

Small Business Regulatory Review Board Meeting

October 17, 2019

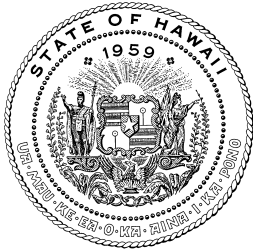
10:00 a.m.

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.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, October 17, 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 September 19, 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 Part IV, **Rules and Regulations Governing Commercial Boating Activities at County Beach Parks**, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation –
Discussion Leader – William Lydgate
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 5, **Environmentally-Related Illness and Injury Reporting**, promulgated by Department of Health – **Discussion Leader – Harris Nakamoto**

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, Hawaii Revised Statutes (HRS), as follows:
 - a. Discussion of Board Member Nominations pursuant to Section 201M-5 (b), HRS, *Small Business Regulatory Review Board; Powers*
 - b. Meetings with Board Members and State Department Directors

V. Next Meeting: Thursday, November 21, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

VI. Adjournment

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

II. Approval of September 19, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

September 19, 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 10:02 a.m., with a quorum present.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- William Lydgate, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF AUGUST 15, 2019 MINUTES**

Ms. Albitz made a motion to accept the August 15, 2019 minutes, as amended. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

Chair Cundiff acknowledged DBEDT Deputy Director Randall Tanaka for attending the meeting today and thanked him for his support.

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

A. Discussion and Action on Proposed Amendments to HAR Title 18, promulgated by Department of Taxation (DoTax), as follows:

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

Discussion leader and Vice Chair Yamanaka stated that DoTax is proposing a rule amendment to reduce the period from 90 to 45 days for posting the abandonment of commercial tax licenses; this is intended to mirror the period for the intent to revoke. A non-substantive change involves correcting cross-references to other sections of the rules. He did not see any negative impact to small business regarding these changes.

DoTax Administrative Rule Specialist Mr. Jacob Herlitz reminded the members that these rules came before this Board a few years ago due to the hundreds of thousands of abandoned tax licenses that were still on DoTax's books. This new proposal will remove the prior requirement where the only way to revoke a license is via postal mail. As this takes much time and expense, the new changes entail DoTax revoking licenses the very next day rather than the current requirement of waiting 45 days.

Mr. Herlitz added that DoTax would have the ability to un-revoke a revoked license quite easily in the event there was a mistaken revocation of a commercial tax license; there is no cost to the businesses to un-revoke a revoked license. In regard to impacting small business, Mr. Herlitz confirmed that small and large businesses would be affected equally and minimally.

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

b. Chapter 235 Income Tax Law, Section 3-01, Distribution of credit for partnerships, S corporations, estates, and trusts, promulgated by DoTax

Discussion leader and Vice Chair Yamanaka stated that the changes to these rules were straight-forward and more efficient. Mr. Herlitz added that the rules establish 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.

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

c. Chapter 243 Fuel Tax Law, Section 4-01, Refund of fuel taxes more than 1 cent per gallon for certain fuels used for operating agricultural equipment in areas other than upon the public highways of the State, promulgated by DoTax

Mr. Herlitz explained that changes to these sections contain rules for requesting refunds of fuel tax arising from the operation of equipment in areas other than on public highways of the state. Under the current rules, the law specifies that itemized lists of equipment and fuel 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.

All businesses, large and small, will be required to comply with the proposed rule changes. Specifically, taxpayers are required to furnish information related to equipment and fuel used when making claims for fuel tax refunds for vehicles in areas other than public highways operated by the state. Any impact would not be overly burdensome to small businesses.

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

B. Discussion and Action on Proposed New HAR Title 18 Chapter 235 Income Tax Law, Sections 17-01 through 17-19, promulgated by DoTax

Ms. Titin Sakata, DoTax Administrative Rules Specialist, explained that the proposed rules provide guidance for the administration of the motion picture, digital media, and film production income tax credit. The credit cap was increased by the Legislature from \$35 million to \$50 million, effective January 1, 2019.

It was questioned whether the rules impact small businesses due to a filmmaking entity requiring that it have at least \$200,000 of qualified production costs. Ms. Sakata replied that the production costs of \$200,000 is defined in the statute and includes wages, money spent on food and caterers, stage costs, renting of studios, etc., as well as certain criteria to meet the qualifications, such as pre-qualification requirements with DBEDT for permits.

Ms. Mariah White, Economic Development Specialist from DBEDT's Film Office, stated that there are many small production companies in the Hawaiian Islands that consistently benefit from the film tax credits. Further, because production is a costly endeavor, the various expenses that go into production add up very quickly.

For purposes of allocating the film credit's \$50 million aggregated cap, the rules offer priority to taxpayers applying for credits totaling \$1 million or less for the year. DoTax believes that this allowance will mitigate the impact of the film credit's \$50 million cap to small production companies if the total credits applied for in any year exceeds \$50 million; Ms. Sakata noted that the cap is constant and ongoing.

Deputy Director Randall Tanaka stated that, when looking at the aggregate, everyone benefits, but most importantly, it is bringing film production to Hawaii. On the high end, the bulk of the tax credit attracts the "50" and "Magnum" series' production companies and others as it has a trickle effect, thus, the state benefits not only in jobs but in tax generation. Further, it is not only the number of jobs that make a difference but the quality and dignity of the jobs; as such, there is a need to have a tax credit to attract the larger companies.

Deputy Director Tanaka added that there are competitive forces, such as other state's tax credits; i.e., Los Angeles, California; New York, New York; Atlanta, Georgia, etc., that Hawaii must deal with. Chair Cundiff stated that there are a lot peripheral benefits to the film tax credit because of the small businesses associated with it. As the cap is worked through the film industry, it results in a positive attitude where Hawaii wants businesses to come to the state by showing that it is a much more business-friendly state.

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

C. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 120, Community-Based Economic Development Loan and Grants Programs, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Mark Ritchie, Branch Chief at DBEDT's Business Development and Support Division, explained that the changes reflect a clean-up of rules for the division's CBED (Community-Based Economic Development) program as well as some legislative statutory changes. One program entails loans, which are provided to businesses, and another program provides grants to mostly non-profit organizations involved in some type of economic development activity; technical assistance is also provided to both programs.

Overseeing the CBED program for the loans and grants is an advisory council. Recently, the number of council members was reduced which has helped with quorum issues. Regarding the small business aspect, while these rules do impact small business, it is believed that the impact is positive.

One of the main changes in the rules involves the loan program. DBEDT may loan up to \$250,000, however, there is currently insufficient funds in the revolving loan fund to make these large amounts. The more plausible and standard loan amount is \$25,000, of which DBEDT is in partnership with the Department of Agriculture. Although the current rules require a small business two commercial "turn downs" before they may approach DBEDT, the proposed rules require only one turn down.

Vice Chair Yamanaka stated that the CBED program appears to be a good program for small businesses to get off the ground. Deputy Director Tanaka noted that for the State to build a sustainable agricultural industry, this program is needed despite the risks involved and the longer-term investment associated with it.

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

IV. OLD BUSINESS – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Subtitle 8 Part 10, promulgated by Department of Labor and Industrial Relations (DLIR)

1. Adoption:
 - a. Chapter 221.1 Existing Pressure Retaining Items
 - b. Chapter 222.1 Power Boilers
 - c. Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heater
 - d. Chapter 224.1 Pressure Vessels
 - e. Chapter 225.1 Pressure Systems
2. Amendment and Compilation:
 - a. Chapter 220 General Administrative and Legal Provisions
3. Deletion:
 - a. Chapter 221 Existing and New Boilers and Pressure Vessels
 - b. Chapter 222 Power Boilers
 - c. Chapter 223 Heating Boilers

- d. Chapter 224 Pressure Vessels
- e. Chapter 225 Pressure Systems

Discussion leader Ms. Albitz explained that these rules are after public hearing, and during the public hearing there was mostly support for the changes.

Mr. William Kunstman, DLIR's Assistant to the Director, reminded the board members that the rule changes update and incorporate the national consensus code and make it easier for the practitioners in the field to understand the contemporary terminology in the rules. In addition, there are significant proposed increases in the fees, which most if not all, of the increases impact the larger entities. He explained that during the public hearing, the testimonies supporting the rule changes included supporting the fee increases as well.

Chair Cundiff stated that the public hearing was very well attended with great support coming in for the proposed changes. He believes this support is attributed to DLIR reaching out to stakeholders early in the process to hear the business' input, work with them, and address their concerns, which clearly make the overall process work smoothly.

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

V. ADMINISTRATIVE MATTERS

- A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS, on the following:
 - a. Discussion and Action on the Board's existing "Standard Operating Guidelines and Procedures"

Board members reviewed the updates to its existing standard operating guidelines and procedures which sets up the process for addressing incoming complaints, etc., and how the information is handled.

DBEDT staff requested that board members timely notify them of travel plans and/or an inability to attend meetings, to sign travel forms, or to conduct board business. To keep the work flowing, it was agreed that should the chair be unavailable, the vice chair would be approached by staff.

Mr. Shick made a motion to approve the Board's existing "Standard Operating Guidelines and Procedures" as amended. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

- b. Discussion with Representatives from Hawaii Information Consortium on the Board's Newly Created Website

Chair Cundiff stated that a press release went out today announcing the Board's newly created website. He welcomed Mr. Christopher Cosner and Ms. Rosemary Warfield,

representatives from HIC (Hawaii Information Consortium), who worked with DBEDT's website team and who were responsible for creating the current new site.

Mr. Cosner walked the members through the website page by page, beginning with the homepage and highlighted all the new features that were not on the prior website.

Adjustments discussed will include: 1) fixing the broken link on the rulemaking process page; 2) updating logic so the next month's meeting time will not change until 2:00 p.m.; 3) adding the missing 2017 SBRRB 201M-7 report on the SBRRB reports page; 4) correctly displaying the Internet Explorer call to action section on the home page; and 5) containing the rule-tracking spreadsheet to stats on the webpage.

c. Discussion and Action on the Board's Fiscal Year-End 2020 – 2021 Budget Request

Chair Cundiff outlined the Board's proposed fiscal year-end 2020 to 2021 budget request, rounded to \$25,000, as follows:

\$19,200 - Travel expenses – Currently, there are 4 Neighbor Island Members

- \$15,000 = Airfare - 5 members x \$250 x 12 months
- \$900 = Parking – 5 members x \$15 x 12 months
- \$3,300 = Car Rental/Taxi – 5 members x \$55 x 12 months

\$2,200 – Outreach

- \$800 Maui Small Business Conference – sponsored by Maui Economic Development Board (includes travel)
- \$1,000 TBD – Other Small Business Conferences
- \$400 - Business Cards - \$80 x 5 sets of cards

\$750 - Miscellaneous

- Office Supplies, postage stamps, membership, etc.

Chair Cundiff expressed the value of attending various conferences throughout the year for outreach and would like to continue this.

Mr. Nagasako questioned whether Skype could conceivably be utilized for monthly board meetings. Although there is a possibility to have neighbor island members skyped or video-conferenced into the meeting, Deputy Attorney General Polk-Waihee explained that while Office of Information Practices governs this aspect of board meetings there are several items to weigh-in when video-conferencing neighbor island members. For example, if conducting meetings where the neighbor island members are located, and the video connection is lost, the meeting is over even if quorum still exist because that location can no longer be part of the meeting.

Because the meetings are open to the public, the public would be entitled to attend the meetings where the meetings' locations are identified in the agenda. Also, hand-outs must be distributed to all members attending, and all those people who attend the meeting expecting to testify are required by law to testify.

Mr. Jonathan Shick made a motion to approve the proposed fiscal year-end 2020 to 2021 budget request, as presented. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

d. Meetings with Board Members and State Department Directors

Ms. Albitz has scheduled an upcoming meeting with Department of Labor and Industrial Relations.

Mr. Shick mentioned to the members that the new short-term rental law changes, which has some positive effects, also result in negative effects on not only those owning vacation rentals but other related small businesses; thus, he wanted to know if the Board would be interested in hearing from those small businesses.

Chair Cundiff responded that clarification as to what the impacts and concerns are would be needed as the Board's purview is to review rules and regulations promulgated by state and county agencies. Therefore, because this item is not on the agenda, the Board is unable to discuss it today, however, it may be able to discuss these issues if the specific state and county rules and regulations were identified. The Board would then be able to place it on the agenda and review the impacts; Mr. Shick concurred.

Deputy Director Tanaka suggested that on the tourism perspective of the short-term rental law, in looking at the impact, currently there is monitoring being performed by the state. He will get back to the Board and DBEDT staff on any information he may be able to find.

Chair Cundiff acknowledged that from now until the next board meeting, research will be done to determine if rules and regulations currently exist or are being considered that have an impact to small business that this Board may address.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, October 17, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Vice Chair Yamanaka made a motion to adjourn the meeting and Mr. Jonathan Shick seconded the motion; the meeting adjourned at 11:37 a.m.

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 of Parks and Recreations

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

Department or Agency: County of Kauai, Department of Parks and Recreation

Administrative Rule Title and Chapter: N/A

Chapter Name: Commercial Boating Activities at County Beach Parks

Contact Person/Title: Darcie Agaran, Executive Secretary to the Director

Phone Number: (808) 241-4456

E-mail Address: dagaran@kauai.gov Date: 9/10/2019

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.)

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

Prior to the public hearing, the County met with the commercial boaters and the commercial boaters expressed their desire to not be specific with time frames as the days are longer during the summer months. After the public hearing, the County met with... (see attachment)

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

Yes, we proposed to change the period of time that commercial boating activities would be permitted to one-half hour before sunrise to one-half hour after... (see attachment)

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 Notice of Public Hearing was emailed to the commercial boaters, and that notice included instructions on how to submit testimony on the proposed amendments. The Notice was also published in The Garden Island Newspaper.

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

A majority of the written and oral testimony was in support of the commercial boating operations. The commercial boaters requested to remove the Sunday restriction, allow them to use County hose bibs, and to allow day use parking for their truck and trailer.

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

During the public hearing on Tuesday, September 3, 2019, the County extended the time period to submit written testimony by three (3) days - to Friday, September 6, 2019. Because of this, it was announced that the rules would be adopted at a later date.

4. The number of persons who:

(i) Attended the public hearing: 25

(ii) Testified at the hearing: 18

(iii) Submitted written comments: 26

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.

The request to remove the Sunday restriction cannot be adopted via the rule-making process as this condition is imposed by the Department's Special Management Area Use Permit. The request to allow the... (see attached)

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements-pre-and-post-public-hearing>

Attachment

A. Statement of the Topic of the Proposed Rule:

The Department proposes to amend its existing Rules and Regulations Governing Commercial Boating Activity at County Beach Parks by: 1) moderately extending the allowable hours of operation; 2) amending compliance and enforcement provisions to allow for incremental fines rather than automatic permit revocation; 3) minor non-substantive changes in formatting and language; and 4) clarifying the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.

B. Proposed rule amendments are available for viewing at the Department of Parks and Recreation or www.kauai.gov/parks. In addition, the Department will send an electronic copy by email to any interested person upon request.

V. ...Mel Wills, who represents the commercial boaters, to discuss the oral and written testimonies that were received and to amend the proposed rules further.

V.a. ...sunset. We also included an additional area for the loading and unloading of passengers and provisions. Eliminating the Sunday restriction (Sec. 33(a)) was one recommendation that we could not incorporate into the rules as it is a condition of our Special Management Area Use Permit from the Planning Department.

VI.5. ...boaters to park their commercial truck and trailer in the designated trailer parking area also cannot be adopted via the rule-making process as it was a condition of the sale of the "mauka" parcel. When the County purchased the parcel, it was agreed that the use of the parcel shall be for park purposes, and not for commercial tour boat and related boat yard purposes.

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai'i Revised Statutes (HRS), Chapter 23, Article 3, Kaua'i County Code (KCC) 1987 as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua'i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS PART IV

Section 30. Findings and Purpose.

Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial boating activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR)/Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at ~~[those]~~ designated County beach parks and beach ~~[right-of-ways]~~ rights-of-way ~~[listed in the attachment]~~.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State ~~[Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 31. State Permit.

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR. If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee's County permit will automatically expire.

Section 32. Number of Persons.

(a) The maximum number of passengers permitted to participate in a commercial boating activity authorized by these rules within the County park shall be limited to that number allowed in the operator's current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR and any and all permits issued to the County, including but not limited to ~~[sma]~~ SMA, zoning and or land use permits.

Section 33. Time of Use.

- (a) No commercial boating activities shall occur within the County parks on Sundays.
- (b) ~~[Permittees shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.]~~ Commercial boating activities are permitted one-half hour before sunrise to one-half hour after sunset. No commercial boaters shall operate one-half hour after sunset to one-half hour before sunrise.
- (c) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.
- (d) At the Director's discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

Section 34. Use Areas.

- (a) The use of Weke Boat Ramp for supply service vessels shall be allowed during the permitted timeframe referenced in 33(b).
 - (1) Each Permittee shall be allowed no more than two supply service vessel trips per day.
 - (2) Supply service vessels launching from Weke Boat Ramp shall only be used to transfer supplies to and from Permittee's primary tour vessel. Supply service vessels shall not be used for passenger loading and unloading at Weke Boat Ramp.
- (b) In the event of an emergency, Weke Boat Ramp may be accessed. Permittee shall notify DOPR officials as soon as practicable.
 - (1) An emergency shall be defined as an unexpected situation requiring immediate action involving injury, loss of life, damage to the property, or catastrophic interference with normal activities.
- (c) Passengers shall be loaded and unloaded at specified ingress/egress locations described in Hawai'i Administrative Rules (HAR) § 13-256-39. Additionally, loading and unloading of passengers and provisions shall be allowed along the river side at Black Pot Beach Park in the accreted sand area extending westward from Weke Boat Ramp to Zone 2 of the ingress/egress area as defined by DLNR/DOBOR.
- (d) No loading and unloading of passengers shall be allowed within the Weke Boat Ramp corridor.
 - (1) The Weke Boat Ramp corridor shall be defined as the width of the Weke Boat Ramp, beginning at the constructed ramp itself extending 150 feet northward into the river.
- (e) No loading and unloading of passengers shall be allowed within the designated DLNR/DOBOR swimming areas B-1 and B-2, as defined in HAR § 13-256-39.

Section [34] 35. Fees.

The fees for conducting commercial boating activities shall be as stated in section 23-3.4 of the KCC.

Section [35] 36. Permits.

(a) Permits to conduct commercial boating activities shall be issued only for ~~[those]~~ the following County beach parks and beach ~~[right-of-ways]~~ rights-of-way: ~~[listed in the attachment.]~~

Black Pot Beach Park; TMKs (4) 5-5-01:004 and (4) 5-5-01:011;

Weke Road Right-of-Way within Black Pot Beach Park

(b) Permits for operation of commercial boating activities shall have a duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The Director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the Director within five ~~[(5)]~~ business days of any changes regarding the information provided in the permit application.

Section ~~[36]~~ 37. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is ~~[\$1]~~ \$2 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial boating activities, equipment and or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and ~~[hosebibs]~~ hose bibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, ~~[show-case]~~ or showcase their business in any County beach park or parking lot.

(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or ~~[instructors]~~ employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for a period not exceeding thirty

minutes. All vehicles used for shuttling ~~[instructors]~~ employees, supply service vessels, and or customers shall clearly indicate that they are owned and or operated ~~in~~ on behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

(g) Trash generated by commercial operations shall be disposed of properly.

(h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.

(i) ~~[Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.]~~ Permittees shall not solicit business within any beach park, beach park parking lot, or adjacent County road right-of-way.

(j) Commercial notices or advertisements for commercial boating activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.

(k) Permittees and any ~~[instructors]~~ employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State ~~[of]~~ or Federal governmental agency.

(l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea ~~[and surf]~~ conditions.

(m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.

(n) All permittees must possess off-site, permitted commercial staging areas and shuttle their customers to and from any County ~~[Beach Parks]~~ beach park. Solicitation of moneys and or exchanging of moneys is prohibited within the County parks.

(o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.

(p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.

~~[(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.]~~

~~[(r)]~~ (q) Permittees shall demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.

~~[(s)]~~ (r) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.

~~[(t)]~~ (s) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No fueling, washing or storage of boats, trailers or supplies are permitted in the County parks identified herein, County parking lots, or in road ~~[rights of way]~~ rights-of-way.

~~[(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two years from the date of failure to perform.]~~

[(v)] (t) Non-compliance with any and all terms and conditions of ~~[this agreement]~~ these rules and regulations or permits issued under these rules and regulations shall ~~[automatically]~~ subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[render this agreement null and void]~~ result in the revocation of any permit issued under these rules and regulations, and the permittee shall be required to cease and desist all commercial operations on County property immediately upon notification by the Department.

(u) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.

III. Old Business – After Public Hearing
**B. Discussion and Action on the Small Business
Statement After Public Hearing and Proposed
Amendments to HAR title 11 Chapter 5,
Environmentally-Related Illness and Injury
Reporting, promulgated by DOH**

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

Department or Agency: Hazard Evaluation and Emergency Response (HEER) Office

Administrative Rule Title and Chapter: HAR Title 11 Chapter 5

Chapter Name: Environmentally-Related Illness and Injury Reporting

Contact Person/Title: Diana Felton/State Toxicologist

Phone Number: 808-586-0963

E-mail Address: diana.felton@doh.hawaii.gov **Date:** 9/26/2019

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.)

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* * *

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

DOH collaborated with the six community health centers and one private practice that operate Point of Care (POC) machines in Hawaii to create an electronic spreadsheet to simplify reporting requirements. The electronic spreadsheet was added as an acceptable method of reporting in the proposed rules under "electronic transmission".

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

Recommendations made by the POC users on the electronic spreadsheet were incorporated to create the spreadsheet that is currently used.

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.

In addition to the public hearing notice that was published in newspapers statewide on August 14th 2019, DOH individually contacted all POC users in Hawaii by email on September 4, 2019. The email included the notice of the public hearing and a point of contact if they had comments or questions. POC users already sending lab results to DOH (6 out of 7) were notified that they were already in compliance with the proposed rule changes. The one community health center that is not sending lab results to DOH was notified that they were not in compliance with the proposed rule changes.

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

DOH received no comments from the public, from community health centers, or from small businesses regarding the rule change. There was a concern raised at the SBRRB pre-hearing review that classifying the POC users as "laboratories" could precipitate additional regulatory requirements for those small businesses.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

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

In regards to the concern from the SBRRB, the language of the proposed rule change was verified to not classify the POC machine users as "laboratories" and will not cause additional regulatory compliance.

4. The number of persons who:

(i) Attended the public hearing: 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?

(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.

No, no request was made at the hearing to change the proposed rule.

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

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

RECEIVED

By JetaimeA at 1:35 pm, Sep 26, 2019

Statement of Topic

The proposed Title 11, Chapter 5, "Environmentally-Related Illness and Injury Reporting", updates requirements for the reporting of designated heavy metal and pesticide lab results to include all results. This will allow the department of health (DOH) to assess environmentally-related illness and injury trends and patterns statewide. The rule amendment also improves the quality of reported data and updates the acceptable methods of reporting. HRS §321-314 establishes the authority of DOH to require the reporting of individuals afflicted with or tested under suspicion of an environmentally-related illness or injury.

The positive stakeholders include DOH, laboratories in Hawaii, individuals with environmentally-related illnesses or injuries, and the general public. The adoption of these rules will allow the department to better identify environmental illness and injury patterns and thus provide improved population-based interventions and link more affected individuals with needed services. The proposed rule changes also allow laboratories to use electronic transmission to report lab results. Electronic laboratory reporting (ELR) can be configured to be an automatic signal, which will save both laboratory and DOH employees' time by removing the need for manual data entry. Further, ELR will speed up the process of providing follow-up care to exposed individuals as DOH will receive the ELR results in real time.

The negative stakeholders include Point of Care (POC) machine users who are not reporting their lab results to DOH and do not have ELR capabilities. POC machines allow health care professionals to analyze blood lead tests without sending the collected blood samples to a laboratory. The proposed rule changes mandate that POC users send their lab results to DOH, either by ELR, filling out an electronic spreadsheet, or by mail. It is estimated that the spreadsheet may take up to a half hour every two weeks to fill out and send to DOH. Mailing the results would likely take about the same amount of time and cost postage. ELR is automatic and would add no additional time or cost.

Currently, there are six non-profit community health centers and one private practice using POC machines for blood lead testing. The private practice and five of the six community health centers send all of their lead lab results to DOH using an electronic spreadsheet and would not require any changes under the new rules. DOH is in the process of helping the sixth and final POC user develop a workflow for reporting.

Link to posted rules on Lieutenant Governor's website: <http://health.hawaii.gov/opppd/proposed-changes-to-department-of-health-administrative-rules-title-11/>

Rules may also be viewed in person at 2385 Waimano Home Rd #100, Pearl City, Mon-Fri, 8am-4pm (except state holidays).

RECEIVED

By JetaimeA at 1:36 pm, Sep 26, 2019

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-5
Hawaii Administrative Rules

ADOPTION DATE

1. Chapter 11-5, Hawaii Administrative Rules, entitled "Environmentally-related Illness and Injury Reporting", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 5

ENVIRONMENTALLY-RELATED ILLNESS AND INJURY REPORTING

\$11-5-1	Purpose
\$11-5-2	Definitions
\$11-5-3	Reporting Requirements
\$11-5-4	Reportable environmentally-related illnesses and injuries and condition for control
\$11-5-5	Immunity from liability
\$11-5-6	Penalty
\$11-5-7	Severability

\$11-5-1 Purpose. The purpose of this chapter is to state requirements for health care professionals and laboratory directors to report to the department [~~the diagnosis of~~] any person afflicted with or tested

under suspicion of a designated environmentally-
related illness or injury. [Eff 10/4/90; am and comp
] (Auth: HRS §§321-1, 321-9, 321-317)
(Imp: HRS §§321-1, 321-311, 321-314, 321-317)

§11-5-2 Definitions. As used in this chapter:

"Case" refers to a person who has been diagnosed to have any of the ~~[diseases or]~~ conditions specified in ~~[table]~~ Table 1, "Reportable Environmentally-Related Illnesses and Injuries" ~~["-"]~~ (5/1/19)", in section 11-5-4.

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

"Director" means the director of the department of health or his or her duly authorized ~~[agent who may be the deputy director for environmental health administration.]~~ agent.

"Environmentally-related illnesses and injuries" are those adverse health effects associated with exposure to any of the ~~[designated]~~ agents listed in ~~[table]~~ Table 1 ~~[at the end of this chapter.]~~, "Reportable Environmentally-Related Illnesses and Injuries (5/1/19)", in section 11-5-4. Illnesses and injuries resulting from occupational exposure to the agents listed in ~~[table]~~ Table 1, "Reportable Environmentally-Related Illnesses and Injuries (5/1/19)", in section 11-5-4 would also be included under the same heading, "environmentally-related illnesses and injuries".

"Health care professional" means a physician as licensed under chapter 453, ~~[HRS]~~ Hawaii Revised Statutes, or an osteopath as licensed under chapter 460, ~~[HRS.]~~ Hawaii Revised Statutes.

"Suspected" or "suspicion" means suspicion by a health care professional that the patient may have been exposed to any of the agents listed in Table 1, "Reportable Environmentally-Related Illnesses and Injuries (5/1/19)", in section 11-5-4, as indicated by the ordering of a laboratory test. [Eff 10/4/90; am and comp
] (Auth: HRS

§§321-1, 321-9, 321-317) (Imp: HRS §§321-1, 321-312, 321-313, 321-317)

§11-5-3 Reporting Requirements. (a) Report by ~~[physicians: any]~~ physicians. Any health care professional who has primary responsibility for the treatment of an individual who is suffering from environmentally-related illness or injury shall report the occurrence of such illness to the department of ~~[health on Oahu.]~~ health. Any health care professional diagnosing and reporting any such illness or injury shall do confirmatory laboratory testing whenever possible to ascertain the agent that caused the condition and the nature of the exposure. Health care professionals shall report diagnosed cases to the department as specified in ~~[table]~~ Table 1, entitled "Reportable Environmentally-Related Illnesses and Injuries ~~["-"]~~ (5/1/19)", in section 11-5-4. ~~[The department shall provide forms for reporting these conditions. Reports provided to the Department of Health on persons diagnosed to be suffering from an environmentally-related illness or injury shall be kept confidential and are not open for public inspection.]~~ Health care professionals having laboratory data regarding an individual from the use of in-house laboratory services shall follow the reporting requirements listed in subsection (b).

(b) Report by ~~[laboratories: every]~~ laboratories. Every laboratory director having ~~[abnormal]~~ laboratory data regarding an individual affected by or suspected to be affected by ~~[a designated toxic substance]~~ an agent listed in Table 1, "Reportable Environmentally-Related Illnesses and Injuries (5/1/19)", in section 11-5-4 shall report such data to the ~~[Department of Health]~~ department and attending ~~[physician as specified in table 1 entitled "Reportable Environmentally-Related Illness and Injuries"-]~~ physician. The report shall include the following information:

- (1) Patient's first, middle, and last name;

- (2) Patient's month, day, and year of birth;
- (3) Patient's gender;
- (4) Patient's race and ethnicity;
- (5) Patient's street address, apartment number, city, state, and zip code;
- (6) Patient's phone number;
- (7) Result of the laboratory analysis;
- (8) Month, date, and year the sample was collected;
- (9) Sample collection method (e.g., capillary or venous blood);
- (10) Name and address of the health care provider who ordered the laboratory analysis;
- (11) Name of the laboratory performing the analysis;
- (12) Month, date, and year the laboratory analysis was completed; and
- (13) Source of funding for the laboratory analysis.

(c) ~~[Laboratory notifications herein]~~ Reports provided to the department under subsections (a) and (b) shall be kept confidential, unless the department has received written consent from the patient or from the minor patient's parent or legal guardian requesting the release of information, and are not open for public inspection. [Eff 10/4/90; am and comp] (Auth: HRS §§321-1, 321-9, 321-317) (Imp: HRS §§321-1, 321-311, 321-312, 321-313, 321-314, 321-315, 321-317)

§11-5-4 Reportable environmentally-related illnesses and injuries and condition for control. The ~~[diseases]~~ agents listed ~~[or described]~~ in ~~[table]~~ Table 1, entitled "Reportable Environmentally-Related Illnesses and Injuries[", ~~located at the end of this chapter]~~ (5/1/19)", in section 11-5-4 are declared by the director to be potentially dangerous to public health. ~~[and]~~ Any person afflicted with or tested under suspicion of a designated environmentally-related illness or injury listed in Table 1,

"Reportable Environmentally-Related Illnesses and Injuries (5/1/19)", in section 11-5-4 shall be reported to the department as specified in this chapter to provide information to assist in prevention efforts.

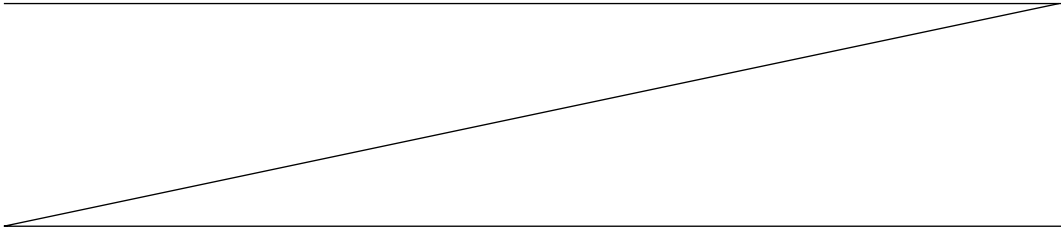


Table 1. Reportable Environmentally-Related Illnesses and Injuries (5/1/19)

<u>Condition</u>	<u>Agents</u>	<u>Method of Report Submission for Health Care Professionals</u>	<u>Method of Report Submission for Laboratory Directors</u>
<u>Heavy metal poisoning</u>	<u>arsenic</u> <u>cadmium</u> <u>lead</u> <u>mercury</u> <u>zinc</u>	<u>Telephone within one working day of laboratory confirmation</u>	<u>Electronic transmission or mail within one week of laboratory analysis</u>
<u>Pesticide poisoning</u>	<u>carbamates</u> <u>organophosphates</u>	<u>Telephone within one working day of diagnosis</u>	<u>Electronic transmission or mail within one week of laboratory analysis</u>

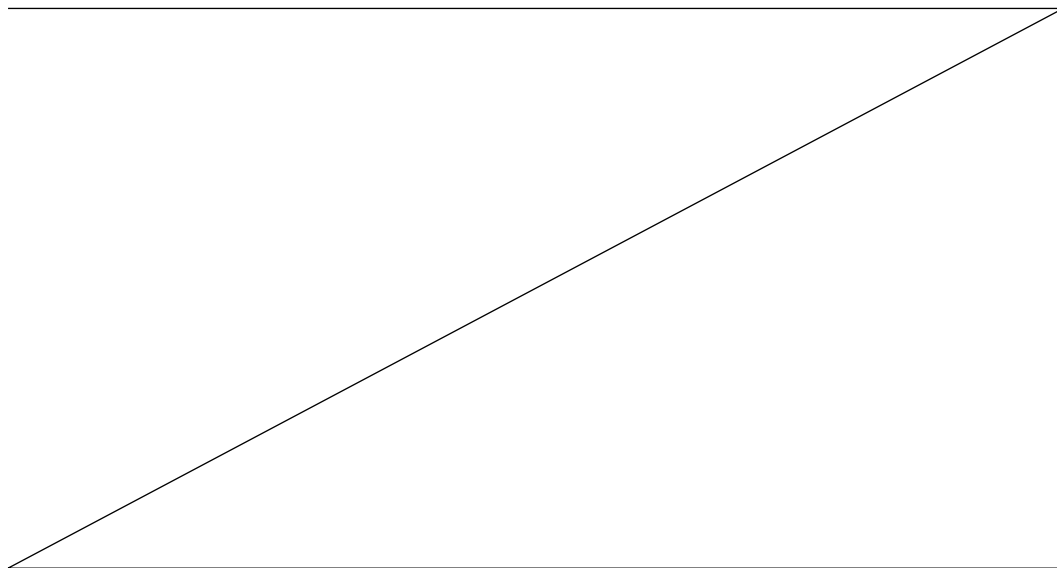
[Eff 10/4/90; am and comp] (Auth: HRS
 §§321-1, 321-9, 321-314, 321-317) (Imp: HRS
 §§321-311, 321-314, 321-317)

§11-5-5 Immunity from liability. In the event where confirmatory laboratory testing of the suspected agent is not possible or in cases of laboratory error, neither the reporting physician or laboratory director will be held legally liable for any error in reporting such a case, should the condition prove later to be due to another etiologic agent. Therefore, any health care professional or laboratory director who complies with this chapter shall not be held civilly or criminally liable for providing best obtainable information or diagnosis as required under this

chapter. [Eff 10/4/90; am and comp]
(Auth: HRS §§321-1, 321-9, 321-316, 321-317) (Imp:
HRS §§321-316, 321-317)

§11-5-6 Penalty. Every person who willfully
[~~violated~~] violates any provision of this chapter
shall be guilty of a misdemeanor and upon conviction
shall be fined not more than one thousand dollars.
[Eff 10/4/90; am and comp] (Auth:
HRS §§321-1, 321-9, 321-18, 321-317) (Imp: HRS
§321-317)

§11-5-7 Severability. If any provision of this
chapter, or its application to any person or
circumstance, is held invalid, the application of such
provision to other persons or circumstances, and the
remainder of this chapter shall not be affected
thereby." [Eff 10/4/90; comp] (Auth:
HRS §§321-1, 321-9, 321-317) (Imp: HRS §321-317)



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

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

4. These amendments to and compilation of chapter 11-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of 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 ADOPTION DATE, and filed with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, PH.D.
Director of Health

APPROVED AS TO FORM:

Kathleen Ho, Esq.
Deputy Attorney General

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, as follows:

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

b. Meetings with Board Members and State Department Directors

§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 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 ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;

(3) Two members shall be appointed from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio, voting member of the board;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business; and

(8) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than

one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3; am L 2017, c 174, §3; am L 2018, c 18, §5]

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