creates a general rule for how income tax credits may be distributed by partnerships, S corporations, estates and trusts to their partners, shareholders, and beneficiaries when the method of distribution is not specified by statute or the statute states that distribution shall be determined by rule.

**I. Rule Description:** ☒ New ☐ Repeal ☐ Amendment ☐ Compilation

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

The Department invited public comment at the public hearing held on October 14, 2019.



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

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

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers on September 13, 2019.

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

The Department did not receive any comments.

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

N/A

4. The number of persons who:
  - (i) Attended the public hearings: 0
  - (ii) Testified at the hearing: 0
  - (iii) Submitted written comments: 0

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

No.

**RECEIVED**

*By JetaimeA at 10:13 am, Oct 31, 2019*

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

SUMMARY

1. §18-235-3-01 is added.

**§18-235-3-01 Distribution of credit for partnerships, S corporations, estates, and trusts.**

Whenever chapter 235, HRS, does not specify how a credit should be distributed or provides that distribution and share of a credit shall be determined by rule, distribution shall be made according to the ratio upon which the partners, S corporation shareholders, or beneficiaries of an estate or trust divide the general profits or losses of the entity; provided that a distribution pursuant to section 704 of the Internal Revenue Code may be made in the case of partnerships. [Eff ] (Auth: HRS §§231-3(9), 235-55.91, 235-110.8, 235-118) (Imp: HRS §§235-2.45, 235-16.5, 235-17, 235-55.91, 235-110.2, 235-110.7, 235-110.8, 235-110.94)

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

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

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-235

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**Date:** October 31, 2019

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-235, Hawaii Administrative Rules (HAR), by adding new sections 18-235-17-01 through 18-235-17-19. The proposed rules provide guidance for the administration of the motion picture, digital media, and film production income tax credit ("Film Credit"). The proposed rules create definitions, explain how taxpayers claiming the credit register with the Department of Business, Economic Development, and Tourism ("DBEDT") and provide DBEDT reports, clarify how the Film Credit's aggregate cap shall be applied, clarify how credits shall be allocated and distributed, clarify what constitutes a qualified production and what qualifies as qualified productions costs for which the credit can be claimed, and also provide numerous examples.

**I. Rule Description:** ☒ New ☐ Repeal ☐ Amendment ☐ Compilation

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

The Department invited public comment at the public hearing held on October 14, 2019. In addition, the Department and DBEDT have been in communication

with members of the film industry, some small and some large, in developing the proposed rules.

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

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

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers on September 13, 2019.

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

The Department received written testimony in the form of comments and recommendations from the following persons and organizations:

- Dylan Davis, an individual
- Island Film Group
- Motion Picture Association

In addition, the Department received oral testimony from two people who did not submit written comments:

- Samo Rozman, an individual
- Walea Constantinau, Film Commissioner for the City and County of Honolulu

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

Based on the comments received, the Department made the following changes to the proposed rules:

- Allow tentative allocation based on preproduction registration under HRS section 235-17(f);
- Hawaii Film Office will tentatively allocate credits based on the date/time that it received the preproduction registrations;

- Principal photography must begin within 90 days of the letter tentatively allocating credit;
  - Small production priority for qualified productions with a credit of \$250,000 or less, rather than by taxpayer and its related entities;
  - Require claims of \$2,500,000 or more to be tentatively allocated over a two-year period;
  - Certification of the credit based on tentative allocation of credit;
  - Clarify that for fiscal year taxpayers, the credit must be claimed in the fiscal year during which the calendar year ends;
  - Remove the reference to AICPA standard for verification reviews;
  - Clarify that the process of preparing the verification review may begin after the production is completed or if no further production costs will be incurred for the calendar year;
  - Add a provision to disallow production costs for which another state's or county's tax credit, rebate, or other incentive may be claimed;
  - Add a provision that qualified production costs shall not include any amounts paid to the taxpayer claiming the credit or any of the taxpayer's related entities;
  - Limit airfare as a qualified production cost to \$2,000 per way to or from Hawaii and between the islands;
  - Remove the requirement to submit end-credit within 90 days after the close of the calendar year; and
  - Clarify that a promotional video is only required when an end credit is not feasible.
4. The number of persons who:
- (i) Attended the public hearings: 10
  - (ii) Testified at the hearing: 4
  - (iii) Submitted written comments: 3
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
- Yes.
- (i) If yes, was the change adopted? The Film Credit will tentatively be allocated based on a first-come-first-served-type system combined with a

mandatory two-year claim period for credit claims of \$2,500,000 or more. This new allocation system will likely benefit smaller productions that are not already given small-claim priority. Credit claims of \$250,000 or less will be given priority over all new claims.

## DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

## SUMMARY

1. New §§18-235-17-01, 18-235-17-02, 18-235-17-03, 18-235-17-04, 18-235-17-05, 18-235-17-06, 18-235-17-07, 18-235-17-08, 18-235-17-09, 18-235-17-10, 18-235-17-11, 18-235-17-12, 18-235-17-13, 18-235-17-14, 18-235-17-15, 18-235-17-16, 18-235-17-17, 18-235-17-18, and 18-235-17-19 are added.



**§18-235-17-01 Definitions.** For purposes of sections 18-235-17-01 through 18-235-17-19:

"Aggregate cap" means the total amount of credits that may be claimed by all taxpayers claiming the credit in a particular tax year. The aggregate cap is \$50,000,000 and applies to taxable years beginning after December 31, 2018.

"Hawaii film office" means the office within the department of business, economic development, and tourism that is responsible for the administration of the department of business, economic, development, and tourism's duties and responsibilities under section 235-17, HRS.

"Initial claim year" means the first calendar year for which the credit is being applied for.

"Initial claim year" includes the second year of a split-year production claim if the first taxable year of the claim started in 2018.

"Kit or box" means the personal tools, accessories, or other equipment of a specialist or tradesperson that utilizes the instruments to complete their specialized tasks in the motion picture and television film industry and includes a makeup artist's equipment and a set designer's construction tools.

"Loan-out company" or "loan-out" means a wholly owned entity formed on behalf of an actor, performer, director, producer, or other such "above the line" cast or crewmember of a qualified production, that constitutes an "above the line" cast or crewmember's means of contracting with a qualified production for services rendered. A loan-out company may employ more than one person.

"Per diem" means a reimbursement provided by a qualified production to an employee or contractor for lodging, meals, and incidental expenses of the employee or contractor while the individual is away from home during work-related travel in the State.

"Preproduction registration" means the same as described in section 18-235-17-03(a).

"Principal photography start date" means the first date of substantial and ongoing filming of significant portions of a qualified feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game, television series pilot, single season of a television series regularly filmed in the State, television special, single television episode that is not part of a television series regularly filmed or based in the State, national magazine show, or national talk show.

"Production report" means the same as described in section 18-235-17-03(b).

"Qualified certified public accountant" means a certified public accountant licensed to provide accounting services in the state of Hawaii that does not have an ownership or pecuniary interest in the taxpayer.

"Related entities" means two or more entities that have:

- (1) Any common ownership or membership; or
- (2) Directly or indirectly any common control.

"Split-year production" means a production that has submitted a preproduction registration to the Hawaii film office indicating that production will take place over a two-year period.

"Timely production report" means a production report that has been physically received by the Hawaii film office or is deemed "filed and received" under section 231-8, HRS, after the end of the calendar year and on or before ninety days from the end of the calendar year as required under section 235-17(h), HRS. A production report received before the end of the calendar year shall be deemed to have been received on the first day following the end of the calendar year. [Eff \_\_\_\_\_] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-02 Motion picture, digital media, and film production income tax credit; allowed. (a)**

Section 235-17, HRS, allows qualified taxpayers to claim a refundable income tax credit equal to the following percentages of qualified costs incurred for qualified productions being produced in the State:

- (1) Twenty per cent of qualified production costs incurred in any county in the State with a population of over seven hundred thousand (i.e., as of the date this rule became effective, the city and county of Honolulu); and
- (2) Twenty-five per cent of qualified production costs incurred in any county in the State with a population of seven hundred thousand or less (i.e., as of the date this rule became effective, Kauai, Maui, and Hawaii counties).

(b) To qualify for the credit under section 235-17, HRS, a qualified production must be considered a taxpayer for purposes of chapter 235, HRS. Any qualified production that conducts business activities in the State subject to chapter 235, HRS, is eligible to claim the credit under section 235-17, HRS. [Eff

] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-03 Claim for credit; procedures; production reports; multiple entities involved. (a)**

Every taxpayer claiming the credit is required to prequalify for the credit under section 235-17(f), HRS, by submitting a preproduction registration to the Hawaii film office. All taxpayers must submit a preproduction registration for each qualified production to the Hawaii film office no later than seven days before the principal photography start date. The preproduction registration shall include:

- (1) A proof of registration with every state agency requiring registration to do business in the State;
- (2) A detailed synopsis of the production;
- (3) An estimated budget; and
- (4) An estimated number of Hawaii resident and non-resident hires, including above-the-line, below-the-line, and extras.

The Hawaii film office will review each request for preproduction registration and issue a letter to each production, notifying the production that it has successfully prequalified under section 235-17(f), HRS. This letter shall also state the amount of credits that were tentatively allocated under section 18-235-17-04(c).

Failure to obtain preproduction registration approval and a tentative allocation of credit under section 18-235-17-04(c) from the Hawaii film office shall constitute a waiver of the credit.

(b) The production report required under section 235-17(h), HRS, shall be made on a calendar year basis. Not later than ninety days following the end of each calendar year in which qualified production costs were incurred, all taxpayers must submit a production report to the Hawaii film office. Failure to file a timely production report shall constitute a waiver of the credit. The production report must include:

- (1) A sworn statement identifying qualified production costs incurred during the calendar year;
- (2) Data on the production as prescribed by the Hawaii film office;
- (3) A detailed expenditure report with summary by department and category made on the form prescribed by the Hawaii film office;
- (4) A list of vendors in the format prescribed by the Hawaii film office, including the general excise tax license number of each vendor that is engaged in business in the State;
- (5) A list of loan-out companies in the format prescribed by the Hawaii film office, including the general excise tax license number of each loan-out company that is engaged in business in the State;
- (6) A list of costs for which use tax was properly paid and substantiation of such payment in the format prescribed by the Hawaii film office;
- (7) Crew list;
- (8) Confirmation of efforts to hire local talent and crew as described in section 18-235-17-16;
- (9) Confirmation of educational or workforce development contributions as described in section 18-235-17-17;
- (10) Verification of compliance with section 18-235-17-18(a);
- (11) A verification review as described in section 18-235-17-14; and
- (12) Information necessary to estimate the benefit of the credit provided in section 235-17, HRS, including:
  - (A) The number of Hawaii resident and non-resident hires: above-the-line, below-the-line, and extras;

- (B) Salary and wage information for resident actors, producers, directors, and other hires;
- (C) Salary and wage information for nonresident actors, producers, directors, and other hires; and
- (D) Any other information the Hawaii film office determines necessary to estimate the benefits of the credit provided in section 235-17, HRS.

**Example:**

Tommy Taxpayer is a fiscal year taxpayer whose tax year begins on April 1 and ends on March 31. Tommy Taxpayer submits his production report that covers production costs incurred from April 1, 2019 to December 31, 2019 to the Hawaii Film Office on April 20, 2020. Tommy Taxpayer's production report is not timely because it was not submitted within ninety days from the end of the calendar year as required under section 18-235-17-03(b).

(c) With respect to fiscal year taxpayers and the production report due on March 30, 2020, fiscal year taxpayers shall only report qualified production costs incurred from the first day of the taxpayer's fiscal year to December 31, 2019.

For production reports due on March 31, 2021, March 31, 2022, March 31, 2023, March 30, 2024, and March 31, 2025, fiscal year taxpayers shall report qualified production costs incurred from January 1 to December 31 of the preceding calendar year as if they were calendar year taxpayers.

Fiscal year taxpayers shall be allowed to submit final production reports that report qualified production costs incurred from January 1, 2025 to the last day of the taxpayer's fiscal year that began

after January 1, 2024. This final report shall be due no later than ninety days following the end of the taxpayer's fiscal year; provided that in no case shall any claims for credit be made after December 31, 2025.

**Example 1:**

FIS Productions is a fiscal year taxpayer whose tax year begins on April 1, 2019 and ends on March 31, 2020. FIS Productions may only report qualified production costs incurred from April 1, 2019 to December 31, 2019 because for fiscal year taxpayers' production reports due on March 30, 2020, only qualified production costs incurred from the first day of the taxpayer's fiscal year to December 31, 2019 may be reported.

**Example 2:**

Assume the same facts as Example 1. For the production report due on March 31, 2021, FIS Productions may report qualified production costs incurred from January 1, 2020 to December 31, 2020.

**Example 3:**

Assume the same facts as Example 1. FIS Productions may submit a final production report under section 18-235-17-03(c) reporting qualified production costs incurred from January 1, 2025 to March 31, 2025, the end of FIS Productions' fiscal year. This final report is due June 29, 2025, ninety days from the end of FIS Productions' fiscal year.

(d) The Hawaii film office shall not certify the credit under section 18-235-17-04(d) if the production report is incomplete. In certifying the credit, the

Hawaii film office may require any taxpayer to provide substantiation for any production costs.

(e) The Hawaii film office shall issue a certificate to the taxpayer stating the amount of qualified production costs and the amount of credit that was certified under section 18-235-17-04(d). To properly claim the credit, the taxpayer must attach a copy of the certificate to the taxpayer's income tax return, along with any other required forms.

(f) If a taxpayer produces more than one qualified production in a calendar year, the Hawaii film office shall issue a separate certificate for each qualified production.

(g) The Hawaii film office shall issue a single certificate per qualified production per calendar year. If multiple taxpayers participate in one qualified production, each taxpayer shall attach a copy of the certificate issued to the qualified production to the taxpayer's income tax return; provided that the amount of credit claimed shall not exceed the amount to which the taxpayer is entitled.

(h) The \$15,000,000 cap shall be applied per qualified production, not per taxpayer. If a taxpayer produces multiple qualified productions in one calendar year, the taxpayer may receive total credit for that calendar year in excess of \$15,000,000.

(i) Claims for credit under section 235-17, HRS, must correspond with the taxpayer's accounting method, except as provided in section 18-235-17-03(c). In general, a cash method taxpayer must claim all qualified production costs in the calendar year in which the costs were paid, as provided in section 461 of the Internal Revenue Code of 1986, as amended. Costs that remain unpaid at the time the production report is submitted to the Hawaii film office are not qualified production costs. Any unpaid costs at the time the production report is submitted will not be considered incurred. An accrual method taxpayer must claim all qualified production costs in the year in



which the costs were properly incurred under section 461 of the Internal Revenue Code of 1986, as amended.

(j) Subsection (i), relating to the claiming of qualified production costs in the year the costs are properly accounted for based upon a taxpayer's accounting method, is not intended to conflict with the definitional requirement of a qualified production contained in section 18-235-17-07. A taxpayer must independently satisfy the \$200,000 qualified production cost definitional requirement to qualify for the tax credit under section 235-17, HRS. For additional discussion on the definitional requirement of a qualified production, see section 18-235-17-07.

(k) Fiscal year taxpayers shall claim the credit for the fiscal year during which the calendar year ends.

**Example:**

FYT Productions is a taxpayer with a fiscal tax year that begins on April 1 and ends on March 31. FYT Productions incurs qualified production costs during calendar year 2019 and receives a certificate from the Hawaii film office for these costs. FYT Productions must claim the credit for the tax year that begins on April 1, 2019 and ends on March 31, 2020 because the end of calendar year 2019 falls within this fiscal year.  
[Eff \_\_\_\_\_] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-04 Claim for credit; aggregate cap; tentative allocation and certification of credit. (a)**

The aggregate cap applies to taxable years beginning after December 31, 2018. If the total amount of credits applied for in any particular year exceeds the aggregate cap, the excess shall be treated as applied for in the subsequent year and shall be claimed in such year; provided that no credit shall be claimed after December 31, 2025.

(b) For purposes of applying the aggregate cap, tentatively allocating the credit under subsection (c), and certifying the credit under subsection (d), the Hawaii film office shall consider the year's claims for credits to be the total amount of credits applied for based on production costs incurred during the preceding calendar year. Credits applied for in production reports that cover tax years beginning before January 1, 2019 shall not be counted against the aggregate cap for any year.

(c) The Hawaii film office shall tentatively allocate credits based on the production costs reported in the estimated budget provided by taxpayers as part of the preproduction registration submitted to the Hawaii film office. Tentative allocation of credits is subject to the following rules:

- (1) Credits shall be tentatively allocated in the order of the date and, if necessary, the time that the preproduction registration required under section 18-235-17-03(a) and section 235-17(f), HRS, is received by the Hawaii film office;
- (2) The principal photography start date shall be within ninety days of the date of the letter sent by the Hawaii film office approving the preproduction registration and tentatively allocating the credit. Each production shall provide written notice of the actual principal photography start date to the Hawaii film office within thirty days

of starting principal photography. If the principal photography start date is after the ninety-day period described in this paragraph, the tentative allocation of credit shall be void; provided that a new preproduction registration may be submitted to the Hawaii film office in order to receive a new tentative allocation of credit;

- (3) Credits that cannot be tentatively allocated pursuant to paragraph (5) or (6) or because the aggregate cap is exceeded in any year, shall be allocated in the subsequent year in the manner described in paragraph (1);
- (4) Credits of \$500,000 or less described in subsection (e) shall have priority in tentative allocation before initial claim year claims and after any credits that were allocated under paragraph (3);
- (5) If the amount of credit applied for by a qualified production is \$2,500,000 or more, these credits shall be tentatively allocated over a two-year period; provided that no more than one-half of the credits applied for shall be allocated to the initial claim year, except as allowed under subsection (f); provided further that this paragraph shall not apply if the initial claim year is the last year that the credit is available under section 235-17, HRS;
- (6) For split-year productions, credits shall be tentatively allocated to the initial claim year and the subsequent year upon the approval of the preproduction registration for the initial claim year; provided that the requirements of this subsection are met for the initial claim year as if the production was not a split-year production; provided further that this paragraph shall

not apply to qualified productions that are subject to paragraph (5); and

- (7) If the amount of credit applied for in a production report exceeds the amount of credit that was tentatively allocated under this subsection, the difference shall be tentatively allocated in the subsequent year in the manner described in paragraph (1).

Tentative allocation required under this subsection shall not be interpreted to guarantee the amount of credit that is certified or may be claimed.

(d) The Hawaii film office shall certify credits in the same order that the credits were tentatively allocated under subsection (c). The amount of credits certified shall be based on the qualified production costs reported in the verification review of the qualified production. Except as allowed under subsection (f), the amount of credit certified under this subsection shall not exceed the amount of tentative allocation under subsection (c). Credits shall only be certified for taxpayers that have:

- (1) Received a letter from the Hawaii film office approving the preproduction registration;
- (2) Received a tentative allocation of credit under subsection (c); and
- (3) Submitted a timely production report.

**Example 1:**

LAT Productions is a calendar year taxpayer who submits a timely production report to the Hawaii film office but has not submitted a preproduction registration and has therefore not received a letter from the Hawaii film office tentatively allocating the credit. Although LAT Productions submitted a timely production report, the Hawaii film may not allocate any credits to LAT Productions because it did not receive a

preproduction registration approval letter which would have contained the tentative credit allocation. LAT Productions has waived its right to claim the credit under section 18-235-17-03(a).

**Example 2:**

CAL Productions is a calendar year taxpayer and submits its production report to the Hawaii film office on May 1, 2020. FIS Productions is a fiscal year taxpayer whose fiscal year begins on April 1 and ends on March 31. FIS Productions also submits its production report on May 1, 2020. The production report was due on March 30, 2020, ninety days after the end of the calendar year, for both taxpayers. Because a timely production report was not submitted by either taxpayer, both CAL Productions and FIS Productions have waived their right to the credit for the qualified production costs reported on the 2020 production report.

If the amount of credit applied for in a production report is twenty or more percent less than the amount of credit tentatively allocated under subsection (c) for that year, the Hawaii film office shall certify no more than one-half of the credit applied for in that year; provided that for credits subject to paragraph (c)(5), the Hawaii film office shall certify no more than one-fourth of the credit applied for in that year. The credits that were not certified pursuant to this provision shall be tentatively allocated in the subsequent year in the manner described in paragraph (c)(1). The Hawaii film office may waive the applicability of this provision if it finds that the estimated budget was made in good faith and that the reduction in the actual production

costs was due to circumstances beyond the taxpayer's control.

For the calendar year ending December 31, 2019, the Hawaii film office shall certify credits under this subsection based on the production report as if each taxpayer received a tentative allocation of credit. Credits shall be certified in the order that the preproduction registration was received by the Hawaii film office.

(e) Qualified productions that have a credit claim of \$500,000 or less shall have priority over initial claim year claims in tentative allocation under subsection (c) and certification under subsection (d); provided that such credits shall not have priority over credits allocated under paragraph (c)(3).

(f) The amount of credits certified for a taxpayer under subsection (d) shall not exceed the amount of credits tentatively allocated to that taxpayer under subsection (c); provided that if the aggregate cap is not reached for the calendar year, the remaining credits for the year may be certified for taxpayers who were not tentatively allocated the full amount of credits for the initial claim year pursuant to paragraph (c)(5) or (c)(7). Credits shall be certified under this subsection in the manner described in paragraph (c)(1).

For the calendar year ending December 31, 2019, the Hawaii film office and the department shall have discretion to determine the most efficient and appropriate method of allocation under this subsection. [Eff ] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-05 Claim for credit; costs incurred in more than one calendar year.** (a) The credit under section 235-17, HRS, is based on the qualified production costs incurred during each calendar year. A taxpayer with qualified production costs for one production that incurs qualified production costs in more than one calendar year must submit a production report as described in section 18-235-17-03(b) to the Hawaii film office for each calendar year in which qualified production costs are incurred.

(b) If a qualified production incurs qualified production costs in two separate calendar years, then the credit under section 235-17, HRS, for each taxable year will be based upon the qualified production costs incurred in each respective calendar year. [Eff

] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-06 Claiming the credit; timing; twelve-month rule.** Section 235-17(c), HRS, requires all claims for the credit, including amended claims, be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the twelve-month filing requirement constitutes waiver of the right to claim the credit. The department has no authority to suspend or waive this provision. [Eff  
] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)



**§18-235-17-07 Qualified productions; \$200,000 threshold determination.** (a) Section 235-17(d)(2), HRS, requires that a production have qualified production costs totaling at least \$200,000.

(b) Each production must independently meet the \$200,000 qualified production cost threshold imposed by section 235-17(d)(2), HRS. A taxpayer may not combine the qualified production costs of separate productions to meet the \$200,000 qualified production cost threshold. However, a taxpayer may combine the qualified production costs of multiple taxpayers associated with a single production to meet the \$200,000 qualified production costs threshold.

**Example 1:**

J3T Productions is a calendar year taxpayer and begins producing its film in the State on January 1, 2020. During the tax year, the production incurs qualified production costs totaling \$75,000. Because the \$200,000 qualified production costs threshold has not been met, J3T Productions does not qualify for the tax credit and cannot claim the tax credit.

**Example 2:**

J3T Productions produces four productions throughout the taxable year, with each production incurring qualified production costs of \$75,000. For the entire taxable year, J3T Productions has incurred qualified production costs in excess of \$200,000 for all productions. Because no individual production incurred qualified production costs of at least \$200,000, J3T Productions cannot claim the credit. This is true even though J3T Productions incurred qualified production costs in excess of \$200,000 in the aggregate during the taxable year.

(c) If in one tax year a production does not meet the \$200,000 qualified production costs threshold imposed by section 235-17(d)(2), HRS, but incurs qualified production costs in a subsequent tax year for the same production that when combined with qualified production costs in the previous tax year satisfy the \$200,000 threshold, the taxpayer may claim the credit under section 235-17, HRS, for the production. To claim the credit, the taxpayer must submit a production report to the Hawaii film office as described in section 18-235-17-03(b). The Hawaii film office will issue a certificate to the taxpayer certifying the amount of the qualified production costs for the prior year. To properly claim the credit for the prior year, the taxpayer must amend its income tax return for that year and attach the certificate to its amended tax return, along with any other required forms.

**Example 1:**

Assume the same facts as Example 1 under subsection (b), except that in June of 2021, the same production incurs qualified production costs totaling \$250,000. Total qualified production costs associated with the production now exceed \$200,000. Because the production now has qualified production costs totaling at least \$200,000, J3T Productions can file an amended return for 2020 taking into account the \$75,000 in qualified production costs incurred during 2020; provided a timely amended return is filed within twelve months following the close of the taxable year for which the credit may be claimed.

**Example 2:**

Assume the same facts as Example 1 under subsection (b), except that in June of 2021, the same production incurs qualified production costs totaling \$75,000. Total qualified production costs associated with the production total only \$150,000. Because the \$200,000 qualified production costs threshold has not been met, J3T Productions cannot claim the tax credit. [Eff  
] (Auth: HRS §231-3(9)) (Imp: HRS  
§235-17)

**§18-235-17-08 Distribution of credit.** Section 235-17(a), HRS, provides that the cost upon which the tax credit is computed is determined at the entity level for partnerships, S corporations, estates, and trusts. However, the credit cannot be claimed at the entity level for a partnership, S corporation, estate, or trust unless such entity has elected to be taxed as a corporation under relevant federal tax law. Distributions of the credit under section 235-17, HRS, shall be made in accordance with Subchapter K, Subchapter J, Subchapter S, or other relevant pass-through entity allocation laws of the Internal Revenue Code of 1986, as amended, to which the State conforms. [Eff ] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-09 Prorating qualified production costs between counties in Hawaii; airfare and shipping costs.** (a) Section 235-17(a), HRS, provides that a taxpayer claiming the credit may prorate its qualified production costs based upon the amount spent in each county if the population bases differ enough to change the percentage of tax credit. Qualified production costs cannot be prorated between other states or countries and the State.

(b) Proration is not necessary if costs are incurred solely in counties with a population of seven hundred thousand or less. The county where the goods or services are consumed determines where the cost is incurred for the purposes of this tax credit.

(c) Qualified production costs may be prorated amongst the counties by any reasonable method, taking into account the specific facts and circumstances in any particular case.

**Example 1:**

J3T Productions rents a camera from Oahu Camera Company located in Honolulu county, for use on its movie set located in both Honolulu county and Kauai county. Oahu Camera Company is headquartered in Honolulu county and has no business operations in Kauai county. Use of the camera was divided among the counties accordingly: one-fourth of the use occurred in Honolulu county; three-fourths of the use occurred in Kauai county. The cost of the camera rental may be prorated between the counties based upon the equipment's use in each county because the respective county populations entitle J3T Productions to different tax credit rates. One-fourth of the cost (the use in Honolulu county) qualifies for the credit at the twenty per cent rate. Three-fourths of the cost (the use in Kauai county) qualifies for the credit at the

twenty-five per cent rate. Time spent in transit while transporting or shipping the camera will not be taken into account in calculating use for purposes of this example.

**Example 2:**

Assume the same facts in Example 1, except that the cost of the camera rental, which includes the shipping cost, is paid for in Honolulu county and all use of the camera occurs in Kauai county. There is no prorating issue raised by this example because all use of the camera occurred in Kauai county. Therefore, the entire cost of the camera rental qualifies for the credit at the twenty-five per cent rate.

(d) The department will not challenge the prorating of a qualified production cost for airfare, shipping, or other costs of a similar nature where two counties equally impact said cost; provided that to qualify for this safe harbor, the taxpayer must:

- (1) Divide the total cost in half;
- (2) Apply the twenty per cent tax credit rate to one-half of the cost;
- (3) Apply the twenty-five per cent tax credit rate to the other half of the cost; and
- (4) Claim the credit for the prorated qualified production cost in the amount of the sum of the twenty per cent rate product and the twenty-five per cent rate product.

**Example 1:**

J3T Productions purchases airfare to transport talent and crew from Honolulu to Kailua-Kona on the Island of Hawaii. Production activities occurred on both islands. Honolulu and Hawaii counties have disparate county

populations with the former having a population of greater than seven hundred thousand and the latter having a population of less than seven hundred thousand. The cost of the total airfare is \$1,000. To qualify for the safe harbor provided by section 18-235-17-09(d), J3T Productions must divide the total fare (\$1,000) in half (\$500 and \$500). Then, J3T Productions must take the tax credit at the twenty per cent rate for half of the cost ( $\$500 \times 20\% = \$100$ ), and take the credit at the twenty-five per cent rate for the other half of the cost ( $\$500 \times 25\% = \$125$ ). J3T Productions' total credit properly allocable for the airfare is \$225.

**Example 2:**

Assume the same facts in Example 1, except that the cost is to transport talent and crew from Los Angeles to Kailua-Kona for a production occurring only in Hawaii county. The prorating safe harbor and this section do not apply to this example. The amount of credit for airfare costs to the State will be determined solely by the destination county. Based upon the facts in this example, the total cost of airfare to transport talent and crew to Kailua-Kona will qualify for the credit at the twenty-five per cent rate.

[Eff \_\_\_\_\_] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-10 Qualified production costs; generally.** (a) Qualified production costs are production costs that are directly attributable to and incurred by a qualified production in the State that are subject to the:

- (1) General excise tax at the highest rate under chapter 237, HRS, if the payee is engaged in business in the State; or
- (2) Income tax under chapter 235, HRS, if the costs are not subject to tax under chapters 237 and chapter 238, HRS.

**Example 1:**

ABC Airlines is a commercial airline that flies from Los Angeles, California to Honolulu, Hawaii. ABC Airlines has business operations in the State; however, it also has business operations in other jurisdictions. ABC Airlines is subject to Hawaii income tax on an apportioned basis. J3T Productions contracts with ABC Airlines to transport its cast and crew from Los Angeles, California to Honolulu, Hawaii to shoot a motion picture. Although the cost of roundtrip airfare on ABC Airlines is not subject to general excise tax, it is a qualified production cost for purposes of the credit under section 235-17, HRS, because ABC Airlines is subject to Hawaii income tax.

**Example 2:**

123 Catering, a Hawaii limited liability company, is a vendor to local productions for catering services. 123 Catering is engaged in business in the State and is therefore subject to general excise tax. J3T Productions contracts with 123 Catering to provide plate lunches to its cast and crew for a production taking place in



the State. The cost of catering services provided by 123 Catering to J3T Productions is a qualified production cost for purposes of the credit under section 235-17, HRS, because the amount paid to 123 Catering is subject to general excise tax at the highest rate. J3T Productions must submit 123 Catering's general excise tax license number as part of the production report required under section 18-235-17-03(b).

**Example 3:**

J3T Productions, a California-based production company doing business in the State, ships filming equipment from California to the State to produce a commercial. J3T Productions contracts with two shipping companies: SlugShip, a same-day air travel parcel shipping company, to ship copies of the scripts, contracts, and costumes; and BugShip, a freight forwarder, to ship cameras, set materials, rigging, and other large objects. Both shipping companies have a presence in the State, as well as on the mainland, and are subject to Hawaii income tax on an apportioned basis and general excise tax. The shipping costs incurred from both SlugShip and BugShip are qualified production costs on an apportioned basis to the extent that those amounts are subject to Hawaii income or general excise taxes.

**Example 4:**

Gus Grip, a resident of California, is hired as an employee by J3T Productions to help film a movie in the State. Under state law, the wages of Gus Grip earned in the State are subject to Hawaii income tax under section 235-4(b), HRS, and section 18-235-4-03. Gus Grip's wages, to

the extent earned in the State, are a qualified production cost.

**Example 5:**

Sam Staff, a resident of California, is a full-time employee of J3T Productions working out of J3T's California headquarters. J3T sends Sam Staff to work in the State temporarily. Sam Staff's wages that are earned while working in the State are a qualified production cost because the wages are subject to Hawaii income tax.

**Example 6:**

Molly Makeup is hired as an employee by J3T Productions to perform for the filming of a movie in the State. J3T Productions also agrees to rent Molly Makeup's kit box from her for \$1,000 per month. Molly Makeup's wages are qualified production costs because they are subject to Hawaii income tax to the extent they are earned in the State. The \$1,000 per month paid to Molly Makeup for the rental of her kit box is a qualified production cost because it is subject to general excise tax at the highest rate. J3T Productions must submit Molly Makeup's general excise tax license number as part of the production report required under section 18-235-17-03(b).

**Example 7:**

Assume the same facts as Example 6, except that J3T Productions treats the \$1,000 per month to rent Molly Makeup's kit box as additional wages to Molly Makeup and the amount is reported on Molly Makeup's Form W-2. The \$1,000 per month paid to Molly Makeup for the rental of her kit

box is a qualified production cost because it is subject to Hawaii income tax to the extent it is earned in the State.

**Example 8:**

Lenny Loaner, a resident of California, agrees to film a movie in the State for J3T Productions through the contracting of Lenny Loaner's loan-out company. J3T Productions pays fees to Lenny Loaner's loan-out company for services provided in the State that represent wages or salary for Lenny Loaner. The amounts paid to Lenny Loaner's loan-out company are qualified production costs to the extent that they are subject to general excise tax at the highest rate. J3T Productions must submit Lenny Loaner's general excise tax license number as part of the production report required under section 18-235-17-03(b).

**Example 9:**

J3T Productions is filming on location at a church, owned by an Internal Revenue Code section 501(c)(3) tax-exempt religious organization the exempt purpose of which is to advance religious practices of its congregation. J3T Productions pays the church \$1,000 in rent for the use of the church facility for one day of shooting. The rent's primary purpose is the production of income, even if the rental income is later used for the church's exempt purposes. The \$1,000 rent payment is subject to general excise tax at the highest rate and therefore qualifies as a qualified production cost. J3T Productions must submit the church's general excise tax license number as part of the production report required under section 18-235-17-03(b).

(b) The cost of the verification review described in section 18-235-17-14 is a qualified production cost for the calendar year the verification review relates to regardless of the accounting method used by the taxpayer claiming the credit; provided that the cost is subject to general excise tax at the highest rate.

(c) Per diem payments are a qualified production cost if the per diem payments are subject to Hawaii income tax if paid by an employer to an employee or to general excise tax at the highest rate if the payee is not an employee.

**Example 1:**

Gus Grip, a resident of California, is hired by EFG Productions as an employee to film a movie in the State. EFG Productions pays Gus Grip wages and gives Gus Grip a per diem allowance that is subject to Hawaii income tax while working in the State. The amounts paid as per diem are qualified production costs to the extent that Gus Grip is subject to Hawaii income tax on the amounts received.

**Example 2:**

Assume the same facts as Example 1, except EFG Productions gives Gus Grip a per diem allowance that is not subject to Hawaii income tax. The per diem that Gus Grip receives is not a qualified production cost because it is not subject to Hawaii income tax.

**Example 3:**

George Grip, a resident of California, is hired by EFG Productions as an independent

contractor to film a movie in the State for a month. EFG Productions pays George Grip \$100,000 to perform services and \$30,000 per diem. George Grip's income and per diem are qualified production costs because the \$130,000 is subject to general excise tax at the highest rate. EFG Productions must submit George Grip's general excise tax license number as part of the production report required under section 18-235-17-03(b).

(d) Airfare is a qualified production cost subject to the following rules:

- (1) The airfare is to or from Hawaii or between the islands in the State;
- (2) The airfare does not include a scheduled layover that is twelve hours or longer; and
- (3) No more than \$2,000 per person per way shall be a qualified production cost.

(e) The credit may not be claimed for production costs if a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended. The basis for eligible property for depreciation of accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

(f) Qualified production costs shall not include any amounts paid to the taxpayer claiming the credit or any of taxpayer's related entities.

(g) Qualified production costs shall not include any amounts paid as gratuity or a tip.

(h) Qualified production costs shall not include costs for which another state or county's tax credit, rebate, or other incentive may be claimed.

(i) Qualified production costs shall not include any government-imposed fines, penalties, or interest incurred by a qualified production.

(j) No cost incurred shall qualify as a qualified production cost unless the cost is incurred for the specific production for which the credit under section 235-17, HRS, is being claimed.

**Example:**

XYZ Productions produced the feature film Papaya Dancing I in 2015 and filmed its sequel Papaya Dancing II in 2019. The main actor in both films is Richie Royal. During 2019, when Papaya Dancing II was being filmed, XYZ Productions pays Richie Royal residual income from Papaya Dancing I. The residual income paid to Richie Royal shall not be claimed as a qualified production cost of Papaya Dancing II because the residual income paid arises from Papaya Dancing I and is not incurred specifically for the production of Papaya Dancing II. [Eff  
] (Auth: HRS §231- 3(9)) (Imp: HRS §235-17)

**§18-235-17-11 Qualified production costs; credit calculation for certain equipment costs.** (a) For equipment that is purchased for more than \$25,000 and specifically for use for a qualified production in the State, the amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production shall be limited to the cost incurred for the equipment divided by the applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service; provided that a deduction has not been taken under section 179 of the Internal Revenue Code of 1986, as amended, with respect to the equipment.

**Example:**

XYZ Production Company purchased a camera to film an underwater scene of a feature film in Hawaii. The camera was purchased for \$60,000 and has a recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years. A deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the camera. The amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production is \$12,000, which is the \$60,000 purchase price divided by the applicable recovery period of 5 years.

(b) For equipment that a taxpayer owned prior to beginning production in the State or that a taxpayer has previously claimed qualified production costs for a qualified production in the State and that has an applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years or more, the

taxpayer may claim the amount of the depreciation allowance as a qualified production cost. The amount claimed as a qualified production cost shall be prorated to reflect the amount of time that the equipment is actually used during the calendar year; provided that a deduction has not been taken under section 179 of the Internal Revenue Code of 1986, as amended, with respect to the equipment. The depreciation allowance under state law shall be utilized to calculate the credit amount under this section.

**Example 1:**

XYZ Production Company has cameras that it ships to the State to film a production for six months. All of these cameras were purchased by the production company prior to production in the State and have been utilized as equipment for the past few years on other film projects. These cameras are available on a checkout basis for all productions being created by XYZ Production Company. Assume that the cameras have an applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years and assume further that a deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the cameras and that depreciation deductions have been taken in prior years. If XYZ Production Company is entitled to take a \$1,000 state depreciation allowance for the cameras for the calendar year, XYZ Production Company may claim \$500 as a qualified production cost that represents the \$1,000 depreciation allowance adjusted for the time the cameras were used in the State.

**Example 2:**



XYZ Production Company purchased a camera to film an underwater scene of a feature film in Hawaii. The camera was purchased for \$60,000 and has a recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years. A deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the camera. The amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production is \$12,000, which is the \$60,000 purchase price divided by the applicable recovery period of 5 years. In the subsequent year XYZ Production uses the camera for the qualified production for six months of the year. XYZ Production is entitled to a \$10,000 state depreciation allowance for the camera. XYZ Production may claim \$5,000 as a qualified production cost that represents the \$10,000 depreciation allowance adjusted for the time the camera was used in the State. [Eff

] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-12 Qualified production costs; imported goods, services, or contracting subject to the use tax; claim for products or services acquired outside of this State.** (a) In order to avoid constitutionally infringing upon out-of-state taxpayers, and to complement the general excise tax as an overall excise tax regime, there is imposed in the State a tax on the use in the State of tangible personal property, services, and contracting imported into the State under Hawaii use tax law, codified at chapter 238, HRS.

(b) Importation of goods, services, or contracting into the State from a seller that is not engaged in business in the State, for use in the State, is subject to chapter 238, HRS, capturing the general excise tax equivalent. Because chapter 238, HRS, is a substitute for Hawaii general excise tax, production costs incurred by a qualified production in the State that would otherwise qualify as qualified production costs if subject to the general excise tax at the highest rate, are considered "qualified production costs" under section 235-17(m), HRS, and section 18-235-17-10; provided that the production costs are subject to use tax at the highest rate.

**Example:**

Steve Screenwriter, a resident of California with no physical presence in the State, is an author and screenplay writer. EFG Productions, a Hawaii limited liability company, intends to shoot a movie in the State. Steve Screenwriter sells his screenplay to EFG Productions for \$99,999. Assuming that Steve Screenwriter has no other Hawaii sourced business income and is therefore not engaged in business in the State, the cost of Steve Screenwriter's screenplay is subject to use tax. The amount paid to Steve Screenwriter is a qualified production cost

provided that it is subject to use tax at the highest rate, the cost is incurred in the calendar year for which EFG Productions is claiming the credit, and EFG Productions is able to substantiate the payment of the use tax due as required by section 18-235-17-03(b) (6).

(c) This section shall not apply to any costs incurred by a qualified production and paid to a seller that is engaged in business in the State and therefore subject to general excise tax.

(d) Section 235-17(d) (5), HRS, requires that a production provide to the department of business, economic development, and tourism evidence that reasonable efforts were unsuccessful to secure and use comparable products or services within the State when making any claim for products or services acquired outside of the State. To satisfy section 235-17(d) (5), HRS, the department of business, economic development, and tourism may accept from a taxpayer a sworn statement, under the penalties set forth in section 231-36, HRS, that reasonable efforts to secure and use products and services within the State were unsuccessful. [Eff ] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-13 Qualified production costs; premiums paid to insurers subject to tax under chapter 431, HRS.** Not all taxpayers conducting business transactions occurring in the State are subject to chapter 235, HRS. In recognition of its unique business structure and place within the community, authorized insurers are subject to tax on insurance premium income under chapter 431, HRS, in lieu of tax under chapter 235, HRS. Insurance premiums paid to insurance companies not registered with the State are presumed not to be subject to tax under chapter 431, HRS, and thus are not qualified production costs under 235-17, HRS.

**Example 1:**

J3T Productions is filming a qualified production in the State and pays insurance premiums to BDDF Insurance Company, which is doing business in the State, for insurance on J3T Productions' activities and property associated with the qualified production. The insurance premiums J3T Productions pays to the insurance company are qualified production costs. J3T Productions must submit BDDF's insurance license number as part of the production report required under section 18-235-17-03(b).

**Example 2:**

J3T Productions is filming a qualified production in the State and pays insurance premiums to DEED Insurance Company, which is not registered to do business in the State, for insurance on J3T Productions' activities. The insurance premiums J3T Productions pays to DEED Insurance Company are presumed not subject to chapter 431, HRS, and not qualified production

costs. [Eff ] (Auth: HRS §231-  
3(9)) (Imp: HRS §235-17)

**§18-235-17-14 Verification review of motion picture, digital media, and film production income tax credit claims.** (a) As required by section 235-17(h), HRS, and Section 6 of Act 143, Session Laws of Hawaii 2017, a taxpayer claiming the tax credit under section 235-17, HRS, must submit to the Hawaii film office a verification review, together with a production report as described in section 18-235-17-03(b), no later than ninety days following the end of the calendar year in which the qualified production costs were incurred.

(b) A "verification review" is an agreed-upon procedures report prepared by a qualified certified public accountant. The agreed-upon procedures report, must:

- (1) Verify that the production has obtained a preproduction registration approval letter and tentative allocation of credit under section 18-235-17-04(c) from the Hawaii film office;
- (2) Evaluate the taxpayer's assertion of the amounts proposed as qualified production costs within the meaning of section 235-17, HRS, for the calendar year;
- (3) Test compliance with the elements set forth in section 235-17, HRS, and any relevant administrative rules or administrative guidance issued by the department and Hawaii film office;
- (4) Verify that the production report to be submitted to the Hawaii film office complies with section 18-235-17-03(b);
- (5) Separately state any costs that were deemed not qualified production costs; and
- (6) Separately state the total of qualified production costs for which no exceptions were noted.

(c) The department, in consultation with the Hawaii film office, shall issue a Tax Information Release specifying the procedures by which the agreed-

upon procedures report shall be prepared by the qualified certified public accountant.

(d) There is no requirement that the preparation of the verification review start after the end of the calendar year. The process of preparing the verification review may begin after production is completed or if no further production costs will be incurred for the calendar year.

**Example 1:**

XYZ Productions finishes the filming of its feature film on July 31, 2019. The qualified certified public accountant that XYZ Productions retains may begin the preparation of the verification review on August 1, 2019 because the filming of the feature film was completed on July 31, 2019.

**Example 2:**

Assume the same facts as Example 1, except that XYZ Productions' feature film is a split-year production, filming in calendar year 2019 will stop on November 30, 2019, and filming will be completed in March of 2020. The qualified certified public accountant that XYZ Productions retains may begin the preparation of the 2019 verification review on December 1, 2019 because the filming of the feature was stopped for calendar year 2019 on November 30, 2019.

(e) It is not necessary that the verification review be addressed to, or be relied upon by, any person other than the taxpayer.

(f) It is the taxpayer's responsibility to provide all relevant information to the taxpayer's qualified certified public accountant.

(g) The cost of the verification review shall be the responsibility of the taxpayer; provided that it may be claimed as a qualified production cost as described in section 18-235-17-10(b).

(h) Inclusion of a verification review with the production report does not preclude the department from auditing and adjusting the tax credit amounts claimed. [Eff ] (Auth: HRS §231-3(9))  
(Imp: HRS §235-17; SLH 2017, Act 143, §6)



**§18-235-17-15 Hawaii promotion; shared-card, end-title screen credit.** (a) Section 235-17(d)(3), HRS, requires that a production provide the State a qualified Hawaii promotion, at a minimum, a shared-card, end-title screen credit. A shared-card, end-title screen credit is provided by:

- (1) Including in the end credits of each qualified production the phrase "Filmed on location on the Island of \_\_\_\_\_ in Hawaii with the assistance of Hawaii Production Tax Credits administered by the Hawaii Film Office and the Department of Taxation" and a logo provided by the Hawaii film office; or
- (2) If it is not feasible to include an end credit as required under paragraph (1), including in each qualified production distributed by digital video disc, Blu-ray disc, digital download, or other media for the secondary market, a Hawaii promotional video approved by the Hawaii film office.

(b) A production must submit a still shot, frame grab, finished copy of the qualified production in a media format acceptable to the Hawaii film office, or other documentation that the Hawaii film office may require prior to public release of the qualified production.

(c) Failure to submit the documentation required under subsection (b) may result in the disallowance of the credit under section 235-17(d), HRS. [Eff

17) ] (Auth: HRS §231-3(9)) (Imp: HRS §235-

**§18-235-17-16 Evidence of reasonable efforts to hire local talent and crew.** (a) Section 235-

17(d)(4), HRS, requires that a production provide to the department of business, economic development, and tourism evidence of reasonable efforts to hire local talent and crew.

(b) Evidence of reasonable efforts to hire local talent and crew means:

- (1) Documentary evidence of having contacted state chapters of industry unions or guilds, including the date and time of any telephone calls, emails or other contact; the name of the union or guild representative contacted; the name of the production representative initiating contact; and the name of the union or guild contacted; or
- (2) Documentary evidence of the specific means of notifying the public of the production's desire to hire local talent and crew, including copies of any press releases; solicitations; requests for proposals; bids; local newspaper ads; trade journal ads; flyers posted; open casting calls; radio spots; Hawaii film office website or other internet posting; or engagement of local production professionals as references for local talent and crew hires. [Eff

] (Auth: HRS §231-3(9)) (Imp:  
HRS §235-17)

**§18-235-17-17 Evidence of financial or in-kind contributions to educational or workforce development for the local film, television, and digital media industry.** (a) Section 235-17(d)(6), HRS, requires that a production provide to the department of business, economic development, and tourism evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film, television, and digital media industries.

(b) Only one contribution is necessary to satisfy the requirement under section 235-17(d)(6), HRS. However, a production may make multiple contributions to multiple qualified entities.

(c) Refundable contributions do not satisfy section 235-17(d)(6), HRS. Any term allowing for refundability disqualifies a contribution from satisfying section 235-17(d)(6), HRS, including refundability contingent only upon a production failing to qualify to claim the credit under section 235-17, HRS.

(d) Contributions do not satisfy section 235-17(d)(6), HRS, if a charitable deduction is taken for the contribution under section 170 of the Internal Revenue Code of 1986, as amended, or under conformity to such section.

(e) Contributions are not qualified production costs for purposes of claiming the tax credit under section 235-17, HRS.

(f) The following contributions qualify for purposes of section 235-17(d)(6), HRS:

- (1) Financial contributions to state public or charter schools totaling at least 0.1 per cent of a production's qualified production costs or \$1,000, whichever is higher. Financial contributions must be made in cash specifically to an arts or media program at

- a state public or charter elementary school, middle school, high school, or post-secondary school, preferably to a school in the same community in which the production takes place. Arts programs may include film, video, radio, performing arts, theater, music, and visual and fine arts;
- (2) In-kind contributions to state public or charter schools totaling at least the equivalent value of 0.1 per cent of a production's qualified production costs or \$1,000, whichever is higher. Contributions of in-kind property or services must be made specifically to an arts or media program at a state public or charter school, preferably in the same community in which production takes place. The in-kind contribution must include production-related property or services, such as cameras and sound equipment, editing/post-production equipment, grip/electric equipment, computer hardware/software, props/set dressing, costumes, or other property or services previously agreed to by school administrators;
- (3) Educational programs provided to state public or charter schools consisting of at least one on-set or post-production internship arrangement with a state public or charter high school or post-secondary school, preferably in the same community in which the production takes place. The internship must include a total of at least eight hours of arts or digital media education-related volunteer services, such as teaching acting classes, directing a school play, participating in animated student projects, or giving craft seminars. The internship may be arranged with any cast

- (4) Educational programs provided to local labor union chapters consisting of at least one on-set craft apprenticeship arranged with one of the local labor union chapters. The apprenticeship must include a total of at least eight hours of education-related volunteer services, such as giving a craft-related seminar. The apprenticeship may be arranged with any cast or crew. The minimum time requirement, at the discretion of the Hawaii film office, may be reduced based upon the value of services; and
- (5) Any other financial or in-kind contributions or any other educational or workforce development approved by the Hawaii film office. [Eff \_\_\_\_\_] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-18 Production company personnel and contractors; required Hawaii tax notice.** (a) Any taxpayer claiming the income tax credit allowed under section 235-17, HRS, shall provide every contractor, vendor, loan-out company, or other agent providing goods or performing services in the state that does not have a general excise tax license with a tax advisory informing such persons of state tax obligations and obtain acknowledgement that the advisory was received. The tax advisory under this section shall be provided to all such persons not later than thirty calendar days after engaging the contractor, vendor, loan-out company, or other agent.

(b) The tax advisory to be provided shall be any tax advisory made available to the motion picture and television film industry by the department through official pronouncement, and in a form that includes substantially the following:

"The purpose of this Tax Advisory is to provide notice to persons engaged in the motion picture and television film production industry (film industry) of their Hawaii tax obligations.

#### GENERAL EXCISE TAX OBLIGATIONS

All businesses, including loan-out companies and independent contractors, that engage in business in Hawaii are subject to the general excise tax (GET). GET is a privilege tax that is measured by the business' gross receipts. All businesses that provide services or have other business activities in the Hawaii film industry are subject to the GET, as they are engaged in business in Hawaii.

All businesses must register for a GET license prior to engaging in business in Hawaii. Submit Form BB-1 together with a one-time \$20 fee

to register for a GET license. A \$500 fine will be imposed on any non-cash-based business that receives income from engaging in business in Hawaii prior to registering for a GET license. Hawaii Revised Statutes (HRS) §237-9(c).

GET is reported and remitted by filing periodic returns (Form G-45), followed by an annual reconciliation return (Form G-49) after the end of the tax year. Other forms may be necessary depending upon the circumstances.

The penalty for failure to file a tax return by the deadline is 5% of the unpaid tax per month, with a maximum penalty of 25%. The penalty for failure to pay the tax within 60 days of timely filing a return is 20% of the amount that is unpaid. If the failure to pay tax is due to fraud, the penalty is an amount up to 50% of the underpayment. The interest on nonpayment of tax or underpayment of tax accrues at a rate of two-thirds of 1% per month. HRS §231-39.

Taxpayers may register, file and pay GET online through the Department's website at <https://hitax.hawaii.gov>.

#### INCOME TAX OBLIGATIONS

Income earned from performing services or conducting other business activities in Hawaii is taxable regardless of residency.

Wages earned while working in Hawaii as an employee (receiving Form W-2) are subject to Hawaii income tax for the amount of income earned from performing services or conducting other business activities in Hawaii.

Loan-out companies and independent contractors (receiving Form 1099) are also subject to Hawaii income tax on the income earned from performing services or conducting other business activities in Hawaii.

Income tax is reported and remitted by using the proper income tax form. Resident individuals must file Form N-11 and nonresidents or part-year resident individuals file Form N-15.

Corporations file Form N-30, S Corporations file N-35, and partnerships and multimember limited liability companies file Form N-20. Other forms may be necessary depending upon circumstances.

The penalty for failure to file a tax return by the deadline is 5% of the unpaid tax per month, with a maximum penalty of 25%. The penalty for failure to pay the tax within 60 days of timely filing a return is 20% of the amount that is unpaid. If the failure to pay tax is due to fraud, the penalty is an amount up to 50% of the underpayment. The interest on nonpayment of tax or underpayment of tax accrues at a rate of two-thirds of 1% per month. HRS §231-39.

#### CONTACT A TAX PROFESSIONAL

The Department suggests that any person affected by this Tax Advisory contact a tax professional familiar with Hawaii tax laws to assist them with any Hawaii tax issues.

#### ADDITIONAL INFORMATION

For additional information:



- Website: tax.hawaii.gov
- Telephone: (808) 587-1530
- Fax: (808) 587-1584
- Hawaii Administrative Rules 18-235-17"

(c) A taxpayer claiming the tax credit under section 235-17, HRS, shall retain evidence that the tax advisory was provided to the contractors, vendors, loan-out companies, or other agents, as required under subsection (a), not later than thirty calendar days after engaging such parties. [Eff ]  
(Auth: HRS §231-3(9)) (Imp: HRS §235-17)

**§18-235-17-19 Access to production company set and locations; required courtesy visit and press coverage.**

(a) All taxpayers submitting a production report to the Hawaii film office shall allow access to the taxpayer's production set or location at least once during production for a courtesy visit by government officials. Taxpayers are entitled to at least seven days' notice of the government's intent to visit the taxpayer's set or location. The taxpayer is entitled to escort the government officials on the visit and restrict access to any part of the set or location deemed proprietary or that access to which would result in competitive harm if government officials were allowed to visit. Government officials allowed to participate in the courtesy visit include, but shall not be limited to, Hawaii film office personnel; department personnel; state and county film commissioners; and legislators.

(b) All taxpayers submitting a production report to the Hawaii film office shall hold a press conference or agree to at least one press story, broadcast or print, as agreed to by both the production and the Hawaii film office, where the taxpayer and any of its representatives shall allow themselves to be interviewed by government officials and the media regarding the qualified production. The press conference or other press story shall be held at a location mutually agreed upon between the production and the Hawaii film office and may be held at the production's set or other location.

(c) The courtesy visit and press requirements of this section must be satisfied before the Hawaii film office accepts a taxpayer's production report as being complete.

(d) Nothing in this section shall be interpreted as limiting or restricting the department's authority to access premises or documents, including exercise of its subpoena power as otherwise allowed. [Eff

17) ] (Auth: HRS §231-3(9)) (Imp: HRS §235-

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

#### **B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, promulgated by DoTax, as follows:**

**a. Chapter 231 Administration of Taxes, Section 3-14.17,  
Revocation of licenses because of abandonment;**

**b. Chapter 235 Income Tax Law**

**1. Proposed New Section 3-01, Distribution of credit  
for partnerships, S corporations, estates, and  
trusts;**

**2. Proposed New Section 17-01 through 17-19,  
Motion picture digital media, and film production  
income tax credit;**

**c. Chapter 243 Fuel Tax Law**

**1. Section 4-01, Refund of fuel taxes in excess of 1  
cent per gallon for certain fuels used for  
operating agricultural equipment in areas other  
than upon the public highways of the State**

**2. Section 4-02, Refund of fuel tax and diesel oil and  
liquefied petroleum gas used for operating motor  
vehicles in areas other than upon the public  
highways of the State**

**RECEIVED**

*By JetaimeA at 9:59 am, Oct 31, 2019*

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

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

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-243

**Chapter Name:** Fuel Tax Law

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** October 31, 2019

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-243, Hawaii Administrative Rules (HAR), by amending sections 18-243-4-01 and 18-243-4-02. These two sections contain rules for requesting refunds of fuel tax arising from the operation of equipment in areas other than upon public highways of the State. Under current rules, sections 18-243-4-01(e)(7) and 18-243-4-02(f)(7) specify that certain information need not be furnished along with forms requesting the refund of fuel tax. The proposed rules amend the law by requiring taxpayers to furnish this information.

In addition, under current rules taxpayers may only apply for refunds on a quarterly basis if the refund amount is over \$1000; otherwise claims must be made annually. The proposed rules allow all taxpayers to make refund claims quarterly regardless of amount.

**I. Rule Description:** ☐ New ☐ Repeal ☒ Amendment ☐ Compilation

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

The Department invited public comment at the public hearing held on October 14, 2019.

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

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

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers on September 13, 2019.

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

The Department did not receive any comments.

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

N/A

4. The number of persons who:
  - (i) Attended the public hearings: 0
  - (ii) Testified at the hearing: 0
  - (iii) Submitted written comments: 0

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

No.

**RECEIVED**

**By JetaimeA at 10:00 am, Oct 31, 2019**

DEPARTMENT OF TAXATION

Amendments to Chapter 18-243,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

SUMMARY

1. §18-243-4-01 is amended.
2. §18-243-4-02 is amended.

**18-243-4-01 Refund of fuel taxes in excess of 1 cent per gallon for certain liquid fuels used for operating agricultural equipment in areas other than upon the public highways of the State.** (a) For purposes of this section:

"Agricultural equipment" means any vehicle or mechanical apparatus powered by its own motor or engine using liquid fuel and

- (1) Used in carrying on a trade or business in the State involving agriculture; or
- (2) Used in connection with cultivating soil; raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife; handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; planting, cultivating, caring for, or cutting of trees or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to the farming operations; operating, managing, conserving, improving, or maintaining a farm and its tools and equipment.

"Liquid fuel" means liquids usable in internal combustion engines for the generation of power and refers to paragraphs (3) through (6) of section 243-4(a), HRS; provided however that for purposes of this section the term shall not include:

- (1) Diesel oil;
- (2) Gasoline or other aviation fuel used for airplanes; and
- (3) Liquefied petroleum gas, benzol, benzene, toluol or xylos.

"Non-highway or off the highway use" means use of liquid fuel for operating agricultural equipment in areas other than upon the public highways of the State.



"Public highways" means the same as the term is defined in section 264-1, HRS.

(b) The amount of refund is subject to the following:

- (1) The amount of state and county fuel taxes subject to refund shall be determined by multiplying the number of gallons of liquid fuel used by the tax rates as provided under:
  - (A) Paragraphs (3) through (6) of section 243-4(a), HRS, in excess of 1 cent per gallon; and
  - (B) Section 243-5, HRS, respectively.
- (2) Any interest accruing on a claim for refund shall be made as provided under sections 231-23(c)(1) and 231-23(d)(1) and (2), HRS.
- (3) Fuel taxes paid on liquid fuel used for highway purposes or on non-agricultural equipment and liquid fuel exempt from tax as provided under sections 243-7 and 243-4(d), HRS, shall not be subject to refund.

(c) The ultimate user of the liquid fuel may obtain a refund by filing a claim quarterly or annually with the department. All claims for refund under this section shall be filed within three years of April 20 of the year following the year in which the fuel subject to the refund is used.

(d) Liquid fuel used on agricultural equipment operated both off and on the highways of the State may be allocated on actual gallons used, percentage of total gallons used or other basis acceptable by the director. Such allocation must be based, however, upon operating experiences and supported by taxpayer's records.

(e) An itemized list showing the various agricultural equipment utilized and the corresponding number of gallons of liquid fuel used on such agricultural equipment need not be submitted with the claim. Generally, a claim for refund shall be

supported by the furnishing of the following information:

- (1) Total gallons on hand at beginning of period.
- (2) Total number of gallons of liquid fuel purchased during the period.
- (3) Total number of gallons of liquid fuel used on non-agricultural equipment or for highway purposes.
- (4) Total number of gallons of liquid fuel used on agricultural equipment for non-highway purposes.
- (5) Total number of gallons of liquid fuel on hand at end of the period.
- (6) Name of the county in which the liquid fuel was used. (Separate claim to be filed for each county).
- (7) Name of the seller or sellers.

(f) Taxpayers are expected to keep at their principal place of business in the state such records as will enable the director to verify the accuracy of the refund claimed. The records must show separately the number of gallons of liquid fuel used for the purpose that will qualify for refund. [Eff 2/16/82; am and re 8/12/02; am ] (Auth: HRS §§231-3(9), 243-4, 243-16) (Imp: HRS §243-4)

**18-243-4-02 Refund of fuel tax on diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than upon the public highways of the State.** (a) For purposes of this section:

"Diesel oil" means diesel oil for which tax rates are provided in paragraph (1) of section 243-4(a), HRS, and paragraphs (1) through (4) of section 243-4(b), HRS.

"Liquefied petroleum gas" means liquefied petroleum gas for which tax rates are provided in paragraphs (1) and (2) of section 243-4(c), HRS.

"Non-highway use" or "off the highway use" means use of diesel oil or liquefied petroleum gas for operating motor vehicles in areas other than upon the public highways of the State.

(b) The furnishing of exemption certificates under this section is subject to the following:

- (1) For any user of diesel oil or liquefied petroleum gas who furnished an exemption certificate to the distributor, or the distributor who uses diesel oil or liquefied petroleum gas signs such certificate, certifying that diesel oil or liquefied petroleum gas is for use in operating motor vehicles off the public highways, the taxes imposed under paragraphs (1) through (4) of section 243-4(b), HRS, and paragraph (2) of section 243-4(c), HRS, shall not be applicable.
- (2) In the event an exemption certificate is not or cannot be furnished to the distributor, the tax shall be imposed upon all sales for operating motor vehicles and collected as if the diesel oil or liquefied petroleum gas is to be used for operating motor vehicles upon the public highways of the State.
- (3) An exemption certificate shall not be required if:
  - (A) Diesel oil is used as a fuel for operating a stationary engine, watercraft, or for heating purposes; or

- (B) Liquefied petroleum gas is used exclusively for fuel and heating purposes in a home, restaurant, or an industrial plant and not used for operating an internal combustion engine in such areas.

Notwithstanding paragraph (3), the imposition of the 1 cent tax with respect to diesel oil used for purposes stated therein shall not be exempted.

(c) The amount of refund is subject to the following:

- (1) The amount of state and county fuel taxes subject to refund shall be determined by multiplying the gallons of:

- (A) Diesel oil used for operating motor vehicles off the highways by the tax rates as provided under sections 243-4(b)(1) through (4), HRS, and 243-5, HRS; and

- (B) Liquefied petroleum gas used for operating motor vehicles off the highways by the tax rates as provided under sections 243-4(c)(2) and 243-5, HRS.

- (2) Any interest accruing on a claim for refund shall be made as provided under sections 231-23(c)(1) and 231-23(d)(1) and (2), HRS.

(d) The ultimate user of the diesel oil or liquefied petroleum gas may obtain refund of all taxes imposed under paragraphs (1) through (4) of section 243-4(b), HRS, and paragraph (2) of section 243-4(c), HRS, by filing a claim form quarterly or annually with the department in a situation where:

- (1) An exemption certificate was not or could not be furnished to the distributor and the tax was imposed and collected as provided under paragraph (b)(2); or
- (2) The diesel oil or liquefied petroleum gas was initially purchased and intended for use upon the highways but was subsequently used off the highways.

All claims for refund under this section shall be filed within three years of April 20 of the year following the year in which the fuel subject to the refund is used.

(e) Diesel oil and liquefied petroleum gas used for operating motor vehicles both off and on the highways of the State may be allocated on actual gallons used, percentage of total gallons used or other basis acceptable by the director. Such allocation must be based, however, upon operating experiences and supported by taxpayer's records.

(f) An itemized list showing the various motor vehicles utilized and the corresponding gallons of diesel oil and liquefied petroleum gas used on such motor vehicles need not be submitted with the claim. A claim for refund shall be supported by furnishing the following information:

- (1) Total gallons on hand at beginning of the period.
- (2) Total gallons purchased during the period.
- (3) Total gallons used for off the public highway purposes.
- (4) Total gallons used for purposes other than in paragraph (3).
- (5) Total gallons on hand at end of the period.
- (6) Name of the county in which the diesel oil or liquefied petroleum gas was used.  
(Separate claim to be filed for each county).
- (7) Name of the seller or sellers.

(g) Taxpayers are expected to keep at their principal place of business in the State such records as will enable the director to verify the accuracy of the refund claimed. The records must show separately the gallons of diesel oil or liquefied petroleum gas used for the purpose that will qualify for refund.

[Eff 2/16/82, am and ren 8/12/02; am ]  
(Auth: HRS §§231-3(9), 243-4, 243-16) (Imp: HRS §243-4)

**RECEIVED**

**By JetaimeA at 10:01 am, Oct 31, 2019**

DEPARTMENT OF TAXATION

Amendments to Chapter 18-243,  
Hawaii Administrative Rules

Effective: \_\_\_\_\_

1. Section 18-243-4-01, Hawaii Administrative Rules, is amended to read as follows:

**"18-243-4-01 Refund of fuel taxes in excess of 1 cent per gallon for certain liquid fuels used for operating agricultural equipment in areas other than upon the public highways of the State. (a)**

~~[Definitions.]~~ For purposes of ~~[section 18-243-4-01:]~~ this section:

"Agricultural equipment" means any vehicle or mechanical apparatus powered by its own motor or engine using liquid fuel and

- (1) ~~[used]~~ Used in carrying on a trade or business in the State involving agriculture~~[r]~~; or
- (2) ~~[used]~~ Used in connection with cultivating soil; raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife; handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; planting, cultivating, caring for, or cutting of trees or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to the farming operations; operating, managing, conserving, improving, or maintaining a farm and its tools and equipment.

"Liquid fuel" means liquids usable in internal combustion engines for the generation of power and

refers to paragraphs (3) through (6) of section 243-4(a), HRS; provided however that for purposes of ~~[section 18-243-4-01]~~ this section the term shall not include:

- (1) Diesel oil;
- (2) Gasoline or other aviation fuel used for airplanes~~[r]~~; and
- (3) Liquefied petroleum gas, benzol, benzene, toluol or xylos.

"Non-highway or off the highway use" means use of liquid fuel for operating agricultural equipment in areas other than upon the public highways of the State.

"Public highways" means the same as the term is defined in section 264-1, HRS.

(b) ~~[Amount of refund; exceptions.]~~ The amount of refund is subject to the following:

- (1) ~~[Rates.]~~ The amount of state and county fuel taxes subject to refund shall be determined by multiplying the number of gallons of liquid fuel used by the tax rates as provided under:
  - (A) ~~[paragraphs]~~ Paragraphs (3) through (6) of section 243-4(a), HRS, in excess of 1 cent per gallon; and
  - (B) ~~[section]~~ Section 243-5, HRS, respectively.
- (2) Any interest accruing on a claim for refund shall be made as provided under sections 231-23(c)(1) and 231-23(d)(1) and (2), HRS.
- (3) ~~[Exceptions.]~~ Fuel taxes paid on liquid fuel used for highway purposes or on non-agricultural equipment and liquid fuel exempt from tax as provided under sections 243-7 and 243-4(d), HRS, shall not be subject to refund.

(c) ~~[Filing of claim; when and how.]~~

~~(1)]~~ The ultimate user of the liquid fuel may obtain a refund by filing a claim quarterly or annually with the ~~[Tax Collector in the ultimate user's taxation district.]~~

~~(2) A claim may be filed quarterly if the amount of refund is in excess of \$1,000 within any calendar quarter. Where the amount of refund within a calendar quarter is not in excess of \$1,000 but the cumulative amounts for two or more calendar quarters exceed \$1,000, a claim for refund covering such calendar quarters may be filed. Any claim not exceeding \$1,000 quarterly or cumulative quarterly shall be filed on a calendar year basis regardless of the basis used for record-keeping purposes or for filing other tax returns.~~

**Example:-**

~~"A" Corporation is a calendar year taxpayer. It computed the following amounts of allowable liquid fuel taxes paid at the end of each quarter:-~~

<del>January 1 through March 31</del>	<del>\$2,500</del>
<del>April 1 through June 30</del>	<del>500</del>
<del>July 1 through September 30</del>	<del>600</del>
<del>October 1 through December 1</del>	<del>1,500</del>

~~"A" Corporation may elect to file quarterly claims for the quarters ending March 31 and December 31. It may not file quarterly claims for the quarter ending June 30 and September 30 since the amounts within those quarters were less than \$1,000. However, the refund for such quarters may be combined and the cumulative amount of \$1,100 (\$500+\$600) may be claimed for the quarter ending September 30.] department. All claims for refund under this section shall be filed within three years of April 20 of the year following the year in which the fuel subject to the refund is used.~~

(d) ~~[Allocation of use.]~~ Liquid fuel used on agricultural equipment operated both off and on the



highways of the State may be allocated on actual gallons used, percentage of total gallons used or other basis acceptable by the director. Such allocation must be based, however, upon operating experiences and supported by taxpayer's records.

(e) ~~[Information to be furnished on claim.]~~ An itemized list showing the various agricultural equipment utilized and the corresponding number of gallons of liquid fuel used on such agricultural equipment need not be submitted with the claim. Generally, a claim for refund shall be supported by the furnishing of the following information:

- (1) Total gallons on hand at beginning of period.
- (2) Total number of gallons of liquid fuel purchased during the period.
- (3) Total number of gallons of liquid fuel used on non-agricultural equipment or for highway purposes.
- (4) Total number of gallons of liquid fuel used on agricultural equipment for non-highway purposes.
- (5) Total number of gallons of liquid fuel on hand at end of the period.
- (6) Name of the county in which the liquid fuel was used. (Separate claim to be filed for each county).
- (7) Name of the seller or sellers. ~~[If, however, separate records are maintained for liquid fuel used on each agricultural equipment, information on items in paragraphs (1), (2), (3) and (5) of the foregoing need not be furnished.]~~

(f) ~~[Records.]~~ Taxpayers are expected to keep at their principal place of business in the state such records as will enable the director to verify the accuracy of the refund claimed. The records must show separately the number of gallons of liquid fuel used for the purpose that will qualify for refund." [Eff 2/16/82; am and re 8/12/02; am ] (Auth: HRS §§231-3(9), 243-4, 243-16) (Imp: HRS §243-4)

2. Section 18-243-4-02, Hawaii Administrative Rules, is amended to read as follows:

**"18-243-4-02 Refund of fuel tax on diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than upon the public highways of the State.** (a) ~~[Definitions.]~~ For purposes of

~~[section 18-243-4-02:]~~ this section:

"Diesel oil" means diesel oil for which tax rates are provided in paragraph (1) of section 243-4(a), HRS, and paragraphs (1) through (4) of section 243-4(b), HRS.

"Liquefied petroleum gas" means liquefied petroleum gas for which tax rates are provided in paragraphs (1) and (2) of section 243-4(c), HRS.

"Non-highway use" or "off the highway use" means use of diesel oil or liquefied petroleum gas for operating motor vehicles in areas other than upon the public highways of the State.

(b) ~~[Furnishing of exemption certificate; exception.]~~ The furnishing of exemption certificates under this section is subject to the following:

- (1) For any user of diesel oil or liquefied petroleum gas who furnished an exemption certificate to the distributor, or the distributor who uses diesel oil or liquefied petroleum gas signs such certificate, certifying that diesel oil or liquefied petroleum gas is for use in operating motor vehicles off the public highways, the taxes imposed under paragraphs (1) through (4) of section 243-4(b), HRS, and paragraph (2) of section 243-4(c), HRS, shall not be applicable.
- (2) In the event an exemption certificate is not or cannot be furnished to the distributor, the tax shall be imposed upon all sales for operating motor vehicles and collected as if the diesel oil or liquefied petroleum gas is to be used for operating motor vehicles upon the public highways of the State.

- (3) ~~[Exception.]~~ An exemption certificate shall not be required if ~~[(i) diesel]~~:
- (A) Diesel oil is used as a fuel for operating a stationary engine, watercraft, or for heating purposes~~[7~~ ~~or (ii) liquefied]~~ ; or
  - (B) Liquefied petroleum gas is used exclusively for fuel and heating purposes in a home, restaurant, or an industrial plant and not used for operating an internal combustion engine in such areas.

Notwithstanding ~~[the foregoing exception]~~ paragraph (3), the imposition of the 1 cent tax with respect to diesel oil used for purposes stated therein shall not be exempted.

(c) ~~[Amount of refund; interest thereon.]~~ The amount of refund is subject to the following:

- (1) The amount of state and county fuel taxes subject to refund shall be determined by multiplying the gallons of:
  - (A) Diesel oil used for operating motor vehicles off the highways by the tax rates as provided under sections 243-4(b)(1) through (4), HRS, and 243-5, HRS~~[7]~~; and
  - (B) Liquefied petroleum gas used for operating motor vehicles off the highways by the tax rates as provided under sections 243-4(c)(2) and 243-5, HRS.
- (2) Any interest accruing on a claim for refund shall be made as provided under sections 231-23(c)(1) and 231-23(d)(1) and (2), HRS.
- (d) ~~[Claiming of refund; when and how.]~~
- ~~(1)]~~ The ultimate user of the diesel oil or liquefied petroleum gas may obtain refund of all taxes imposed under paragraphs (1) through (4) of section 243-4(b), HRS, and paragraph (2) of section 243-4(c), HRS, by filing a claim form quarterly or annually with the ~~[Tax Collector in the ultimate~~

~~user's taxation district]~~ department in a situation where: [~~(A) an~~]

- (1) An exemption certificate was not or could not be furnished to the distributor and the tax was imposed and collected as provided under paragraph (b) (2); or [~~(B) the~~]
  - (2) The diesel oil or liquefied petroleum gas was initially purchased and intended for use upon the highways but was subsequently used off the highways.
- ~~[(2) A claim may be filed quarterly if the amount of refund is in excess of \$1,000 within any calendar quarter. Where the amount of refund within a calendar quarter is not in excess of \$1,000 but the cumulative amounts for two or more calendar quarters exceed \$1,000, a claim for refund covering such calendar quarters may be filed. Any claim not in excess of \$1,000 quarterly or cumulative quarterly shall be filed on a calendar year basis regardless of the basis used for record keeping purposes or for filing other tax returns.]~~

**Example:-**

~~"A" Corporation is a calendar year taxpayer. It is entitled to refund of the following amounts of diesel oil and liquefied petroleum gas taxes imposed and paid as provided under paragraphs (1) through (4) of section 243-4(b), HRS, and paragraph (2) of section 243-4(c), HRS, at the end of each quarter:~~

<del>January 1 through March 31</del>	<del>\$2,500</del>
<del>April 1 through June 30</del>	<del>500</del>
<del>July 1 through September 30</del>	<del>600</del>
<del>October 1 through December 1</del>	<del>1,500</del>

~~"A" Corporation may elect to file quarterly claims for the quarters ending March 31 and December 31. It may not file quarterly claims for~~

~~the quarters ending June 30 and September 30 since the amounts within those quarters were less than \$1,000. However, the refund for such quarters may be combined and the cumulative amount of \$1,100 (\$500+\$600) may be claimed for the quarter ending September 30.]~~

All claims for refund under this section shall be filed within three years of April 20 of the year following the year in which the fuel subject to the refund is used.

(e) ~~[Allocation of use.]~~ Diesel oil and liquefied petroleum gas used for operating motor vehicles both off and on the highways of the State may be allocated on actual gallons used, percentage of total gallons used or other basis acceptable by the director. Such allocation must be based, however, upon operating experiences and supported by taxpayer's records.

(f) ~~[Information to be furnished on claim.]~~ An itemized list showing the various motor vehicles utilized and the corresponding gallons of diesel oil and liquefied petroleum gas used on such motor vehicles need not be submitted with the claim. A claim for refund shall be supported by furnishing the following information:

- (1) Total gallons on hand at beginning of the period.
- (2) Total gallons purchased during the period.
- (3) Total gallons used for off the public highway purposes.
- (4) Total gallons used for purposes other than in paragraph (3).
- (5) Total gallons on hand at end of the period.
- (6) Name of the county in which the diesel oil or liquefied petroleum gas was used.  
(Separate claim to be filed for each county).
- (7) Name of the seller or sellers. ~~[If, however, separate records are maintained for diesel oil and liquefied petroleum gas on each motor vehicle, information pertinent to~~

~~items in paragraphs (1), (2), (4) and (5) of  
the foregoing need not be furnished.]~~

(g) [~~Records.~~] Taxpayers are expected to keep at their principal place of business in the State such records as will enable the director to verify the accuracy of the refund claimed. The records must show separately the gallons of diesel oil or liquefied petroleum gas used for the purpose that will qualify for refund." [Eff 2/16/82, am and ren 8/12/02; am  
] (Auth: HRS §§231-3(9), 243-4, 243-16)  
(Imp: HRS §243-4)

3. Material to be repealed is bracketed and stricken. New material is underscored.

4. These amendments to chapter 18-243, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, and filed with the Office of the Lieutenant Governor.

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Director  
Department of Taxation

APPROVED AS TO FORM:

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Deputy Attorney General

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

#### **C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 20 Chapter 26, Public and Commercial Activities on Mauna Kea Lands, promulgated by University of Hawaii**

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

**Department or Agency:** University of Hawai'i

**Administrative Rule Title and Chapter:** Title 20, Chapter 26

**Chapter Name:** Public and Commercial Activities on Mauna Kea Lands

**Contact Person/Title:** Stephanie Nagata, Director, Office of Maunakea Management

**Phone Number:** (808) 933-0734

**E-mail Address:** nagatas@hawaii.edu **Date:** November 15, 2019

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. See Attachment A.

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



**Yes**



**No**

See [http://www.hawaii.edu/offices/bor/adminrules/notices/chapter26\\_star-advertiser\\_04-28-19.pdf](http://www.hawaii.edu/offices/bor/adminrules/notices/chapter26_star-advertiser_04-28-19.pdf); also linked at <https://ltgov.hawaii.gov/the-office/administrative-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.**

See Attachment B.

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

See Attachment B.

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

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

See Attachment B.

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

See Attachment B.

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

See Attachment B.

4. The number of persons who:

(i) Attended the public hearing: See Attachment B.

(ii) Testified at the hearing: See Attachment B.

(iii) Submitted written comments: See Attachment B.

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.

See Attachment B.

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>

## ATTACHMENT A

### **NOTICE OF PROPOSED RULEMAKING PUBLIC HEARING**

Pursuant to chapter 91, Hawaii Revised Statutes (HRS), notice is hereby given that the University of Hawaii will hold public hearings, to afford all interested persons an opportunity to submit data, views, or arguments, orally or in writing on proposed chapter 20-26, Hawaii Administrative Rules, entitled “Public and Commercial Activities on Mauna Kea Lands.”

The topic of the proposed new rules is the regulation of public and commercial activities on Mauna Kea lands, pursuant to section 304A-1903, HRS. Act 132, Session Laws of Hawaii 2009, granted rule-making authority to the University to adopt the proposed rules. Under Act 132, the purpose of the proposed rules is to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety.

In accordance with Act 132, the proposed rules strive for consistency with the administrative rules of the Division of Forestry and Wildlife of the Department of Land and Natural Resources related to forest reserves and natural area reserves. Public and commercial activities covered by the proposed rules include general access for protection of the resources or to ensure the safety and welfare of persons or property; traffic and off-road vehicle use; alcohol consumption; recreational activities; and commercial tour activities. In addition, the proposed rules reaffirm protected rights customarily and traditionally exercised for subsistence, cultural, and religious purposes by native Hawaiians.

The proposed rules apply to activities on “Mauna Kea lands,” referred to as “UH management areas” in the proposed rules. “Mauna Kea lands,” means the lands that the University is leasing from the Board of Land and Natural Resources, including the Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve, and any other lands on Mauna Kea that the University leases or over which the University acquires control or jurisdiction, as defined by section 304A-1901, HRS.

The public hearings are scheduled for the following dates, times, and locations:

- Monday, June 3, 2019, at 5:30 p.m. to 7:30 p.m.  
Manoa Elementary School, 3155 Manoa Road, Honolulu, HI 96822
- Tuesday, June 4, 2019, at 5:30 p.m. to 7:30 p.m.  
Waiakea Elementary School, 180 W. Puainako Street, Hilo, HI 96720

- Wednesday, June 5, 2019, at 5:30 p.m. to 7:30 p.m.  
Waikoloa Elementary & Middle School, 68-1730 Hooko Street, Waikoloa, HI 96738
- Friday, June 7, 2019, at 5:30 p.m. to 7:30 p.m.  
Pomaikai Elementary School, 4650 S. Kamehameha Avenue, Kahului, HI 93732

A copy of the proposed rules will be made available for public viewing at the UH System Government Relations Office located at the University of Hawaii at Manoa, 2442 Campus Road, Administrative Services Building 1, Room 101, Honolulu, Hawaii 96822, Monday through Friday between the hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m.

Copies of the proposed rules will also be available at regional public libraries during library hours and on the University's websites at [www.hawaii.edu/offices/bor/adminrules/proposed.html](http://www.hawaii.edu/offices/bor/adminrules/proposed.html) and [www.malamamaunakea.org](http://www.malamamaunakea.org).

The University will mail a copy of the proposed rules to any interested person, upon written request and advance payment of \$3.70 for copying and postage to the UH System Government Relations Office at the address noted above. Please call (808) 956-4250 for more information.

Interested persons may present testimony at the time of the public hearing. Interested persons unable to attend the public hearing may submit written testimony regarding the proposed rules by mail to the UH System Government Relations Office at the address noted above; by email at [UHHAR@hawaii.edu](mailto:UHHAR@hawaii.edu); or through the University website at [www.hawaii.edu/govrel/uhhar-testimony](http://www.hawaii.edu/govrel/uhhar-testimony). All submissions must be received at or prior to closing of the last scheduled public hearing.

All oral and written testimony is public information. Please do not include information in your testimony that you do not want to be disclosed to the public.

Individuals who require special needs accommodations may contact the UH System Government Relations Office at (808) 956-4250 or [UHHAR@hawaii.edu](mailto:UHHAR@hawaii.edu) at least five (5) state working days prior to the hearing.

David Lassner

President, University of Hawaii  
(SA1193159 4/28/19)

## **NOTICE OF PROPOSED RULEMAKING PUBLIC HEARING**

Pursuant to chapter 91, Hawai'i Revised Statutes (HRS), notice is hereby given that the University of Hawai'i will hold public hearings, to afford all interested persons an opportunity to submit data, views, or arguments, orally or in writing on proposed chapter 20-26, Hawai'i Administrative Rules, entitled "Public and Commercial Activities on Mauna Kea Lands."

The topic of the proposed new rules is the regulation of public and commercial activities on Mauna Kea lands, pursuant to section 304A-1903, HRS. As directed by Act 132, Session Laws of Hawai'i 2009, which granted rule-making authority to the University to adopt the proposed rules, the purpose of the proposed rules is to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety.

In accordance with Act 132, the proposed rules strive for consistency with the administrative rules of the Division of Forestry and Wildlife of the Department of Land and Natural Resources related to forest reserves and natural area reserves. Public and commercial activities covered by the proposed rules include general access for protection of the resources or to ensure the safety and welfare of persons or property; traffic and off-road vehicle use; alcohol consumption; recreational activities; and commercial tour activities. In addition, the proposed rules reaffirm protected rights customarily and traditionally exercised for subsistence, cultural, and religious purposes by native Hawaiians.

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The public hearings are scheduled for the following dates, times, and locations:

- Monday, September 24, 2018, 5:00 p.m. to 7:00 p.m.  
Sullivan Conference Center, University of Hawai'i Cancer Center  
701 Ilalo Street  
Honolulu, Hawai'i 96813

- Tuesday, September 25, 2018, 5:00 p.m. to 7:00 p.m.  
 'Imiloa Astronomy Center of Hawai'i  
 600 'Imiloa Place  
 Hilo, Hawai'i 96720
- Wednesday, September 26, 2018, 6:15 p.m. to 8:15 p.m.  
 Waikoloa Elementary and Middle School  
 68-1730 Ho'oko Street  
 Waikoloa, Hawai'i 96738
- Friday, September 28, 2018, 5:30 p.m. to 7:30 p.m.  
 'Ike Le'a (Room 144), University of Hawai'i Maui College  
 310 West Ka'ahumanu Avenue  
 Kahului, Hawai'i 96732

A copy of the proposed rules will be made available for public viewing at the UH System Government Relations Office located at the University of Hawai'i at Manoa, 2442 Campus Road, Administrative Services Building 1, Room 101, Honolulu, Hawai'i 96822, Monday through Friday between the hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m.

Copies of the proposed rules will also be available at regional public libraries during library hours and on the University's websites at [www.hawaii.edu/offices/bor/adminrules/proposed.html](http://www.hawaii.edu/offices/bor/adminrules/proposed.html) and [www.malamamaunakea.org](http://www.malamamaunakea.org).

The University will mail a copy of the proposed rules to any interested person, upon written request and advance payment of \$4.04 for copying and postage to the UH System Government Relations Office at the address noted above. Please call (808) 956-4250 for more information.

Interested persons may present testimony at the time of the public hearing. Interested persons unable to attend the public hearing may submit written testimony regarding the proposed rules by mail to the UH System Government Relations Office at the address noted above; by email at [UHHAR@hawaii.edu](mailto:UHHAR@hawaii.edu); or through the University website at [www.hawaii.edu/govrel/uhhar-testimony](http://www.hawaii.edu/govrel/uhhar-testimony). All submissions must be received at or prior to closing of the last scheduled public hearing.

All oral and written testimony is public information. Please do not include information in your testimony that you do not want disclosed to the public.

Individuals who require special needs accommodations may contact the UH System Government Relations Office at (808) 956-4250 or UHHAR@hawaii.edu at least five (5) state working days prior to the hearing.

David Lassner  
President, University of Hawai'i  
(SA1124164 8/19/18)

**ATTACHMENT B**  
**Supplemental Answers**

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

Generally, the Office of Maunakea Management (“OMKM”) met with small business groups including commercial tour operators to discuss the drafting of the rules. In addition, the general public was invited to participate in open houses and a survey in June of 2015. Numerous community meetings were held to provide opportunities for input on proposed rules.

Commercial tour operations are the primary existing commercial use on Maunakea. Following the transfer of the function of commercial tours by the Board of Land and Natural Resources, the University issued permits to commercial tour operators (“CTOs”). The permit function, including compliance, is managed by OMKM. Act 132 (2009), which grants the University rulemaking authority for the subject rules, identifies “[c]ommercial tour activities,” as one of several “[e]xamples of public and commercial activities that could be covered by administrative rules[.]”

Small businesses, along with other interested persons, were afforded opportunity to submit data, views, or arguments in writing at public hearings; by mail to the University System Government Relations Office; in person to the University System Government Relations Office; by email; or through an online site set up for this purpose. See Attachment A. Two rounds of public hearings pursuant to Hawai‘i Revised Statutes (“HRS”) chapter 91 were held in September 2018 and June 2019. Both rounds of hearings were conducted at four sites in Hilo and Waikoloa on Hawai‘i Island; in Kahului, Maui; and in Honolulu, O‘ahu. Act 132 requires that at least one hearing is held on Hawai‘i Island.

In addition to public hearings required under HRS chapter 91 and Act 132, OMKM held two meetings with CTOs regarding the subject rules on August 28, 2018 and July 10, 2019. These meetings primarily focused on how the rules would be implemented as discussed below.

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

CTOs provide an important management function for the University. CTOs reduce the number of vehicles that visit the area by tourists, ensure that visitors are transported by drivers certified in first aid, and serve as interpretive guides for non-English speaking visitors. Conditions of the CTO permit and OMKM policy does not allow certain activities such as driving in certain areas or allowing their passengers to hike to the summit. This



helps to reduce impacts to natural, cultural, and scientific resources and provides a measure of public safety. The University intends to continue to allow CTOs.

A primary concern for existing tour operators was the status of their current permits after the rules became effective, and how new permittees would be selected. The University cannot guarantee permits for existing operators. However, a record of safety, educational programming, and safe equipment are prerequisites to any interested operator as discussed in the subject rules. Existing operators were also encouraged by the fact that implementation of the new CTO provisions under the rules would be gradual and involve input from existing and interested CTOs.

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

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

Please see above section.

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

Public comments generally are summarised in the hearing officers' reports discussed in subsection 4, below. A summary of CTO comments and responses shared with CTOs are as follows:

- Q: Will I lose my CTO permit under the new rules?
  - A: New permits will be issued under the new rules as provided for in existing CTO permit terms. However, the implementation process may take up to a year. Among other things, a study is being prepared to assess carrying capacity and CTO permit fees. This study will help establish the number of available permits.
- Q: What will the new permit requirements be?
  - A: Under the subject rules, permit requirements are similar to those in existing CTO permits, including compatibility with the functions and purpose of UH management areas; consistency with existing approved management plans; potential effect on the surrounding resources, the existing facilities and infrastructure, and the public's use of the UH management areas; compatibility with existing approved uses; compatibility with scheduled or ongoing construction, repairs, or maintenance activities; applicant's prior record of non-compliance with permit conditions, or of violations; quality of the educational aspects of the activity; comprehensiveness of planned staff training; inclusion of safety protocols; extent to which additional practices are incorporated to ensure customer and public safety and welfare; and extent to which additional practices are incorporated to ensure protection of the resources of the UH management areas.

- Q: Why is a lottery system in the rules?
  - A: It is possible that qualified applications may outnumber available permits. In such a case, qualified applicants will be allocated permits by drawing or lottery.
- Q: What will the term of permits be?
  - A: Terms are not in the rules, but as discussed with CTOs, the current expectation is that permits will be issued for up to 5 years.

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

Please see above, subsection 2. CTO's were primarily concerned about implementation and its effects on existing CTO permits. OMKM will work with existing and interested CTOs to implement the rules and minimize business disruptions to the extent permitted by law.

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

	<b>Hearings Round I June 2018</b>	<b>Hearings Round II September 2019</b>
<b>(i) Attended the public hearing:</b>	~358	~370
<b>(ii) Testified at the hearing:</b>	92	133
<b>(iii) Submitted written comments:</b>	406 written submissions	332 written submissions

The record of these proceedings are compiled in two hearings officers' reports, which are available online and can be downloaded at <https://www.hawaii.edu/filedrop/dl/fOKmV-FPwKB-nevbU-LBqmo>. This link will be available for download until November 28, 2019. Please contact souki@hawaii.edu if you have issues with downloading this document.

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

There were no requests made during the public hearings for changes to CTO provisions of the rules; consequently, no changes were made to the rules that would impact CTOs.

**RECEIVED**

*By JetaimeA at 11:00 am, Nov 15, 2019*

UNIVERSITY OF HAWAI'I

Adoption of Chapter 20-26  
Hawai'i Administrative Rules

November 6, 2019

SUMMARY

Chapter 20-26, Hawai'i Administrative Rules,  
entitled "Public and Commercial Activities on Mauna  
Kea Lands," is adopted.

HAWAI'I ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAI'I

SUBTITLE 1

UNIVERSITY OF HAWAI'I

BOARD OF REGENTS

CHAPTER 26

PUBLIC AND COMMERCIAL ACTIVITIES ON MAUNA KEA LANDS

Subchapter 1 General Provisions

- §20-26-1 Purpose
- §20-26-2 Definitions
- §20-26-3 Applicability and implementation, generally
- §20-26-4 Consistency with other rules
- §20-26-5 Orientation
- §20-26-6 Fees
- §20-26-7 Mauna Kea lands management special fund
- §20-26-8 Delegation of authority
- §§20-26-9 to 20-26-20 (Reserved)

Subchapter 2 Public Activities

- §20-26-21 Preservation of resources
- §20-26-22 Preservation of property
- §20-26-23 Preservation of scientific and educational  
resources

§20-26-24 Litter and sanitation  
§20-26-25 Fire use restrictions  
§20-26-26 Explosives  
§20-26-27 Firearms or other weapons  
§20-26-28 Vehicles and transportation  
§20-26-29 Unmanned aerial vehicles, drones and air  
toys  
§20-26-30 Outdoor sports activities  
§20-26-31 Hazardous materials  
§20-26-32 Animals  
§20-26-33 Audio devices and noise  
§20-26-34 Public safety  
§20-26-35 Use of drugs or alcohol  
§20-26-36 Smoking and tobacco use prohibited  
§20-26-37 Camping  
§20-26-38 Access  
§20-26-39 Snow play  
§20-26-40 Scattering of cremated remains  
§20-26-41 Interference with government function  
§20-26-42 Compliance with laws  
§§20-26-43 to 20-26-50 (Reserved)

#### Subchapter 3 Commercial Activities

§20-26-51 Commercial activities generally  
§20-26-52 Selling, advertising, and solicitation  
§§20-26-53 to 20-26-60 (Reserved)

#### Subchapter 4 Permits for Public and Commercial Activities

§20-26-61 General provisions  
§20-26-62 Research permits  
§20-26-63 Special use permits  
§20-26-64 Commercial tour activity permits  
§20-26-65 Commercial film and recordings  
§20-26-66 Period of validity and renewal of permit  
§§20-26-67 to 20-26-70 (Reserved)

#### Subchapter 5 Administration and Enforcement

§20-26-71 Purpose of subchapter; statement of policy

- §20-26-72 Applicability
- §20-26-73 Violations, penalties, costs,  
administrative fines, sanctions, and  
collection
- §20-26-74 Enforcement; citations
- §20-26-75 Appeals process, information requests and  
submittals, and petitions for declaratory  
rulings
- §20-26-76 Enforcement and stay of final decision
- §20-26-77 Severability

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§20-26-1 Purpose.** The purpose of these rules is to provide for the proper use, management, and protection of cultural, natural, and scientific resources of the UH management areas; to promote public safety and welfare by regulating public and commercial activity within the UH management areas; to ensure safe and appropriate access to the UH management areas for the public; and to foster co-management with the department of land and natural resources in UH management areas. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-2 Definitions.** As used in these rules, unless context requires otherwise:

"Authorized agent" means a person, persons, or entity authorized by the president, to act on the president's behalf under this chapter.

"Board" means the board of regents of the University of Hawai'i.

"Camping" means the use of UH management areas (other than designated facilities at Halepōhaku) for living accommodation purposes such as sleeping activities, or making preparations to sleep using any tents or shelter or other structure or vehicle for sleeping, between one hour after sunset and sunrise.

"Commercial activity" means a use or purpose designed for profit, which includes the exchange or buying and selling of goods, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility and routine maintenance, operations, and construction purposes shall not be considered a commercial activity. Commercial activities include but are not limited to activities whose base of operations is outside the boundaries of the UH management areas, or provide transportation to, from, or within the UH management areas.

"Commercial tours" means the transport of people for compensation for the purpose of engaging in public activities within the UH management areas, including but not limited to transport by cars, sport utility vehicles, trucks, taxis, vans or buses.

"Compensation" includes, but is not limited to, monetary payments, barter, or services in-kind. Bona fide sharing of resources or expenses among participants in scientific research-related activities, including but not limited to astronomical observatory operations, does not constitute compensation.

"Comprehensive management plan" means the Mauna Kea Comprehensive Management Plan approved by the board of land and natural resources, dated April 2009, including any sub-plans, as they may be amended.

"Drone" means an unmanned aircraft, ship, or vehicle guided by remote control or onboard computers.

"Forest reserve" means lands set apart as forest reserve pursuant to section 183-11, Hawai'i Revised Statutes.

"Game mammals and birds" means those animals that have been designated as such by the department of land and natural resources.

"Halepōhaku" means the Halepōhaku (also known as Hale Pōhaku) mid-level facilities as described in the lease between the board of land and natural resources and the university.

"Hazardous materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (1976), as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (1980), as amended, the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. (1972), or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof or subsequently enacted.

"Kahu Kū Mauna" means the advisory community-based council that advises the Maunakea Management Board, OMKM, and the chancellor of the University of Hawai'i at Hilo on Hawaiian cultural matters affecting the UH management areas.

"Law enforcement officer(s)" means any federal, state, or county government employee with law enforcement powers.

"Mauna Kea" or "Maunakea" refers to the dormant volcano on the island of Hawai'i standing approximately 4,205 meters above sea level; its peak is the highest point in the state of Hawai'i.

"Maunakea Management Board" or "MKMB" means the community-based advisory body established by the board to provide the Hawai'i Island community with a direct voice to the university for the management of the UH management areas.

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

"Natural area reserve" means an area designated as a part of the Hawai'i natural area reserves system, pursuant to chapter 195, Hawai'i Revised Statutes.



"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.

"Office" or "OMKM" means the office of Maunakea management.

"Person" includes individuals eighteen (18) years of age or older, partnerships, corporations, associations, or public or private organizations of any character other than government agencies.

"President" means the president of the university, unless otherwise expressly stated or further designated by the board or the president.

"Private vehicle" means any vehicle not operated for governmental purposes, including but not limited to private cars and trucks, rental cars and trucks, commercial tour vehicles, taxis, limousines, buses, and other transportation for hire. It does not include vehicles operated by employees or agents of government agencies on official business, but can include any vehicle, including a government vehicle, if operated by an employee or agent of a government agency when not acting in an official capacity.

"Public activities" means activities of the general public that are not governed by contract or other legal agreement with the university, other than a permit issued under these rules or the rules of the department of land and natural resources, if applicable.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; or to try to obtain.

"UH management areas" are those lands defined as "Mauna Kea lands" under section 304A-1901, Hawai'i Revised Statutes.

"University of Hawai'i", "University", and "UH" means the state university established under article X, section 5 of the Hawai'i Constitution and section 304A-101, Hawai'i Revised Statutes, which is governed by the board.

"Written permit" or "written permission" means a permit or permission issued under this chapter by the

president. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-3 Applicability and implementation, generally.** (a) These rules shall apply to all public activities and commercial activities in the UH management areas as defined in these rules.

(b) These rules do not apply to education and research activities and support functions carried out by:

- (1) The university;
- (2) Persons under an agreement with the university; or
- (3) Government entities under an agreement with the university.

(c) Where overlapping jurisdictions within UH management areas are present, including but not limited to department of land and natural resources administrative rules pertaining to conservation districts, forest reserves, historic preservation, hunting, and natural area reserves, those rules shall govern.

(d) This chapter shall be implemented in consultation with the department of land and natural resources, to allow hunting and recreation in those areas designated by the department of land and natural resources as regulated by department of land and natural resources hunting rules.

(e) The president may seek the advice of the Maunakea management board and the Kahu Kū Mauna pursuant to the comprehensive management plan and consistent with the timelines and procedures of this chapter.

(f) Native Hawaiian traditional and customary rights as recognized and protected under article XII, section 7, of the Hawai'i State Constitution shall not be abridged. [Eff ] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-4 Consistency with other rules.** These rules shall not be interpreted so as to be inconsistent with other rules applicable within UH management areas, including but not limited to conservation district rules, and where applicable, forest reserves, hunting, historic preservation, and natural area reserves rules. [Eff ] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-5 Orientation.** As set forth in the comprehensive management plan, all persons accessing the UH management areas shall be required to complete an orientation regarding cultural and natural resources, safety matters, and other relevant information prior to entering the UH management areas. [Eff ] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-6 Fees.** Fees, as established by the board, may be charged for permits, services, parking, entrance, and for the use of facilities and programs related to the UH management areas. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1902, 304A-1903, 304A-2170)

**§20-26-7 Mauna Kea lands management special fund.** (a) All payments collected pursuant to these rules shall be deposited into the Mauna Kea lands management special fund.

(b) The proceeds of the Mauna Kea lands management special fund shall be used as provided in chapter 304A, Hawai'i Revised Statutes. [Eff ] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-2170)

**§20-26-8 Delegation of authority.** The board delegates its authority to administer this chapter to the president, who may further delegate that authority to a designee. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§§20-26-9 to 20-26-20 (Reserved).**

## SUBCHAPTER 2

### PUBLIC ACTIVITIES

**§20-26-21 Preservation of resources.** The following activities are prohibited within the UH management areas:

- (1) Removing, injuring, disturbing, or killing any form of plant or animal life, either in whole or in part, except game mammals and birds hunted according to rules of the department of land and natural resources;
- (2) Introducing any form of plant or animal life, except dogs when permitted by the hunting rules of the department of land and natural resources and legally authorized service animals when accompanying their handlers;
- (3) Removing, damaging, or disturbing any natural feature or resource;
- (4) Removing, damaging, or disturbing any geological or paleontological features or substances;
- (5) Removing, damaging, or disturbing any historic or prehistoric property or remains;
- (6) Removing, damaging, or disturbing any

- private or university property, sign, marker, or structure;
  - (7) Entering into any cave, as defined in section 6D-1, Hawai'i Revised Statutes, or any portion thereof, except as allowed by the department of land and natural resources;
  - (8) Having or possessing the following tools, equipment or implements: cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life, and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife; except as permitted by the hunting rules of the department of land and natural resources or in accordance with a special term or condition of a written permit;
  - (9) Engaging in any improvement or construction, except as authorized by written permit and, if applicable, a permit issued by the department of land and natural resources, or by the board of land and natural resources;
  - (10) Hiking, conducting nature study, or conducting any activity on pu'u (cinder cones) unless on designated trails or roads, except by written permit; or
  - (11) Introducing any materials from outside the UH management areas, including but not limited to manmade and natural items such as balls, plastic flowers, glass, metal and rocks, except by written permit and, if applicable, a permit issued by the department of land and natural resources.
- [Eff \_\_\_\_\_] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-22 Preservation of property.** The following activities are prohibited within the UH management areas:

- (1) Entering, occupying, or using any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university;
- (2) Removing, damaging, disturbing, defacing, or attempting to remove, damage, disturb or deface any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university; or
- (3) Entering and remaining within any portion of the UH management areas developed or used by the university for educational or research purposes, after being asked to leave the area by an authorized agent or law enforcement officer. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-23 Preservation of scientific and educational resources.** The following activities are prohibited within the UH management areas north of Halepōhaku:

- (1) Using any radio transmitter, including but not limited to two-way radios, Wi-Fi and Bluetooth devices, and cellular telephones; provided that, cellular telephones may be used for emergency purposes or when radio transmission is suspended, for example by using airplane mode;
- (2) Directing artificial illumination, for example, lasers and flashlights, at or near observatories; or
- (3) Conducting any other activity that materially interferes with the scientific and educational operations of the astronomical facilities or research

equipment or with the protection of the scientific resources. [Eff ]  
(Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-24 Litter and sanitation.** The following activities are prohibited within the UH management areas:

- (1) Littering, or depositing any garbage, trash, refuse, waste material, or rubbish in any place other than receptacles provided for this purpose;
- (2) Depositing any bodily waste in areas without comfort stations without digging a hole and covering all signs of the waste;
- (3) Depositing any bodily waste, without use of a comfort station, within 200 feet of any body of water, building, road, or trail; or
- (4) Leaving or abandoning any items, including but not limited to, vehicles, appliances, garbage or trash, or other forms of waste, debris, personal effects, or unattended items. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-25 Fire use restrictions.** The following acts are prohibited within the UH management areas: Starting or maintaining a fire or depositing or discarding any potential fire-producing material such as matches, cigarette butts, embers, or coals, except as otherwise provided in this chapter. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-26 Explosives.** The following acts are prohibited within the UH management areas: Using or possessing fireworks, firecrackers, or explosive devices. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-27 Firearms or other weapons.** Firearms, bows and arrows, knives with blade length greater than three (3) inches, and other weapons are prohibited within the UH management areas, except when permitted by the hunting rules of the department of land and natural resources or for use by law enforcement officers. The use and possession of any such weapons are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

**§20-26-28 Vehicles and transportation.** (a) The following acts are prohibited within the UH management areas:

- (1) Exceeding posted speed limits;
- (2) Driving, operating, or using any motorized or non-motorized vehicle in areas and on roads or trails unless designated for that use;
- (3) Launching or landing an air conveyance of any shape or form, including but not limited to aircraft, gliders, hang gliders, helicopters, balloons, parachutes, parasails, or other similar means of transportation in any portion of the UH management areas not designated for that purpose, including but not limited to roads or trails, provided that the department of land and natural resources may allow these uses under its applicable rules after consultation with the university or unless



- used for emergency purposes;
- (4) Parking any motorized or non-motorized vehicle or trailer except in designated areas;
  - (5) Operating any motorized or non-motorized vehicle in violation of existing state or county traffic regulations, including but not limited to having a valid vehicle license plate, registration and safety check as required;
  - (6) Operating any motorized or non-motorized vehicle on a closed roadway or in violation of any usage restriction established pursuant to these rules;
  - (7) Failing to comply with any posted sign or any posted equipment requirement based on roadway conditions, such as a requirement to use or carry tire chains when snow or ice is present or anticipated; or
  - (8) Use of two-wheel drive motorized vehicles north of Halepōhaku.
- (b) The following types of vehicles may be impounded by an authorized agent at any time:
- (1) Vehicles left unattended in closed areas;
  - (2) Vehicles left for longer than forty-eight (48) hours; or
  - (3) Vehicles causing a safety hazard which may be removed as soon as possible.
- (c) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawai'i Revised Statutes. [Eff \_\_\_\_\_]
- (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-29 Unmanned aerial vehicles, drones and air toys.** The following acts are prohibited within the UH management areas: using or operating unmanned or remote controlled terrestrial vehicles, aerial vehicles, drones, or air toys, including but not

limited to kites, balloons, boomerangs, gliders, rockets, and model aircraft. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-30 Outdoor sports activities.** The following acts are prohibited within the UH management areas:

- (1) Use of vehicles with two wheels propelled by pedals, for example, a bicycle, north of Halepōhaku, except by written permission; or
- (2) Engaging in any outdoor sport or play involving objects thrown, hit, or driven, of any shape or size that could result in injury to others or damage to existing structures or equipment, that are likely to be lost or misplaced, or inconsistent with section 20-26-21; or
- (3) Formally or informally organized contests, meets, or competitions. [Eff ] (Auth: HRS §304A-1903)  
(Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-31 Hazardous materials.** Introducing, using, disposing, releasing, spilling, or transporting any hazardous materials is prohibited within the UH management areas, other than fuel or lubricants contained within a licensed motorized vehicle or as otherwise used in the ordinary course of lawful activities in a manner sanctioned by law and compliant with all applicable legal requirements. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-32 Animals.** (a) Dogs, cats, and other animals are prohibited within the UH management areas

except for hunting dogs when permitted by department of land and natural resources hunting rules and legally authorized service animals when accompanying their handlers.

(b) All dogs used for hunting shall be crated, caged, leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas in the UH management areas, except under written authorization by the department of land and natural resources for management activities.

(c) Dogs, cats, or other domestic animals will be removed in the interest of public safety and the protection of resources. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-33 Audio devices and noise.** Creating noise or sound within UH management areas using public address systems or other audio amplifying devices, or using electric generating plants or other equipment driven by motors or engines, in a manner and at times that create a nuisance is prohibited. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**20-26-34 Public safety.** The following acts are prohibited within the UH management areas:

- (1) Disorderly conduct, as defined in section 711-1101, Hawai'i Revised Statutes; or
- (2) Engaging in activities that would obstruct or impede public or vehicular access to UH management areas. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-35 Use of drugs or alcohol.** The following acts are prohibited within the UH management areas:

- (1) Using or possessing narcotics or drugs, except as legally prescribed by a physician, or over-the-counter medication in accordance with applicable law; or
- (2) Using or possessing alcohol in public areas. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-36 Smoking and tobacco use prohibited.** The following acts are prohibited within the UH management areas: Smoking and tobacco use, consistent with section 304A-122, Hawai'i Revised Statutes. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-122, 304A-1903)

**§20-26-37 Camping.** Camping is prohibited within the UH management areas. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-38 Access.** (a) Roadway access control. Upon approval of the board of land and natural resources, a gate or other access control structure may be installed as set forth in the comprehensive management plan to manage vehicular access to portions of the UH management areas.

(b) Closed areas, road closures or usage limitations.

- (1) The president may close or limit access to all or portions of the UH management areas, when needed for protection from hazardous conditions, including but not limited to

inclement weather conditions, construction or maintenance activities on or near the roadway or at observatory sites, transportation of wide, heavy, or otherwise hazardous loads, or roadway congestion. Notice of road closures or usage limitations shall be provided through signage, road blocks, closed gates, or other means reasonably calculated to provide public notice of the location and extent of closure. The road shall remain closed until it is determined the hazardous condition no longer exists.

- (2) Access by private vehicles may be restricted for public safety and welfare, for the protection of resources, and to reduce congestion. Restrictions may include, but are not limited to, setting a maximum number of private vehicles allowed within the UH management areas at a time, restricting the areas in which private vehicles may operate, or utilizing shuttle vehicles in lieu of private vehicles.
- (3) No person shall operate a vehicle on a closed roadway or in violation of a usage restriction.

(c) Closed areas, public access hours. Public access hours for the UH management areas shall be adopted as set forth in the comprehensive management plan, provided that hunting shall be allowed pursuant to department of land and natural resources hunting rules. All persons shall abide by the officially posted signs designating public access hours.

- (d) Closed areas, management and public safety.
  - (1) The president may close any portion of the UH management areas as necessary or appropriate for the protection of the resources of the area or the safety and welfare of persons or property, by posting appropriate signs indicating the extent and scope of closure.
  - (2) All persons shall abide by the officially

posted signs designating closed areas.

(e) Public access policies and procedures. The president may establish policies and procedures for the implementation of this chapter, which shall be posted on the OMKM website and made available for inspection at its offices upon request. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-39 Snow play.** (a) Skiing, snowboarding, sledding and other similar winter or snow sports may be restricted to maintain public safety and welfare, to prevent damage to resources, and to minimize conflicts among visitors.

(b) Skiing, snowboarding, sledding or other forms of snow recreation or snow activities may be prohibited in specific designated zones or areas in order to maintain public safety and welfare, and protect resources.

(c) Formally or informally organized contests, meets, or competitions, snow play tours, or other similar events for skiing, snowboarding, sledding or other forms of snow recreation or snow activities are prohibited.

(d) Operating a snowmobile, an all-terrain vehicle, or other motorized vehicle used for snow recreation is prohibited anywhere in the UH management areas.

(e) Towing persons on skis, sleds, or other sliding devices by any motorized vehicle is prohibited. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-40 Scattering of cremated remains.** The scattering of cremated human remains is allowed within the UH management areas, consistent with this chapter and policies and procedures established by the

president. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-41 Interference with government function.**

The following acts are prohibited within the UH management areas:

- (1) Threatening, resisting, intimidating, or intentionally interfering with an authorized agent or law enforcement officer engaged in the performance of his or her official duties under this chapter;
- (2) Disobeying or refusing to heed the lawful instructions or orders of an authorized agent or law enforcement officer in the performance of his or her official duties to manage public access and movement, to maintain public safety and welfare, or to protect resources;
- (3) Knowingly giving a false or fictitious report or other false information:
  - (A) To a person investigating an accident or violation of these rules, or
  - (B) In an application for a permit; or
- (4) Knowingly giving a false report for the purpose of misleading an authorized agent or law enforcement officer in the conduct of their official duties, or making a false report that causes a response by an authorized agent or law enforcement officer to a fictitious event. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-42 Compliance with laws.** All persons entering the boundaries of the UH management areas shall comply with all federal, state, and county laws, ordinances, and rules. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

**§§20-26-43 to 20-26-50 (Reserved).**

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

**§20-26-51 Commercial activities generally.**

Soliciting or engaging in commercial activities of any kind within the UH management areas without a written permit is prohibited. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

**§20-26-52 Selling, advertising, and solicitation.** (a) Selling of goods of any nature is prohibited within the UH management areas.

(b) Posting or distribution of commercial notices or advertising material of any nature, or soliciting the purchase or sale of goods or services, including but not limited to transportation, is prohibited within the UH management areas.

(c) Any commercial notice or advertising material soliciting the purchase or sale of goods or services for a commercial activity that has received a permit pursuant to these rules, including but not limited to transportation, shall conspicuously provide the permit number and the name of the permittee to whom the permit is issued. [Eff ] (Auth: HRS §304A-1903) (Imp: §§304A-103, 304A-105, 304A-1903).

**§§20-26-53 to 20-26-60 (Reserved).**



SUBCHAPTER 4

PERMITS FOR PUBLIC AND COMMERCIAL ACTIVITIES

**§20-26-61 General provisions.** (a) The president may issue the following types of permits:

- (1) Research activities not otherwise permitted by, or excluded from, these rules;
- (2) Special use;
- (3) Commercial tour activity; and
- (4) Commercial film and recordings.

(b) All permits shall be subject to the following provisions:

- (1) Permits may be suspended, canceled, revoked or terminated at any time upon violation of these rules or any conditions of the permit, which may include failure to comply with applicable federal, state, or county statutes, ordinances, and rules; or for public safety reasons arising from weather or other natural or human-created conditions in the UH management areas.
- (2) Permits are not transferable.
- (3) Persons to which permits are issued shall be responsible for compliance with all conditions stipulated in the permit.
- (4) All payments of fees and charges, as established under section 20-26-6, shall be in U.S. funds, and by cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president, provided that personal or business checks may be used to pay for activities that will occur thirty (30) or more days after the date of payment.
- (5) Permits shall be subject to such other procedures, terms, and conditions as may be established from time to time by the president to carry out the provisions of

chapter 304A, Hawai'i Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule. Conditions may include, but are not limited to, restricting access to certain areas for public safety, requiring execution of a liability waiver, setting protocols for invasive species prevention, requiring compliance with protocols to prevent the accidental introduction of non-native species, or designating approved transportation methods.

- (6) All permittees shall, upon request, show the permit to an authorized agent, law enforcement officer, or the president to manage and regulate public and commercial activities within the UH management areas.
- (7) Permits shall not create a property interest in favor of the permittee.
- (8) Persons crossing UH management areas to access the adjacent Mauna Kea Ice Age Natural Area Reserve or Mauna Kea Forest Reserve, shall obtain a permit from the department of land and natural resources, if required, and make said permit available for an authorized agent, law enforcement officer, or the president's inspection upon request.

(c) Permit applications shall be submitted in the form prescribed by the president. The president may determine numbers of permits to be issued based on consideration of impacts of permitted activities on resources, and public safety and welfare.

(d) Permits may be canceled or terminated at any time without advance notice when:

- (1) A state of emergency is declared by the Governor or other proper authority;
- (2) Natural or civil disturbances occur or threaten to occur, including but not limited to, tsunamis, floods, earthquakes, storms, riots, and demonstrations;
- (3) The permittee violates permit conditions or

provisions of this chapter;

- (4) The permitted activity damages or threatens serious damage to the integrity of the resources of the UH management areas or threatens the safety of the permittee or the general public;
- (5) Fees are not paid when required; or
- (6) Applicant's prior record or conduct within the UH management areas are contrary to university or department of land and natural resources' policy to protect the resources of the UH management areas, including but not limited to failure to pay fines issued under this chapter.

(e) The president may impose fines for failure to comply with the terms of a permit as provided in section 20-26-73.

(f) The department of land and natural resources is not required to obtain permits under this chapter, provided that the department of land and natural resources consults with the president on its activities. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

**§20-26-62 Research permits.** (a) Research permits may be issued to engage in activities for scientific, educational, or management purposes, that may otherwise be prohibited by this chapter.

(b) Applications for research permits shall adequately describe the planned research activity, including but not limited to the scope, duration, and location of the research and shall be submitted at least one hundred twenty (120) calendar days in advance of the date the permit is to be in effect.

(c) Applications for research permits shall be evaluated for duplication with existing or previously approved research, for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources,

the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-63 Special use permits.** (a) Special use permits may be issued to engage in activities otherwise prohibited by this chapter.

(b) Special uses are all types of uses, other than research, commercial tour activities, and commercial film and recordings which are considered compatible with the functions and purpose of the UH management areas and are consistent with the approved management plans for the UH management areas.

(c) Applications for special use permits shall adequately describe the planned use, including but not limited to the scope, duration, and location of the activity, and shall be submitted at least forty-five (45) calendar days in advance of the date the permit is to be in effect.

(d) Each special use permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of

non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(e) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-64 Commercial tour activity permits.** (a) Commercial tour activity permits for conducting commercial tours or transporting passengers for hire within the UH management areas may be issued by the president.

(b) Permits for commercial tours or passenger transportation for hire may be issued pursuant to subsection (c), and under such terms and conditions as shall be determined by the president to carry out the provisions of chapter 304A, Hawai'i Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule.

(c) Each permit application shall be evaluated on its own merits for compatibility with the functions and purpose of UH management areas; for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities and infrastructure, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. In addition, each permit application shall also be evaluated for the quality of the educational aspects of the activity, the comprehensiveness of planned staff training, the inclusion of safety protocols, and the extent to which

additional practices are incorporated to ensure customer and public safety and welfare and to protect the resources of the UH management areas. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) The president shall establish a number of available permits under this section. If qualified applications outnumber available permits, the permits shall be allocated by drawing or lottery.

(e) The president may elect to manage commercial tour activities through issuance of one (1) or more concession agreements in lieu of, or in addition to, commercial tour activity permits. Any such concession agreements shall be consistent with these rules and applicable law.

(f) The president may enter into an agreement with another public agency to manage commercial tour activities and transportation of passengers for hire within the UH management areas, on such terms and conditions deemed appropriate, which shall be consistent with these rules and applicable law. Such an agreement may be in lieu of, or in addition to, written permits or concession agreements for such purposes.

(g) Fees shall be assessed in accordance with section 20-26-6 and additional terms and conditions necessary or appropriate to reduce congestion, protect the resources of the UH management areas and protect safety and welfare may be imposed, including but not limited to insurance and licensing requirements, and loading restrictions. Commercial tour activity permits in force as of the effective date of these rules shall remain in effect through their stated expiration dates or such earlier termination date as may apply in accordance with their terms. Upon expiration, any future application shall be submitted in accordance with these rules. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-65 Commercial film and recordings.** (a)

Use for commercial purposes of video, digital, film, still photography, or any other visual and audio recordings taken within the UH management areas is prohibited without a written permit issued by the Hawai'i film office of the department of business, economic development and tourism.

(b) The president shall review all permit applications involving the UH management areas that are submitted to the Hawai'i film office of the department of business, economic development and tourism. The president shall recommend approval or denial of each permit application, may require specific conditions, and may request fees, insurance, performance bonds, or deposits to cover administrative and personnel expenses or potential damages to resources associated with the proposed activity. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS  
§§304A-103, 304A-105, 304A-1903)

**§20-26-66 Period of validity and renewal of permit.** (a) Permits shall be valid for the term set forth therein, as established the president. Upon expiration of the stated term, the permit and all rights of the permittee thereunder shall automatically terminate.

(b) No permit shall be renewed unless the permittee has submitted a timely application to renew the permit, all the conditions or covenants of the original permit, including but not limited to the requirement of prompt payment of fees or charges, have been met, and the rules governing the UH management areas have been fully complied with.

(c) The renewal of an existing permit is discretionary, and applications for renewal of an existing permit shall be evaluated by the criteria provided in these rules for the issuance of new permits. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§§20-26-67 to 20-26-70 (Reserved).**

## SUBCHAPTER 5

### ADMINISTRATION AND ENFORCEMENT

**§20-26-71 Purpose of subchapter; statement of policy.** This subchapter shall govern the university's practices and procedures relating to the administrative proceedings for civil violations of these rules and the assessment of administrative sanctions for such violations. This subchapter shall effectuate and carry out the purposes and policies of section 304A-1903, Hawai'i Revised Statutes, and shall be construed and interpreted in the manner most favorable to the promotion of justice, expeditious processing, and cost-effective resolution in every case involved. [Eff \_\_\_\_\_] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

**§20-26-72 Applicability.** (a) This subchapter shall apply to violations of this chapter and permits issued under this chapter.

(b) Any criminal prosecution against a person shall not preclude the university from imposing administrative sanctions pursuant to this subchapter against the same person for any civil violation committed in the same course of conduct.

(c) Any administrative proceeding against a person under this subchapter shall not preclude the state from pursuing a separate criminal prosecution against the same person for a criminal offense committed in the same course of conduct, or any collateral proceeding before the department of land



and natural resources. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

- §20-26-73 Violations, penalties, costs, administrative fines, sanctions, and collection.** (a) An authorized agent, law enforcement officer, or the president shall impose one or more of the following sanctions for violations of these rules or permits issued pursuant to these rules:
- (1) Immediate expulsion from the UH management areas;
  - (2) Exclusion from the UH management areas until the violation has been corrected;
  - (3) An administrative fine determined in accordance with subparagraph (b) of this section;
  - (4) A monetary assessment to recover costs of mitigation or restoration required as a result of the violation and to recover the costs of enforcement proceedings;
  - (5) Revocation or suspension of a permit; and
  - (6) Imposition of additional permit conditions.
- (b) Administrative fines shall be assessed as indicated in Exhibit A entitled "Public and Commercial Activities on Mauna Kea Lands, Administrative Fines," located at the end of this chapter.
- (c) Each 24-hour period that a violation continues shall be a continuing violation for which a daily fine may be assessed at the same amount as the initial fine until the violation stops or is corrected.
- (d) The costs of any enforcement proceedings, including the costs of contested case proceedings, may be assessed against a party found to be in violation.
- (e) For parking violations, the driver or registered owner of the motorized vehicle, or both, shall be subject to the applicable penalties described above.
- (f) All payments shall be in U.S. funds, and by

cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president.

(g) Any action taken to impose or collect penalties provided for in this chapter shall be considered a civil action. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903, 304A-1904)

**§20-26-74 Enforcement; citations.** An authorized agent or law enforcement officer shall have the power(s) to issue a citation for any violation of the provisions of this chapter:

- (1) Law enforcement officer(s) may use a form of citation that is authorized for use for violations of Hawai'i Administrative Rules, ordinances, or Hawai'i Revised Statutes;
- (2) In every case when a citation is issued, a copy of the same shall be given to the violator or in the case of a parking, standing, or stopping violation a copy of the same shall be affixed to the vehicle, as provided in paragraph (5);
- (3) Every citation shall be consecutively numbered and each copy shall bear the number of its respective origin;
- (4) Whenever a vehicle is in violation of any provision, other than a parking, standing, or stopping provision, of this chapter, any law enforcement officer and any authorized agent shall take the name, address and driver's license number of the alleged violator and the license plate number of the vehicle or vehicle identification number of the vehicle involved, and shall issue to the alleged violator in writing a citation, notifying the alleged violator to answer to the citation in writing at the address provided and by the date indicated; and
- (5) Whenever any motor vehicle is parked,

standing, or stopped in violation of this chapter, an authorized agent or the law enforcement officer finding the vehicle shall conspicuously affix to the vehicle a citation. The citation shall be addressed to the registered owner of the vehicle, but need not identify the registered owner by name, so long as the citation identifies the vehicle by its license plate number or vehicle identification number. The citation shall instruct the registered owner to answer to the citation in writing at the address provided and by the date indicated. The registered owner of a vehicle shall be responsible and accountable for the illegal parking, standing, or stopping of the vehicle when:

- (A) The registered owner committed the illegal parking, standing, or stopping of the vehicle; or
- (B) Another person committed the illegal parking, standing, or stopping of the vehicle, but the registered owner gave the person explicit or implicit permission to use the vehicle at the time of the violation.

In any proceeding for violation of a parking, standing, or stopping provision of this chapter, the license plate number or vehicle identification number of the parked, standing, or stopped vehicle shall constitute prima facie evidence that the registered owner of the vehicle was responsible and accountable for the illegal parking, standing, or stopping of the vehicle. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-75 Appeals process, information requests and submittals, and petitions for declaratory rulings.**

(a) Requests for informal and formal appeals shall be submitted in writing on a form to be provided by the president. These forms shall be made available by the president at OMKM's office and on OMKM's website.

(b) Practice and procedure for informal and formal appeals:

- (1) Informal procedures. A person who believes that they have received a citation in error, whose vehicle was removed by an authorized agent, or who disagrees with a written decision by the president may file a written request for an informal review with the president within fifteen (15) days of the issuance of the citation, the removal of the vehicle, or the president's written decision. Upon review of the written request, the president shall issue a written decision that shall be final and binding. No further appeal is allowed.
- (2) Formal procedures. Instead of an informal review, a person who believes that they have received a citation in error or who disagrees with a written decision by the president may file a written request for a formal review with the president within fifteen (15) days of the issuance of the citation or the president's written decision. The person shall be afforded an opportunity for hearing after reasonable notice as provided by chapter 91, Hawai'i Revised Statutes. The hearing under this section shall be treated as a contested case hearing under chapter 91, Hawai'i Revised Statutes, and shall be conducted in accordance with the statutory requirements for contested case hearings, as follows:
  - (A) The hearing shall be conducted by the president or a hearing officer appointed by the president;
  - (B) Upon receipt of a written request for a

formal hearing, the president or the hearing officer shall issue a written notice, which notice shall include a statement of:

- (i) The date, time, place, and nature of hearing;
- (ii) The legal authority under which the hearing is to be held;
- (iii) The particular sections of the statutes, rules, and procedures involved;
- (iv) An explicit statement in plain language of the issues involved and the facts alleged by the authorized agent or law enforcement officer issuing the citation in support thereof, provided that if the president or the hearing officer is unable to state the issues and facts at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished; and
- (v) The fact that any party may retain counsel if so desired.

The written notice of hearing shall be provided to all parties to the proceeding at least fifteen (15) days before the hearing;

- (C) Opportunity shall be afforded each party to present evidence and argument on all issues involved. Every party shall have the right to conduct a cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence;
- (D) Any procedure in a contested case may be modified or waived by stipulation of

the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

- (E) For the purpose of preserving a record of the proceedings before the president or the hearing officer, the proceedings shall be either tape-recorded or recorded verbatim by a certified shorthand reporter. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review;
- (F) Within a reasonable time following the closure of the hearing on the contested case, the president or the hearing officer shall prepare findings of fact and conclusions of law, and a decision on the case. The proposed findings, conclusions, and decision shall be served on the parties. A party may file written exceptions and present written or oral arguments to the president or the hearing officer. Any exceptions and written arguments shall be filed not more than fifteen (15) days from the date of the proposed decision with the president;
- (G) In rendering the final decision, the president shall consider the whole record of the contested case or the portions thereof as may be cited by the parties. No matters outside the record shall be considered in making a decision, except as provided in this chapter;
- (H) Every decision and order adverse to a party to the proceeding shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. Parties to the proceedings shall

be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party;

- (I) If a party does not appear at the date, time, and place appointed for the hearing, either before the president or the hearing officer, the party may be denied another hearing on the matter; and
- (J) Judicial appeals from the final decision of the president in a contested case under this chapter shall be in accordance with chapter 91, Hawai'i Revised Statutes.

(c) The public may obtain information or make submittals or requests relative to this chapter by addressing a letter to the president.

(d) Petitions for declaratory rulings as to the applicability of any statutory provision concerning this chapter shall be in the form of a letter to the president stating the interest of the petitioner in the matter, the reasons for requesting the ruling and the specific nature of the ruling being requested. The president shall render in writing a declaratory ruling or other order disposing of the matter. [Eff  
] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

**§20-26-76 Enforcement and stay of final decision.** (a) Unless otherwise stated in a final decision, payment and performance of all administrative fines, other monetary assessments, and non-monetary sanctions shall be due and enforceable within thirty (30) calendar days of the service of the final decision imposing such fines and sanctions.

(b) Upon request filed by a party, the president may stay enforcement of a final decision pending a judicial review of the case. The decision as to the

request for stay is final.

(c) The university may take any legal action to collect any overdue monetary sanctions or enforce any non-monetary sanctions imposed in an administrative proceeding under this chapter. [Eff ]  
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1005, 304A-1903, 304A-1904)

**§20-26-77 Severability.** These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff ] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1005, 304A-1903, 304A-1904)



UNIVERSITY OF HAWAI'I

Chapter 20-26, Hawai'i Administrative Rules, on the Summary Page dated November 6, 2019, was adopted on November 6, 2019, following public hearings held on June 3, 4, 5, and 7, 2019, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, Hawai'i Tribune-Herald, West Hawai'i Today, and The Maui News on April 28, 2019.

The adoption of chapter 20-26 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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BENJAMIN A. KUDO  
Chairperson, Board of Regents  
University of Hawai'i

APPROVED:

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David Y. Ige  
Governor  
State of Hawai'i

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

University of Hawai'i

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Carrie K. S. Okinaga, Esq.  
Vice President for Legal Affairs and  
University General Counsel

Department of the Attorney General

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Name: \_\_\_\_\_  
Deputy Attorney General

Exhibit A

Public and Commercial Activities on  
Mauna Kea Lands, Administrative Fines

Violations Under	Fines
<b>Subchapter 2, Public Activities:</b>  §20-26-24 Litter and sanitation §20-26-28 Vehicles and transportation §20-26-32 Animals §20-26-33 Audio devices and noise §20-26-35 Use of drugs or alcohol §20-26-36 Smoking and tobacco use prohibited §20-26-37 Camping §20-26-38 Access §20-26-39 Snow Play §20-26-40 Scattering of cremated remains	1st violation, not more than \$50-\$400.  2nd repeat violation within five years of 1st violation, not more than \$401-\$1,000.  3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, not more than \$1,001-2,500.
<b>Subchapter 2, Public Activities:</b>  §20-26-21 Preservation of resources §20-26-22 Preservation of property §20-26-23 Preservation of scientific and educational resources §20-26-25 Fire use restrictions §20-26-26 Explosives §20-26-27 Firearms or other weapons §20-26-29 Unmanned aerial vehicles, drones and air toys §20-26-30 Outdoor sports activities §20-26-31 Hazardous materials §20-26-34 Public safety	1st violation, not more than \$2,500.  2nd repeat violation within five years of 1st violation, not more than \$5,000.  3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, not more than \$10,000.

§20-26-41 Interference with government function	
<b>Subchapter 3, Commercial Activities:</b>  §20-26-51 Commercial activities generally §20-26-52 Selling, advertising and solicitation  <b>Subchapter 4, Permits for Public and Commercial Activities:</b>  §20-26-61 General provisions §20-26-62 Research permits §20-26-63 Special Use permits §20-26-64 Commercial tour activity permits §20-26-65 Commercial film and recordings	1st violation, not more than \$2,500.  2nd repeat violation within five years of 1st violation, not more than \$5,000.  3rd repeat violation within five years of 2nd repeat violation and any subsequent violation, not more than \$10,000.

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

**A. Discussion and Action on Proposed  
Amendments to HAR Title 13 Chapter 256,  
Section 73, Kaneohe Bay Ocean Waters,  
promulgated by DLNR**

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT  
TO THE**

**SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes §201M-2)

**RECEIVED**

By JetaimeA at 9:59 am, Oct 29, 2019

Date: \_\_\_\_\_

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

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

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

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

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

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

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

☐

Yes

☐

No

If "Yes," provide details: \_\_\_\_\_

**I. Rule Description:**

☐

New

☐

Repeal

☐

Amendment

☐

Compilation

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

☐

Yes

☐

No

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

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

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

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

☐

Yes

☐

No

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

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

☐

Yes

☐

No

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

\*

\*

\*

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

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
  
  
  
  
  
  
  
  
  
  
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

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

- a. Amount of the current fee or fine and the last time it was increased.
  
  
  
  - b. Amount of the proposed fee or fine and the percentage increase.
  
  
  
  - c. Reason for the new or increased fee or fine.
  
  
  
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
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- 
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
7. How the agency involved small business in the development of the proposed rules.
  - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.



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

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

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

\* \* \*

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

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

## DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-73  
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

**"§13-256-73 Kaneohe Bay ocean waters.** (a) Kaneohe Bay ocean waters means the area ~~[encompassed by]~~ within the boundaries shown on ~~[Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated April 16, 2001,]~~ "Exhibit V. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N / 157° 43' 21.6" W, then in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N / 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

~~[(b) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.]~~

~~[(c) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.]~~

~~[(d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:~~

~~Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N / 157° 47' 45.5" W.~~

~~[(e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown~~

~~on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:~~

~~Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N / 157° 48' 08.5" W.~~

~~(f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:~~

~~Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N / 157° 48' 13.5" W.~~

~~(g) Zones A, B, and C are subject to the following:~~

~~(1) Zones A, B, and C are designated as commercial thrill craft zones where full service permittees shall be required to operate. Not more than six rental thrill craft shall operate within each of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.~~

~~(2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C on Sundays or federal holidays.~~

~~(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this~~

~~subchapter and incorporated herein. The boundaries of Zone D are as follows:~~

~~Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately  $21^{\circ} 28' 32''$  N /  $157^{\circ} 49' 39''$  W, then by a straight line in a due East (true) direction to approximately  $21^{\circ} 28' 32''$  N /  $157^{\circ} 49' 32''$  W, then in a straight line to approximately  $21^{\circ} 28' 10.5''$  N /  $157^{\circ} 49' 27''$  W, then in a straight line due West (true) to approximately  $21^{\circ} 28' 10.5''$  N /  $157^{\circ} 49' 34''$  W, then in a straight line back to beginning.~~

~~Zone D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.~~

~~(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:~~

~~Zone E is a circle with a radius of three hundred ten yards with its center located at approximately  $21^{\circ} 27' 25''$  N /  $157^{\circ} 47' 46.5''$  W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use~~

~~extreme caution while this zone is occupied during diving activities.~~

~~(j) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone F are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then in a straight line to the point of beginning.~~

~~Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.~~

~~(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to~~

~~approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning. Zone C is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.]~~

(b) The boundaries of zones in Kaneohe Bay ocean waters are as indicated in Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019. The zones of Kaneohe Bay ocean waters are shown on "Exhibit X. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter.

(c) Restrictions in Kaneohe Bay ocean waters shall be as follows:

- (1) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.
- (2) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters. All participants in underwater activities, including, but not limited to, SCUBA, snorkeling, and sea-walker use, shall avoid touching coral or any living parts of a reef.
- (3) All sea-walker activity shall only be conducted on a flat, sandy bottom.
- (4) Commercial SCUBA activities shall be prohibited in Kaneohe Bay ocean waters,

except that commercial SCUBA activities shall only be allowed in Kaneohe Bay ocean waters zone D.

(d) Kaneohe Bay ocean waters are designated according to the following restricted zone uses. See Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019.

- (1) Zones A, B, and C are designated for operation of commercial thrill craft by full service permittees between the hours of 9:00 a.m. and 5:00 p.m. At any one time, not more than six rental thrill craft shall be allowed to operate in zones A and B, and not more than three rental thrill craft shall be allowed to operate in zone C. All commercial thrill craft shall only be operated in a clockwise direction within zones A, B, and C.
- (2) Zone D is designated for SCUBA, snorkeling, and sightseeing cruises only. Activity is limited to near the reef, and not on the reef.
- (3) Zone E is designated for SCUBA, snorkeling, underwater activities, and sightseeing cruises only.
- (4) Zones F and I are for non-exclusive commercial ocean water sports activities. All activity on top of Checker Reef in zone F is prohibited. Vessels operating in zone I shall exercise care to stay clear of sea turtles, which may migrate to the north central part of the zone. Commercial operators whose passengers are not operating thrill craft in zone I shall keep those passengers out of zones B and C.
- (5) Zones G and H are for non-exclusive use by commercial large full-service permittees and non-commercial recreational users which shall share this zone for water skiing, water sledding, and operations of towed devices used to carry passengers. For safety, no more than one commercial vessel

for water sledding shall be permitted to tow at any speed in zone G at any one time. No more than two commercial vessels for water sledding shall be permitted to tow at high speed in zone H. All towing shall be conducted in a clockwise direction. No person shall moor or anchor within these zones. High speed operations shall take place in water at least two hundred feet from any reef edge, reef crest, or sand flat.

~~[(1)]~~ (e) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly ~~[(to)]~~ through the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

~~[(m)] Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.~~

~~Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for~~



~~safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.~~

~~(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:~~

~~Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.~~

~~Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.~~

~~(o) Kaneohe Bay speed restrictions. In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef~~

~~shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, ("The Sand Bar").~~

~~(p) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay waters.~~

~~(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.~~

~~(r) Anchoring or mooring on living coral is prohibited.~~

~~(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.~~

~~(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.]~~

(f) Slow-no-wake restrictions shall apply in Kaneohe Bay ocean waters zones D, E, F, and I; Kaneohe Bay offshore mooring areas; Kualoa waters zone B; within Kaneohe Bay for vessels within two hundred feet of Kapapa Island; and the Central Reef shallows where mean lower low water areas are less than or equal to five feet in depth including the area of Ahu o Laka (the "Sand Bar"); in addition to speed restrictions found in section 13-244-9.

(g) Commercial operators conducting snorkeling activities shall have a snorkel vest available for each snorkeler in the water and encourage use of vests to avoid the likelihood of snorkelers standing on coral.

(h) Vessels entering any Kaneohe Bay ocean waters zones shall use extreme caution, especially while in a zone with diving activities taking place.

(i) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay ocean waters." [Eff

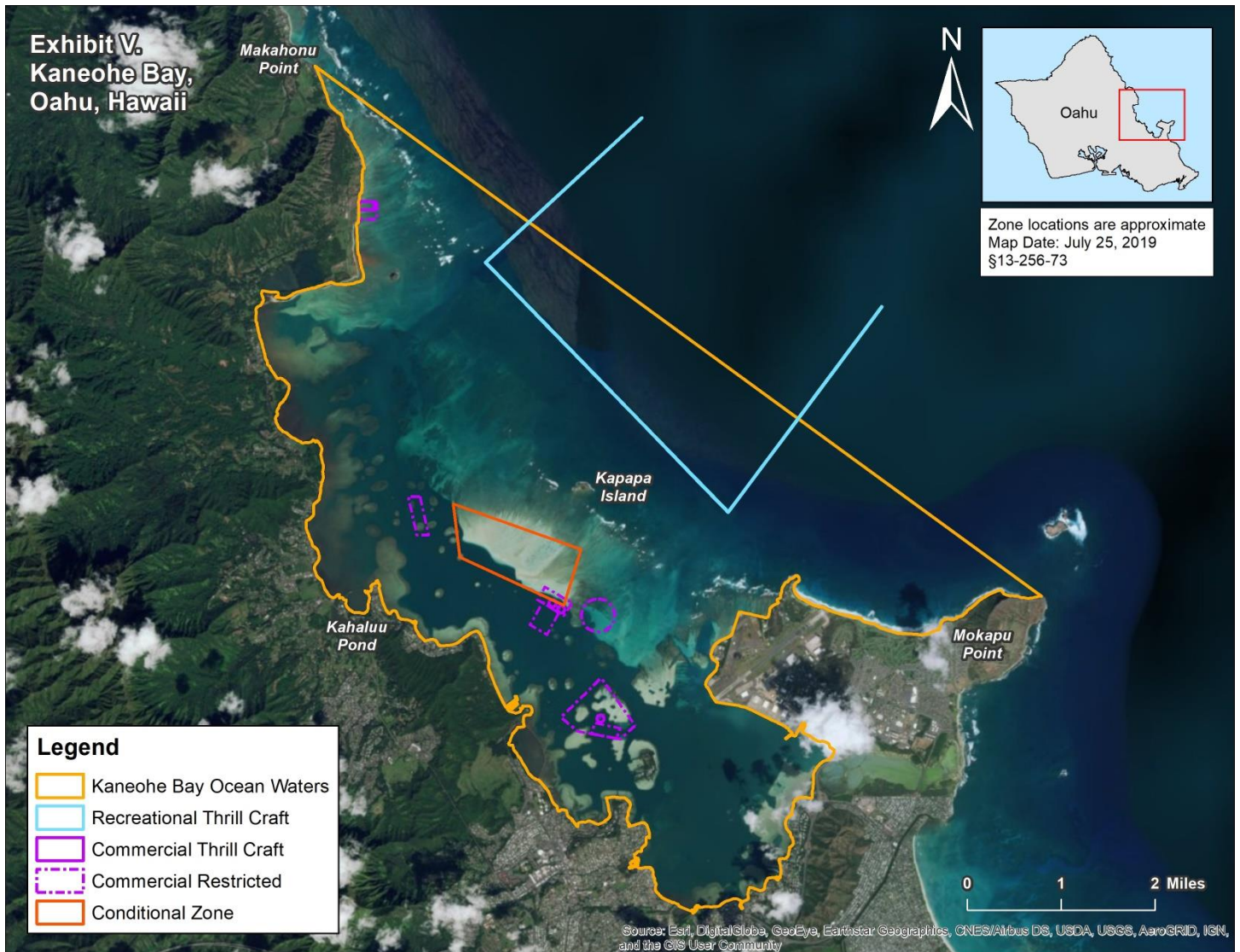
2/24/94; am 11/7/11; am ] (Auth: HRS  
§§ 200-22, 200-24, 200-37) (Imp: HRS §§ 200-22, 200-  
23, 200-24, 200-37)

**Table 1. Summary of Kaneohe Bay Ocean Waters Zones & Uses**  
**July 25, 2019**

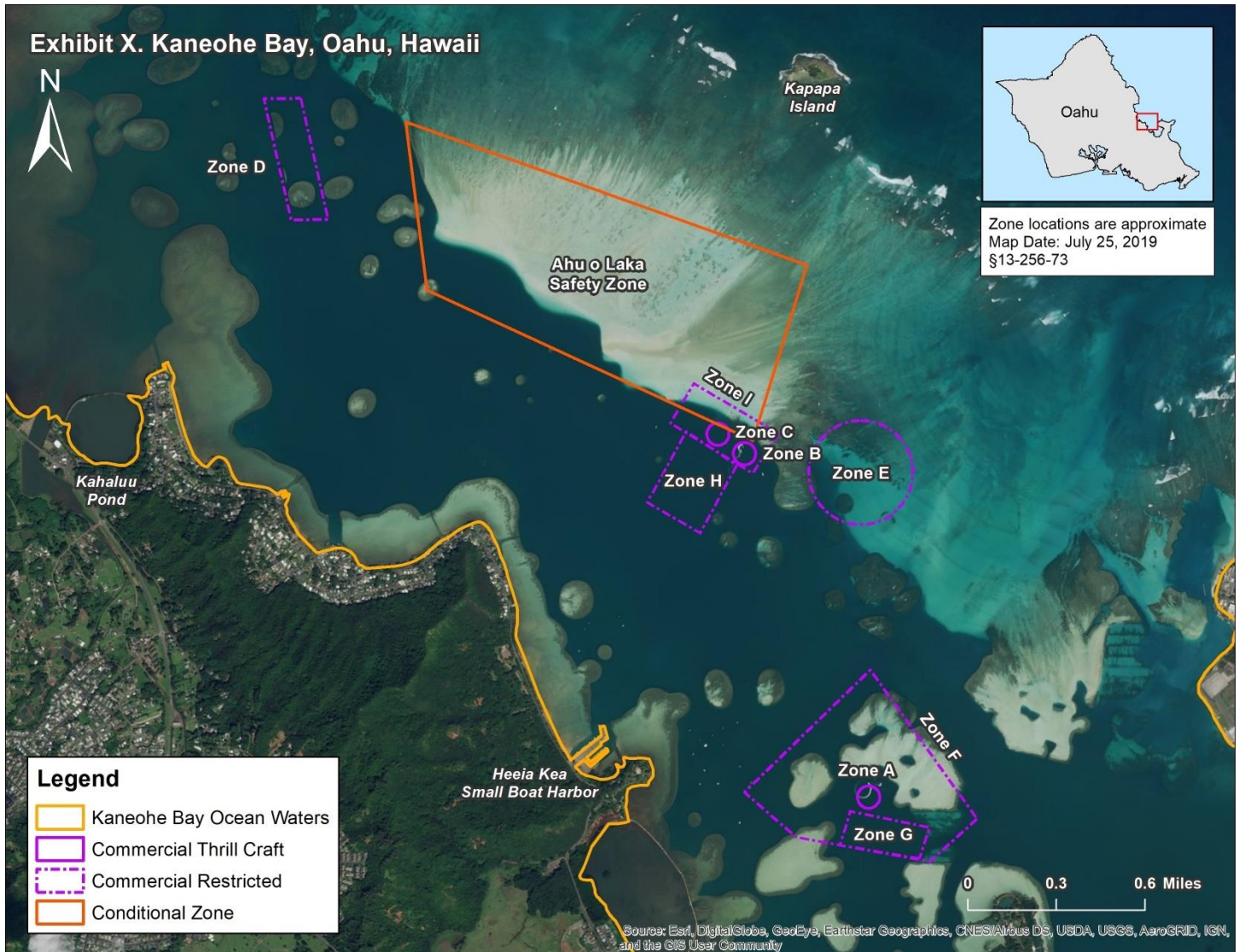
<b>Zone</b>	<b>Origin*</b>	<b>Boundary 1</b>	<b>Boundary 2</b>	<b>Boundary 3</b>	<b>Boundary 4</b>	<b>Use Restrictions</b>
<b>A</b> Checker reef 200-foot radius circle	21° 26' 27.5"N 157° 47' 45.5"W (center)					Comm. thrill craft zone (full service permit); no more than 6. Clockwise only 9am – 5pm
<b>B</b> (Sand flat) 200-foot radius circle	21° 27' 28.5"N 157° 48' 08.5"W (center)					(Same as Zone A)
<b>C</b> (Sand flat) 200-foot radius circle	21° 27' 32"N 157° 48' 13.5"W (center)					Comm. thrill craft zone (full service permit); no more than 3. Clockwise only 9am – 5pm
<b>D</b>	21° 28' 32"N 157° 49' 39"W	21° 28' 32"N 157° 49' 32"W	21° 28' 10.5"N 157° 49' 27"W	21° 28' 10.5"N 157° 49' 34"W		SCUBA, snorkel, & sightseeing cruises; near reef, not on reef; comm. SCUBA zone.
<b>E</b> 310-yard radius circle	21° 27' 25"N 157° 47' 46.5"W (center)					SCUBA, snorkel, U/W activities, & sightseeing cruises.
<b>F</b> Including Checker Reef	21° 26' 50"N 157° 47' 45"W	21° 26' 23.5"N 157° 47' 25"W	21° 26' 16"N 157° 47' 34"W	21° 26' 20.5"N 157° 47' 59.3"W	21° 26' 28.5"N 157° 48' 09"W	Non-exclusive comm. water sports zone. No activity on Checker Reef.
<b>G</b>	21° 26' 25"N 157° 47' 49"W	21° 26' 22"N 157° 47' 34"W	21° 26' 16.5"N 157° 47' 36"W	21° 26' 19"N 157° 47' 51"W		Non-exclusive comm. & rec. water ski and water sledding. Clockwise, one permittee at time. Rec. thrill craft only.
<b>H</b>	21° 27' 32.5"N 157° 48' 19.5"W	21° 27' 26.5"N 157° 48' 10"W	21° 27' 14.5"N 157° 48' 17"W	21° 27' 20"N 157° 48' 27"W		Non-exclusive comm. & rec. water ski and water sledding zone. No more than 2 comm. water sleds at high speed. Clockwise towing, no mooring. High speed areas designated.
<b>I</b>	21° 27' 41"N 157° 48' 18"W	21° 27' 32"N 157° 48' 02"W	21° 27' 25"N 157° 48' 07"W	21° 27' 34"N 157° 48' 22.5"W		Non-exclusive comm. ocean water sports zone. Comm. operators must keep passengers who are not operating thrill craft out of B & C.

\*Unless indicated, points are connected by straight lines with the final point back to the point of origin.

**Exhibit V. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
(All boundaries are unchanged.)



**Exhibit X. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.**  
(All boundaries are unchanged.)





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

3. The amendments to Section 13-256-73, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

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

**IV. New Business – Before Public Hearing**  
**B. Discussion and Action on Proposed**  
**Amendments to HAR Title 13 Chapter 146,**  
**Section 6, Fees, promulgated by DLNR**



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

**RECEIVED**  
By JetaimeA at 6:11 am, Nov 13, 2019

Date: 11/5/2019

Department or Agency: DLNR - Division of State Parks

Administrative Rule Title and Chapter: Title 13 Chapter 146

Chapter Name: Fees

Contact Person/Title: Sang Pil Kim

E-mail: Sang.P.Kim@hawaii.gov Phone: 808-587-0505

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

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

☐ Yes ☒ No

If "Yes," provide details: \_\_\_\_\_

**I. Rule Description:**

☐ New ☐ Repeal ☒ Amendment ☐ Compilation

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

☒ Yes ☐ No

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

\*

\*

\*

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

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

Primarily commercial tourism businesses that will need to pay an increased commercial parking and entrance fee for Hawaii State Parks

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

See Attached draft of fee changes

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.

See Attached draft of fee changes

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

See Attached draft of fee changes

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

To raise revenue for the Division of State Parks to continue to steward/manage land assets and provide higher quality visitor experiences

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

To off set the increase in cost elements for expenditure in park units to provide maintenance and management of the Division of State Parks.

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.

Budget increase to the Division of State Parks - estimates are still being calculated based on feedback from vendors. We have requested to increase our Special Fund spending ceiling by \$2 million in Fiscal Year 2021 in anticipation of increase fee revenue for management, maintenance, public health and safety and quality patron experience - including the patrons of commercial transportation companies.

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 agency has the support of the Hawaii Tourism Authority, our contracted fee collection companies and has been advocating via the media for the need for enhanced revenue to offset the impact of over tourism. . . Collection of fees is a contracted service which is already established. The fees are only assessed when the commercial entity enters the park units, so there would be no impact if they patronize other locations.

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

There are no less restrictive alternatives in raising park fees as it is necessary to maintain the increased maintenance and staff expenses for the Division of State Parks. Having the legislature appropriate a commensurate amount of funds would be less restrictive, but this alternative has not been realized despite years of advocacy.

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.

Technological innovations to facilitate the collection of fees.

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

The agency has had a multitude of discussions with the Hawaii Tourism Authority about the impact on small businesses. Some vendors are small businesses that provide local jobs.

The agency has maintained the position that commercial activity will be allowed to continue, even with the increased fees, as formal permission by permit would otherwise be required for commercial activity (tourism) use of parking and entering state parks.

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

N/A, based on existing protocols in place.

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

No, the proposed fee schedule is comparable with the National Parks in Hawaii. The National Park Service charges more for small vehicles (1-7 passengers). On comparison with Honolulu County Division of Parks and Recreation, the proposed fee schedule for state parks is less stringent as it allows commercial activity to continue.

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

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

\* \* \*

Small Business Regulatory Review Board / DBEDT

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

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

**RECEIVED**

*By JetaimeA at 6:48 am, Nov 20, 2019*

**PARKING AND ENTRANCE FEES**

For all State Park property designated a State Monument as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

<u>Commercial PUC vehicles:</u>	
1-7	passenger vehicles: \$25
8-25	passenger vehicles: \$50
26 +	passenger vehicles: \$90

For all State Park property designated a State Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

<u>Commercial PUC vehicles:</u>	
1-7	passenger vehicles: \$25
8-25	passenger vehicles: \$50
26 +	passenger vehicles: \$90

For all State Park property designated a State Recreation Area property as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

<u>Commercial PUC vehicles:</u>	
1-7	passenger vehicles: \$25
8-25	passenger vehicles: \$50
26 +	passenger vehicles: \$90

For all State Park property designated a State Historic Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7	passenger vehicles: \$25
8-25	passenger vehicles: \$50
26 +	passenger vehicles: \$90

For all State Park property designated a State Scenic Shoreline as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	No charge

Commercial PUC vehicles:	
1-7	passenger vehicles: \$15
8-25	passenger vehicles: \$30
26 +	passenger vehicles: \$50

For all State Park property designated a Wayside Park as established by the Board of Land and Natural Resources, the parking fees shall be as follows:

Residents:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7	passenger vehicles: \$15
8-25	passenger vehicles: \$30
26 +	passenger vehicles: \$50

For all State Park property designated a State Recreational Pier as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	No charge

Commercial PUC vehicles:

1-7	passenger vehicles:	\$15
8-25	passenger vehicles:	\$30
26 +	passenger vehicles:	\$50

For all State Park property designated a State Wilderness Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:

1-7	passenger vehicles:	\$25
8-25	passenger vehicles:	\$50
26 +	passenger vehicles:	\$90

Amendment to Chapter 13-146  
Hawaii Administrative Rules

Date

1. Chapter 13-146, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§ 13-146-6 Fees. (a) The following fees are hereby established:

**STATE PARK CAMPING FEES:**

For all state park areas that allow camping, except for the Napali Coast State Wilderness Park, the camping fee shall be as follows:

Residents:

\$20 per night per camp site ~~(up to six people)~~  
~~\$2 per night for each additional person, with a~~  
~~Maximum of ten people total per camp site~~

Nonresidents:

\$30 per night per camp site ~~(up to six people)~~  
~~\$3 per night for each additional person, with maximum~~  
~~Of ten people total per camp site~~

NAPALI COAST STATE WILDNERNESS PARK

RESIDENTS: \$25/person per night

Nonresidents: \$35/person per night

**CABIN RENTAL FEES:**

HAPUNA BEACH STATE RECREATION AREA

Residents: \$40/night per A-Frame

Nonresidents: \$60/night per A-Frame

KALOPA STATE RECREATION AREA, POLIPOLI SPRINGS STATE  
RECREATION AREA, WAI`ANAPANAPA STATE PARK

Residents: \$70/night per cabin

Non-residents: \$100/night per cabin



**FEES FOR CHANGE OR CANCELLATION OF CAMPING OR RENTAL CABIN RESERVATIONS:**

\$3 per change  
\$5 per cancellation

**WAILOA STATE RECREATION AREA DAY USE PAVILIONS**

Large pavilions: \$125 rental fee, with a \$150 Deposit  
Small pavilions: \$5/hour, with a \$50 deposit

**~~PARKING FEES~~**

~~NU'UANU PALI STATE WAYSIDE~~

~~Residents: No charge~~  
~~Nonresidents: \$3~~  
~~Commercial PUC vehicles:~~  
~~1-7 passenger vehicles: \$6~~  
~~8-25 passenger vehicles: \$12~~  
~~26 + passenger vehicles: \$24~~

~~IAO VALLEY STATE MONUMENT~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicles:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

~~MAKENA STATE PARK~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicle fees:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

~~HĀPUNA BEACH STATE RECREATION AREA~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicle:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

## **~~ENTRANCE FEES~~**

### ~~DIAMOND HEAD STATE MONUMENT~~

~~Daily Rates: \_\_\_\_\_~~  
~~Pedestrians: \_\_\_\_\_ \$1~~  
~~Noncommercial vehicles (except mopeds): \$5~~  
~~Mopeds: \_\_\_\_\_ \$1~~  
~~Others (not listed): \_\_\_\_\_ \$1~~

### ~~Commercial Vehicles:~~

~~1-15 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~16-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26+ \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

### ~~Annual Pass:~~

~~Pedestrians: \_\_\_\_\_ \$10~~  
~~Private Vehicles: \_\_\_\_\_ \$30~~

### ~~AKAKA FALLS STATE PARK~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Nonresidents: \_\_\_\_\_ \$5 per vehicle~~  
~~Others (not listed): \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicle:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26 + \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

### ~~Waimea Canyon State Park and Kokee State Park~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Nonresidents: \_\_\_\_\_ \$5 per vehicle~~  
~~Others: \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicle:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26 + \_\_\_\_\_ passenger vehicles~~  
~~at Waimea Canyon State Park: \_\_\_\_\_ \$40~~

### ~~HA`ENA STATE PARK~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Visitors: \_\_\_\_\_ \$5 per vehicle~~  
~~Others (not listed): \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicles:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26+ \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

## **PARKING AND ENTRANCE FEES**

For all State Park property designated a State Monument as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

### Commercial PUC vehicles:

1-7	passenger vehicles:	\$25
8-25	passenger vehicles:	\$50
26 +	passenger vehicles:	\$90

For all State Park property designated a State Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

### Commercial PUC vehicles:

1-7	passenger vehicles:	\$25
8-25	passenger vehicles:	\$50
26 +	passenger vehicles:	\$90

For all State Park property designated a State Recreation Area property as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

### Commercial PUC vehicles:

1-7	passenger vehicles:	\$25
8-25	passenger vehicles:	\$50
26 +	passenger vehicles:	\$90

For all State Park property designated a State Historic Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7	passenger vehicles: \$25
8-25	passenger vehicles: \$50
26 +	passenger vehicles: \$90

For all State Park property designated a State Scenic Shoreline as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	No charge

Commercial PUC vehicles:	
1-7	passenger vehicles: \$15
8-25	passenger vehicles: \$30
26 +	passenger vehicles: \$50

For all State Park property designated a Wayside Park as established by the Board of Land and Natural Resources, the parking fees shall be as follows:

Residents:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7	passenger vehicles: \$15
8-25	passenger vehicles: \$30
26 +	passenger vehicles: \$50

For all State Park property designated a State Recreational Pier as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	No charge
Parking Fee per Noncommercial vehicle:	No charge

Commercial PUC vehicles:

1-7	passenger vehicles:	\$15
8-25	passenger vehicles:	\$30
26 +	passenger vehicles:	\$50

For all State Park property designated a State Wilderness Park as established by the Board of Land and Natural Resources, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$5
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:

1-7	passenger vehicles:	\$25
8-25	passenger vehicles:	\$50
26 +	passenger vehicles:	\$90

**OVERNIGHT PARKING FEES**

For all State Park property, any parking past the operating hours for each state park shall be subject to parking rates as follows:

Overnight Parking Fee per Noncommercial vehicle: \$15

~~Commercial PUC vehicles:~~

<del>1-7</del>	<del>passenger vehicles:</del>	<del>\$40</del>
<del>8-25</del>	<del>passenger vehicles:</del>	<del>\$80</del>
<del>26 +</del>	<del>passenger vehicles:</del>	<del>\$100</del>

(b) For purposes of this section, the following definitions shall apply:

"Commercial PUC vehicle" means a vehicles that is regulated by the Hawaii Public Utilities Commission.

"Resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license." [Eff Dec 24 2015] (Auth: HRS §§ 184-3, 184-5)

2. New material is underscored
3. The amendments to chapter 13-146, Hawaii Administrative Rules, shall take effect ten dates

after filing with the Office of the Lieutenant Governor.

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

---

Suzanne D. Case,  
Chairperson  
Board of Land and Natural  
Resources

**RECEIVED**

*By JetaimeA at 6:14 am, Nov 13, 2019*

**PARKING AND ENTRANCE FEES**

For State Park property, considered as a Wayside property as established by the Division of State Parks, the parking fees may be set as follows:

Residents:	No charge
Nonresidents:	\$5
Commercial PUC vehicles:	
1-7 passenger vehicles:	\$20
8-25 passenger vehicles:	\$40
26 + passenger vehicles:	\$50

For State Park property, considered as a Recreation Area property as established by the Division of State Parks, the parking and entrance fees may be set as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$10
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7 passenger vehicles:	\$40
8-25 passenger vehicles:	\$80
26 + passenger vehicles:	\$100

For State Park property, considered as a State Park as established by the Division of State Parks, the parking and entrance fees may be set as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$10
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7 passenger vehicles:	\$40
8-25 passenger vehicles:	\$80
26 + passenger vehicles:	\$100

**OVERNIGHT PARKING FEES**

For all State Park property, any parking past the operating hours for each state park shall be subject to parking rates as follows:

Parking Fee per Noncommercial vehicle: \$10

Commercial PUC vehicles:

1-7	passenger vehicles:	\$40
8-25	passenger vehicles:	\$80
26 +	passenger vehicles:	\$100



Amendment to Chapter 13-146  
Hawaii Administrative Rules

**RECEIVED**

By JetaimeA at 6:17 am, Nov 13, 2019

Date

1. Chapter 13-146, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§ 13-146-6 Fees. (a) The following fees are hereby established:

**STATE PARK CAMPING FEES:**

For all state parks that allow camping, except for the Napali Coast State Wilderness Park, the camping fee shall be as follows:

Residents:

\$12 per night per camp site (up to six people)

\$2 per night for each additional person, with a

Maximum of ten people total per camp site

Nonresidents:

\$18 per night per camp site (up to six people)

\$3 per night for each additional person, with maximum

Of ten people total per camp site

NAPALI COAST STATE WILDNERNESS PARK

RESIDENTS: \$15/person per night

Nonresidents: \$20/person per night

**CABIN RENTAL FEES:**

HAPUNA BEACH STATE RECREATION AREA

Residents: \$30/night per A-Frame

Nonresidents: \$50/night per A-Frame

KALOPA STATE RECREATION AREA, POLIPOLI SPRINGS STATE  
RECREATION AREA, WAI`ANAPANAPA STATE PARK

Residents: \$60/night per cabin

Non-residents: \$90/night per cabin

**FEES FOR CHANGE OR CANCELLATION OF CAMPING OR RENTAL CABIN RESERVATIONS:**

\$3 per change  
\$5 per cancellation

**WAILOA STATE RECREATION AREA DAY USE PAVILIONS**

Large pavilions: \$125 rental fee, with a \$150 Deposit  
Small pavilions: \$5/hour, with a \$50 deposit

**~~PARKING FEES~~**

~~NU'UANU PALI STATE WAYSIDE~~

~~Residents: No charge~~  
~~Nonresidents: \$3~~  
~~Commercial PUC vehicles:~~  
~~1-7 passenger vehicles: \$6~~  
~~8-25 passenger vehicles: \$12~~  
~~26 + passenger vehicles: \$24~~

~~IAO VALLEY STATE MONUMENT~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicles:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

~~MAKENA STATE PARK~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicle fees:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

~~HĀPUNA BEACH STATE RECREATION AREA~~

~~Residents: No charge~~  
~~Nonresidents: \$5~~  
~~Commercial PUC vehicle:~~  
~~1-7 passenger vehicles: \$10~~  
~~8-25 passenger vehicles: \$20~~  
~~26 + passenger vehicles: \$40~~

## **~~ENTRANCE FEES~~**

### ~~DIAMOND HEAD STATE MONUMENT~~

~~Daily Rates: \_\_\_\_\_~~  
~~Pedestrians: \_\_\_\_\_ \$1~~  
~~Noncommercial vehicles (except mopeds): \$5~~  
~~Mopeds: \_\_\_\_\_ \$1~~  
~~Others (not listed): \_\_\_\_\_ \$1~~

### ~~Commercial Vehicles:~~

~~1-15 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~16-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26+ \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

### ~~Annual Pass:~~

~~Pedestrians: \_\_\_\_\_ \$10~~  
~~Private Vehicles: \_\_\_\_\_ \$30~~

### ~~AKAKA FALLS STATE PARK~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Nonresidents: \_\_\_\_\_ \$5 per vehicle~~  
~~Others (not listed): \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicle:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26 + \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

### ~~Waimea Canyon State Park and Kokee State Park~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Nonresidents: \_\_\_\_\_ \$5 per vehicle~~  
~~Others: \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicle:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26 + \_\_\_\_\_ passenger vehicles~~  
~~at Waimea Canyon State Park: \_\_\_\_\_ \$40~~

### ~~HA`ENA STATE PARK~~

~~Residents: \_\_\_\_\_ No charge~~  
~~Visitors: \_\_\_\_\_ \$5 per vehicle~~  
~~Others (not listed): \_\_\_\_\_ \$1 per person~~  
~~Commercial PUC vehicles:~~  
~~1-7 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$10~~  
~~8-25 \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$20~~  
~~26+ \_\_\_\_\_ passenger vehicles: \_\_\_\_\_ \$40~~

## **PARKING AND ENTRANCE FEES**

For all State Park property considered as a Wayside property as established by the Division of State Parks, the parking fees shall be as follows:

Residents:	No charge
Nonresidents:	\$5
Commercial PUC vehicles:	
1-7 passenger vehicles:	\$20
8-25 passenger vehicles:	\$40
26 + passenger vehicles:	\$50

For all State Park property considered as a Recreation Area property as established by the Division of State Parks, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
Nonresident Entrance Fee:	\$10
Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7 passenger vehicles:	\$40
8-25 passenger vehicles:	\$80
26 + passenger vehicles:	\$100

For all State Park property considered as a State Park as established by the Division of State Parks, the parking and entrance fees shall be as follows:

Resident Entrance Fee:	No charge
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Parking Fee per Noncommercial vehicle:	\$10

Commercial PUC vehicles:	
1-7 passenger vehicles:	\$40
8-25 passenger vehicles:	\$80
26 + passenger vehicles:	\$100

## **OVERNIGHT PARKING FEES**

For all State Park property, any parking past the operating hours for each state park shall be subject to parking rates as follows:

Parking Fee per Noncommercial vehicle:	\$10
--	------

Commercial PUC vehicles:

1-7	passenger vehicles:	\$40
8-25	passenger vehicles:	\$80
26 +	passenger vehicles:	\$100

(b) For purposes of this section, the following definitions shall apply:

"Commercial PUC vehicle" means a vehicles that is regulated by the Hawaii Public Utilities Commission.

"Resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license." [Eff Dec 24 2015] (Auth: HRS §§ 184-3, 184-5)

2. New material is underscored
3. The amendments to chapter 13-146, Hawaii Administrative Rules, shall take effect ten dates after filing with the Office of the Lieutenant Governor.

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

---

Suzanne D. Case,  
Chairperson  
Board of Land and Natural  
Resources

## **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:**

- a. Discussion and Action on the Board's Draft *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS**
- b. Meetings with Board Members and State Department Directors**



**HAWAII SMALL BUSINESS  
REGULATORY REVIEW BOARD  
ANNUAL REPORT SUMMARY**

**Results for Calendar Year 2019**

**DRAFT**

**Recommendations and Review  
of Administrative Rules, Legislation  
and  
Requests from Small Business Owners for Review  
of Any Rule Adopted by a State Agency**

**In Compliance with  
Chapter 201M, Hawaii Revised Statutes**

# **HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD**

## **ANNUAL REPORT SUMMARY 2019**

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# SECTION I



## 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

**David Y. Ige**  
*Governor*

### MESSAGE FROM THE CHAIR - **DRAFT**

**Michael McCartney**  
*DBEDT Director*

#### Members

Robert Cundiff  
*Chairperson*  
*O'ahu*

Garth Yamanaka  
*Vice Chairperson*  
*Hawai'i*

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



*Robert Cundiff, Chair, 2019*

We continue to have an outstanding team of volunteer board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii. This year, we welcomed two new members on our team, Mr. James (Kimo) Lee from Hawaii County and Mr. Jonathan Shick from Oahu. In addition, member Garth Yamanaka was re-appointed for another four-year term.

On a more somber note, in June the board said good-bye to long-time member Anthony (Tony) Borge. Tony served on the board eight years and was the board's chair the last four of those years. I want to personally thank Tony for his energy and comments made at the board meetings on a wide variety of business concerns, his attendance at the legislative hearings, and his commitment to the small business community.

On behalf of all the board members, I extend a big Mahalo to Governor David Ige and DBEDT Director Mike McCartney for their steadfast support of this Board. I also cannot miss out in thanking the State Legislature for its support, and to all those State and County Agencies that come before us each month to discuss proposed and amended regulations that have a potential to negatively impact small business.

Finally, a big Mahalo goes out to each board member who continue to donate unselfish hours and time away from their families and businesses to share their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State of Hawaii.

## **OVERVIEW**

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January through December 2019. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

### **201M-5 Small business regulatory review board; powers.**

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

## **ANNUAL SUMMARY**

### **SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168 and subsequently the role of the Board was codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended. (Appendix 1)

Statutorily, the Board is comprised of eleven members, ten current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT), or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county rules, the board may make recommendations to the county council or the mayor for appropriate action.

Members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce, and testifying on legislation. The Board also has the statutory to solicit testimony from the public regarding any reports submitted to the Board by State departments.

As an effective means of rule review, each board member is assigned to one or more State department as a "discussion leader" and each neighbor island member is assigned to his or her own respective island.

Members are responsible for the initial review of the administrative rules of these departments and counties prior to consideration by the full Board. As of December 2019, the Board was operating with nine members.

## ADMINISTRATIVE RULE REVIEW

During 2019, the Board reviewed and made recommendations on XX new and amended rules to State and County Agencies, both pre- and post-public hearing.

Since its inception, the Board reviewed a total of XXX sets of proposed new and amended administrative rules. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Agriculture – Title 4</i>	66	Pesticides		X	Prior to going to public hearing, the Board agreed to encourage the Department of Agriculture and the stakeholders to arrive at a mutually acceptable timeframe for the submission of a speaker's biography and break-out presentation, under Section 4-66-60(c)(1), HRS, regarding continuing education requirements. After public hearing the board recommended that the rules be adopted.
<i>Department of Business, Economic Development &amp; Tourism – Title 15</i>	37	Solar Water Heater Variance	X		
	120	Community-Based Economic Development Loan and Grants Program	X		
<i>Department of Commerce and Consumer Affairs – Title 16</i>	TBD	Corporate Governance Annual Disclosure	X		
	185	Annual Audited Financial Reporting	X		
<i>Department of Health – Title 11</i>	Repeal 200; New 200.1	Environmental Impact Statement Rules		X	
	5	Environmentally-Related Illness and Injury Reporting	X	X	
	218	Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf/Blind	X		



	Chapter 243	Section 17-01 through 17-19, Motion picture digital media, and film production income tax credit  Fuel Tax Law Section 4-01, Refund of fuel taxes in excess of 1 cent per gallon for certain fuels used for operating agricultural equipment in areas other than upon the public highways of the State  Section 4-02, Refund of fuel tax on diesel oil and liquefied petroleum gas used for operating motor vehicles in areas other than upon the public highways of the State	X  X  X	X - ?  X - ?  X - ?	
<i>University of Hawaii</i>		Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission: I. General Provisions II. Organization & Parliamentary Rules Public Records, Inspection and Availability		X	
<i>County of Kauai</i>	Kauai County Code Section 18-65.3 Department of Public Works  Part IV	New Revocable Permits to Vend within County Right-of-Ways  Rules and Regulations Governing Commercial Boating Activities at County Beach Parks	   X	X  X	The Board accepted the rules as presented.  The Board moved the proposed administrative rule amendments onto the Mayor for adoption subject to any subsequent changes made by the County of Kauai's Planning Department.
<i>County of Maui</i>	Title 8 Chapter 101  Title 8 Chapter 101  Chapter 102	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui  Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui  Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui	  X  X	X  X  X	

## **LEGISLATIVE ACTIVITY**

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of the report for legislation the Board followed in 2019.

## **SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE DIRECTIVE (AD) NO. 18-02**

AD 18-02 was issued in 2018 to update the policy and procedures by which State departments and agencies request Governor’s approval for a public hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS. (Appendix 3).

Under Section 201M-2, HRS, State agencies wanting to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses.

## **CHAIRPERSON / BOARD MEMBERS**

During 2019, members bid a fond farewell to Mr. Anthony (Tony) Borge, representing Oahu, and welcomed two new board members, Mr. Jonathan Shick and Mr. James (Kimo) Lee. In addition, Mr. Garth Yamanaka from Hawaii was re-appointed for another four-year term.

Under Section 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.” The following elections were held at the June meeting:



- Chair - Robert Cundiff
- Vice Chair - Garth Yamanaka
- Second Vice Chair - William Lydgate

The Board member nomination process, under Section 201M-5, HRS, provides that “the Board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;

(3) Two members shall be appointed from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting member of the board;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) There shall be at least one representative from each county.”

In addition, nominations shall be solicited from small business organizations, state and county chambers of commerce and other interested business and trade organizations. With the exception of the ex officio member, all members are either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

At the end of December 2019, the Board was comprised of the following nine (9) members:

- 1) Mary Albitz, Jig Saw Java, representing County of Maui
- 2) Dr. Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, representing City and County of Honolulu
- 3) Robert Cundiff, representing City and County of Honolulu
- 4) James (Kimo) Lee, representing Hawaii County
- 5) William Lydgate, Steelgrass Farm, representing County of Kauai
- 6) Harris Nakamoto, representing City and County of Honolulu
- 7) Jonathan Shick, representing City and County of Honolulu
- 8) Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- 9) DBEDT Director, Voting Ex Officio Member

## **ACTIVITIES AND PROJECTS**

The following activities and projects were accomplished in 2019:

- **Hawaii Small Business Conference** - sponsored by Maui Economic Development Board, on May 8 and 9, member Mary Albitz and DBEDT staff attended this well-received small business conference for outreach and educational purposes.
- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce, trade organizations and State Legislators.
- **Facebook, Twitter, Instagram** – In 2019, an Instagram account was created where, in addition to regularly sending out notices on Facebook and Twitter, board photographs and notices are sent out to enhance its outreach efforts. Effective December 31, 2019, the Board can proudly boast 12 Facebook Friends and 77 Followers on Twitter.

- **Website Development** – Approximately two years ago, the Board created an investigative taskforce to research the revamping of the Board’s website; subsequently, a budget was approved by DBEDT. Phases I and II of the website were completed, resulting in a brand, new “look and feel” to enhance upon the site’s user-friendly approach to assisting the small business community as well as the State and County departments. Go to [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov).

- **SBA Regulatory and Advocacy Introduction** – In June, Ms. Jane Sawyer, District Director, Hawaii District Office, U.S. Small Business Administration (SBA), introduced Ms. Marina De Wit, the SBA’s new Regional Advocate from the Office of Advocacy, to the Board. Office of Advocacy serves as an independent voice for small business within the federal government, as the watchdog for the Regulatory Flexibility Act, and as the source for small business statistics. Advocacy advances the views and concerns of small business before Congress, the White House, the federal agencies, the federal courts, and state policy makers.

- **Office Assistant III** – In 2019, the Board welcomed Ms. Jet’aime Alcos as its new, permanent Office Assistant.

- **Articles and Press Releases**

- 1) On June 26, 2019, DBEDT distributed a press release entitled “*Small Business Regulatory Review Board Elects 2019 – 2020 Officers.*”
- 2) On July 1, 2019, *Pacific Business News* picked up the Board’s press release announcing the 2019 -2020 officers and published, “*Three Questions with the New Chairs of the Small Business Regulatory Review Board.*”
- 3) On September 20, 2019, DBEDT distributed a press release entitled “*Small Business Regulatory Review Board Launches New Website.*”

- 4) On September 21, 2019, *Pacific Business News* picked up the Board's press release announcing, "*Hawaii's Small Business Regulatory Review Board Launches New Website.*"
- 5) On September 29, 2019, *Hawaii Free Press* picked up the press release, "*Small Business Regulatory Review Board Launches New Website.*"

**REQUESTS FROM SMALL BUSINESS FOR REVIEW**  
**OF ANY RULE ADOPTED BY A STATE AGENCY**  
**"REGULATION FOR REVIEW"**

Under Section 201M-5, HRS, the following represents requests from small business owners for review of any rule adopted by a state agency and recommendations made by the Board to an agency.

1. In October 2018, Mr. Wesley Moore submitted a "regulation for review" on Section 13-231-50 through 70, regarding the existing permitting process and the limited number of permits for small businesses to grow and thrive in Hawaii.

**Action:** The board requested DLNR's Division of Boating and Outdoor Recreation (DOBOR) to report back with any changes that may apply to satisfy Mr. Moore's request such as: 1) A written response about the existing permitting process, and potential steps to undertake; for example: a) Submitting a formal request to the Land Board for a change to the current Statute to provide for a "equitable, level playing field" for all new and existing small businesses desiring to obtain the limited permits issued per location; b) Steps to take if a current permit holder is "sitting" on the permit and not fulfilling the performance requirements set forth in the existing rules; and 2) Additional options Mr. Moore may have to obtain a permit;

**Result:** On January 9, 2019, DLNR's DOBOR responded that the concern of the permitting process and the steps to take towards amending HAR provisions and increasing or removing CUP limits will require an amendment to Hawaii Administrative Rules (HAR). DLNR suggested that pursuant to HAR§ 13-1-26(a), Mr. Moore may petition the Board of Land and Natural Resources (BLNR) to begin the amendment process for HAR Chapter 13-231, the HAR chapter containing the CUP limits. Further, it if Mr. Moore submits a rule amendment petition, he must comply with the requirements of HAR § 13-1-26(b), as follows:

*Petitions for proposed rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the adoption, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petitions. No request for the issuance, amendment, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board.*

Additionally, DOBOR staff will consider potential natural resource impacts and testimony from all stakeholder groups. The current permit count for the Keauhou boat launching ramp is already higher than HAR limits, and therefore already over capacity, as some operators obtained their CUPs before the limits were implemented. Commercial operators must renew their CUPs once per year, at which time DOBOR staff evaluate the operator for any violations. Pursuant to HAR§ 13-231-61 (a), commercial operators must

maintain a minimum level of gross revenues derived from the vessel named in a CUP to remain eligible to renew their CUP. CUPs also specify the accepted method for reporting gross revenues to DOBOR. Any operators who may be "sitting on" a CUP would likely improperly report gross revenues and not meet the gross revenue minimum, in turn losing their permit.

Further, DOBOR's Auditor conducts random audits of commercial operators to ensure compliance with gross revenue requirements. If an operator commits violations, including violating state law and/or administrative rules, DOBOR staff will take one of two options, both of which result in the operator losing their CUP: 1) DOBOR staff will not renew the operator's CUP and the permit expires; and/or 2) DOBOR staff will request BLNR to immediately revoke the operator's CUP.

Regarding the second comment, Mr. Moore's additional options are to: 1) sign up on the CUP waitlist or 2) purchase a company holding a CUP. If a commercial operator is suspected of "sitting on" a permit or is otherwise violating HRS or HAR restrictions, DOBOR will recommend the Division of Conservation and Resources Enforcement be contacted immediately.

2. In February 2019, Mr. Keller Laros from Manta Pacific Research Foundation, submitted a "regulation for review" requesting proposed new rules and regulations for "crafting safe and sustainable, commercial manta ray viewing procedures for manta ray snorkel and dive sites, under DLNR's DOBOR.

**Action:** In March, the Board met with DOBOR representatives and discussed limitations on commercial operators, safety and accessibility of ocean guests, and reasons for the delay in promulgating the administrative rules. The Board encouraged Mr. Laros to

continue providing input to DOBOR and requested DOBOR work with Mr. Laros and others to amend and clarify the draft rules to allow for protection of manta rays and guests.

**Result:** It was agreed that this Board will monitor DOBOR's progress on these rules with the knowledge that absent receiving sufficient funding from the State Legislature, DOBOR is subject to approvals from the State's Attorney General's Office and BLN prior to bringing the rules back to the Board and prior to public hearings.

3. In May 2019, Mr. Alton Miyasaka, submitted a "regulation for review" requesting the Board review whether all bottomfish restricted fishing areas should be opened and/or disestablished under HAR Title 13 Chapter 94, Bottomfish Management.

**Action:** 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.

**Result:** Correspondence from DLNR was received by the Board, that stated "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, the Board reviewed DLNR's response and in September a letter was sent to Mr. Miyasaka describing DLNR's response, suggesting that Mr. Miyasaka continue to gather additional facts and data to support discussions with DLNR.

# **SECTION II**



## **LEGISLATIVE REVIEW**

The Board submitted testimony on the following measures during the 2019 legislative session.

### **1. House Bill 539 – Related to the Small Business Regulatory Review Board**

**Background:** This measure appropriates for staffing, commissioner inter-island travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism.

**Recommendation:** The Board supported this measure.

**Result:** The measure was deferred.

### **2. Senate Bill 1348 SD1 HD1 CD1– Relating to the Small Business Regulatory Review Board**

**Background:** This measure clarifies the intent of the small business regulatory review board’s powers when reviewing state and county administrative rules that impact small business by changing “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action. The SD 1 version modified the section by adding “For requests regarding county ordinances or rules, the board may make recommendations to the county council or the mayor for appropriate action.”

SD1 HD1 also added an appropriation for an undisclosed amount “or so much there of as may be necessary for fiscal year 2019-2020 for the operations and administration of the small business regulatory review board.”

**Recommendation:** Throughout the legislative session, the Board supported this measure but preferred the original House version, which deleted “ordinances” from the statute.

**Result:** The final version, which excluded an appropriation, was passed under Act 247, Sessions Law Hawaii 2019.

**3. Governor’s Message 559 – Submitting for Consideration for the Gubernatorial**

**Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2020**

**Background:** This measure was submitted for consideration of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2022.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 12, 2019, the Senate’s “advise and consent” was affirmed.

**4. Governor’s Message 624 – Submitting for Consideration for the Gubernatorial**

**Nomination of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020**

**Background:** This measure was submitted for consideration of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2023.

**Recommendation:** The Board strongly supported the measure.

**Result:** On April 12, 2019, the Senate’s “advise and consent” was affirmed.

**5. Governor’s Message 625 – Submitting for Consideration for the Gubernatorial**

**Nomination of Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023**

**Background:** This measure was submitted for consideration of Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023.

**Recommendation:** The Board strongly supported this measure.

**Result:** On April 12, 2019, the Senate’s “advise and consent” was affirmed.

## **Appendix**

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 18-02

## **1. Chapter 201M, Hawaii Revised Statutes**

**CHAPTER 201M**  
**SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact;  
small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business;  
consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

**§201M-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

**§201M-2 Determination of small business impact; small business impact statement.** (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less

restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in

addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

**§201M-3 Small business statement after public hearing.** (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
  - (A) Attended the public hearing;
  - (B) Testified at the hearing; and
  - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

**[§201M-4] Advisory committee on small business; consultation process for proposed rules.** (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of



regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

**§201M-5 Small business regulatory review board; powers.** (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county rules, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (8) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule

adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

**§201M-6 Petition for regulatory review.** (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits

the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

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

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

**§201M-8 Waiver or reduction of penalties.** (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
  - (2) The violation was unintentional or the result of excusable neglect; or
  - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
  - (2) When a violation involves willful or criminal conduct;
  - (3) When a violation results in serious health and safety impacts;
  - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
  - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
  - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

**[\$201M-9] Executive order.** The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

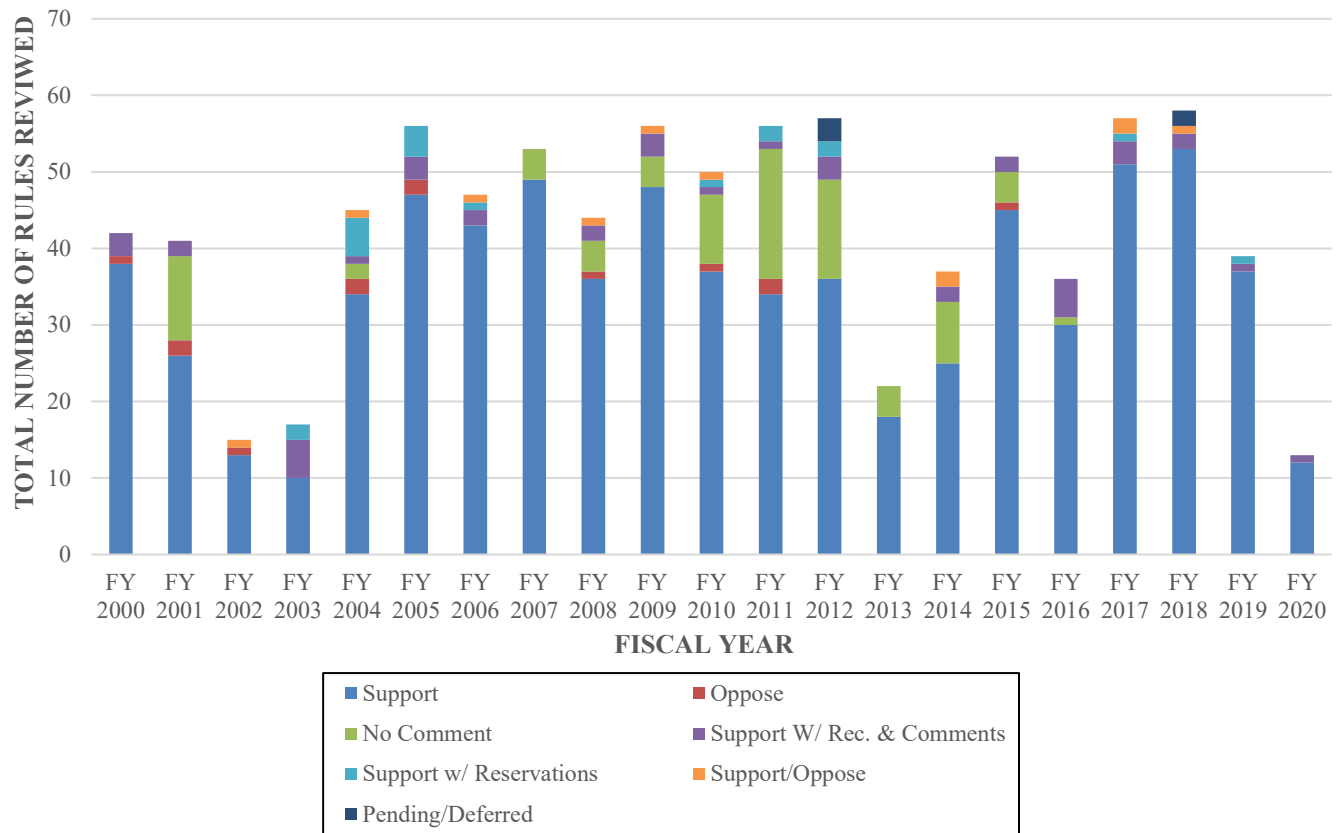
## **2. Administrative Rule Review**

## 2019 Administrative Rule Review

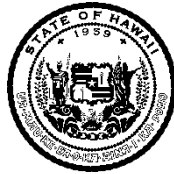
	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2018		673	13	81	41	20	11	5
FY 2019	Jul-18	3						
	Aug-18	3						
	Sep-18	3						
	Oct-18	6						
	Nov-18	NA						
	Dec-18	5			1	1		
FY 2019	Jan-19	3						
	Feb-19	0						
	Mar-19	3						
	Apr-19	4						
	May-19	4						
	Jun-19	3						
FY 2020	Jul -19	3						
	Aug-19	3						
	Sep-19	4						
	Oct-19	2			1			
	Nov-19	?						
	Dec-19	?						
	<b>Total</b>	<b>710</b>	<b>13</b>	<b>81</b>	<b>43</b>	<b>21</b>	<b>11</b>	<b>5</b>



## Administrative Rule Review Matrix



### **3. Administrative Directive No. 18-02**



EXECUTIVE CHAMBERS  
HONOLULU

DAVID IGE  
GOVERNOR

January 1, 2018

## ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of  
Hawaii Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

### **Legal References:**

1. Hawaii Revised Statutes Chapter 91
2. Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

### **Policy:**

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiioint.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

### **2. Small Business Regulatory Flexibility Act**

In accordance with Chapter 201M, the department must complete the following steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
  - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

### **3. Public Hearing Approval**

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
  - i. Why is this section of Hawaii Administrative Rules being amended?
  - ii. What problem is the rule change meant to solve?
  - iii. List all changes that are being made.
- b. Impact of changes
  - i. How does this rule change address the problem?
  - ii. Who are the stakeholders? Positive and negative.
  - iii. What are the potential problems with the rule change?
  - iv. What is the fiscal impact?
  - v. What is the economic impact to the State?
- c. Consequences if changes are not made
  - i. What are the consequences if the rule change does not get adopted, amended or repealed?

### **4. Public Hearings**

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

## **5. Final Rule**

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
  - i. What changes were made in the Final Rule?
  - ii. Why were these changes made?
- b. Other
  - i. Describe how the department has worked with stakeholders to gain support for the rule?
  - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
  - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

## **6. Filing of Final Rule**

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

## **7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)**

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.



Department of Business, Economic Development & Tourism  
**Small Business Regulatory Review Board**

***No. 1 Capitol District Building  
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Honolulu, Hawaii 96813***

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