

Small Business Regulatory Review Board Meeting

October 21, 2021

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 586-2419

AGENDA

Thursday, October 21, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's October 1, 2021 Emergency Proclamation Related to the State's COVID-19 Delta Response, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

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

Copies of the Board Packet will be available on-line for review at: <https://sbrb.hawaii.gov/meetings/agendas-minutes?yr=2021>. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may request to provide audiovisual oral testimony during the meeting by using the raise hand function when indicated by the Chairperson. Also, members of the public may submit written testimony via e-mail to:

DBEDT.sbrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, October 20, 2021.

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

I. Call to Order

II. Approval of September 16, 2021 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 11 Chapter 55, **Water Pollution Control**, promulgated by Department of Health, as follows – **Discussion Leader – Vice Chair Mary Albitz**

- a. Appendix B, Multi-Sector General Permit (MSGP)

- b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
 - c. Appendix F, Authorizing Discharges of Hydrotesting Water
 - d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
 - e. Appendix K, Small Municipal Separate Storm Sewer Systems
- B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, **Ocean Recreation Management Rules and Areas**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Taryn Rodighiero**
- C. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 16 Chapter 171 Subchapter 3, **Miscellaneous Insurance Rules**, promulgated by Department of Commerce and Consumer Affairs (DCCA) – **Discussion Leader – Taryn Rodighiero**
- IV. **New Business** – Before Public Hearing
- A. Discussion and Action on Proposed Amendments to **Rules and Regulations of the Liquor Control Commission of the County of Kauai**, promulgated by the Department of Liquor Control - County of Kauai – **Discussion Leader – William Lydgate**
- B. Discussion and Action on Proposed Amendments to the **Board of Water Supply Rules and Regulations Chapter I, Water and Water System Requirements for Developments, Section 1-102 Water System Facilities Charges**; and Chapter II, **Water Service to Consumers, Section 2-202 Installation of Water Service**, promulgated by the Board of Water Supply, City and County of Honolulu – **Discussion Leader – Second Vice Chair Jonathan Shick**
- C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 73, **Barbers**, promulgated by DCCA – **Discussion Leader – Taryn Rodighiero**
- D. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 78, **Cosmetology**, promulgated by DCCA – **Discussion Leader – Taryn Rodighiero**
- E. Discussion and Action on Proposed New Administrative Rules Title 23, Chapter 5, **Establishment and Administration of Right-of-Way Widths and Setback Lines for Planned Street and Transit Improvements**, promulgated by Department of Transportation Services – City and County of Honolulu – **Discussion Leader – Second Vice Chair Jonathan Shick**
- F. Discussion and Action on Proposed New HAR Title 4, Chapter 161.1 **Hemp Production**, promulgated by Department of Agriculture – **Discussion Leader – William Lydgate**

V. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Administrative Rules

VI. Next Meeting: Thursday, November 18, 2021 at 10:00 a.m.

VII. Adjournment

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

II. Approval of September 16, 2021 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT** September 16, 2021

I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:05 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF August 19, 2021 MINUTES**

Vice Chair Albitz made a motion to accept the August 19, 2021 meeting minutes, as amended. Second Vice Chair Shick 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 HAR Title 5 Chapter 5-11, Notaries Public, promulgated by Department of the Attorney General

Deputy Attorney General Dean Soma from the Department of the Attorney General stated that the public hearing occurred on July 29th. Prior to the hearing, on July 23rd, all notaries and prospective notaries were emailed the notice of public hearing. The hearing notice was also advertised in the local Hawaii newspapers on July 24th and it was posted on the department's website.

At the remote public hearing, 38 people attended with 5 testifying and 13 submitting written comments. Many of the subsequent proposed changes to the rules came from comments at the public hearing; however, one proposed change for the new notary book retention requirements was statutory so this could not be amended. The majority of the changes related to technology requirements.

Discussion leader Mr. Lydgate commended Mr. Soma and his staff for the excellent outreach to the stakeholders. He also commended the excellent note taking of the testimonies at the public hearing. Chair Cundiff reiterated Mr. Lydgate's sentiments for the great outreach as well as listening to the stakeholders.

Mr. Lydgate motioned to move the proposed amendments after the public hearing to the Governor for adoption. Vice Chair Albitz 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

Chair Cundiff briefly noted that the Phase II task force met recently in a Zoom call and discussed the improvements desired for Phase II. After all of Phase II's objectives were captured, the task force is now in the process of reaching out to NIC Hawaii (previously named HIC, or Hawaii Informational Consortium). Prior to the next board meeting, we will likely have connected with NIC Hawaii and should have an update.

V. NEXT MEETING - Thursday, October 21, 2021 at 10:00 a.m.

VI. ADJOURNMENT – Mr. Lydgate motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:25 a.m.

III. Old Business — After Public Hearing

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Water Pollution Control, promulgated by DOH, as follows:

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

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

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

Administrative Rule Title and Chapter: HAR 11-55, Appendices B, E, F, G, and K

Chapter Name: Water Pollution Control

Contact Person/Title: Darryl Lum/Engineering Section Supervisor

Phone Number: (808) 586-4309

E-mail Address: darryl.lum@doh.hawaii.gov Date: 10/01/2021

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

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

Yes No

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

I. Rule Description: New Repeal Amendment Compilation

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

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

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

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

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

Yes No

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

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

Yes No

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

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

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

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

Please see the attached Response to Comments document.

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

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

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

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

Please see the attached Response to Comments document.

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

Please see the attached Response to Comments document.

4. The number of persons who:
- (i) Attended the public hearing: 19
 - (ii) Testified at the hearing: 0
 - (iii) Submitted written comments: 3

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

Yes No

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

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

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

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

July 2021 Meeting Minutes

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

Discussion leader and Vice Chair Albitz stated that these after public hearing rules essentially did not have any business impacts nor were there any business-related comments at the public hearing.

Mr. Lum explained that these rules are the state's NPDES (National Pollutant Discharge and Elimination System) permit rules. This permit system is required by the federal Clean Water Act and authorizes certain types of point source discharging and storm water discharges to surface waters; the EPA has authorized DOH to administer this program in Hawaii.

This rule package will relocate some of the NPDES permitting rules into this chapter from Chapter 54, which among other changes, added federal regulations from municipal drainage systems.

Of the 44 attendees at the combined virtual public hearing, one person testified on these rules with five organizations and five individuals submitting comments. Mr. Lum expanded upon the comments made at the public hearing by environmental groups; these were also included in the rules packet provided to this Board. However, any changes DOH made to the rules after the public hearing based on these comments did not have any small business impact.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

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

A. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Second Vice Chair Shick stated that many of the rule changes will help streamline and standardize the rules. Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, explained that this proposal was precipitated by changes to the insurance code chapter during the 2021 legislative session.

These changes create a uniform duration of the license and registrations that the Insurance Division provides to insurance licensees and registrants. In addition to housekeeping measures, the main changes will allow the Insurance Division to utilize an electronic system for processing insurance licensing, registration, renewal, and reinstatement fees. The amendments have an effective date of January 1, 2022.

RECEIVED

By SBRRB at 8:58 am, Oct 06, 2021

FILED 9
~~2021~~
OFFICE OF THE DIRECTOR
DEPT. OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
HEARINGS OFFICE

'21 AUG 25 P 1:58

REPORT OF THE HEARINGS OFFICER

Virtual Public Hearing on the proposed reissuance of Appendices B, E, F, G and K of Chapter 11-55 (Water Pollution Control) of the Hawaii Administrative Rules

Pursuant to HRS § 91-3, and in accordance with other applicable laws and regulations, advance notice of a public hearing on the above-described matters was timely published statewide advising that a virtual public hearing thereon would be held on Wednesday, August 25, 2021, at 9:00 a.m. HST via Zoom and telephone, inviting all persons interested in participating or observing to make the arrangements necessary to do so, and indicating how they could arrange to do so and how to advise the Hearings Officer if they wished to speak..

The undersigned Hearings Officer called the public hearing to order on that date at approximately 9:01 a.m. Staff members of the Department of Health were present at the same location to provide support. Nineteen (19) members of the public were present by Zoom, and one (1) was present by telephone.

After a brief introduction by the Hearings Officer, the two persons who had indicated in advance that they wished to testify were allowed an opportunity to do so. However, one was not present, and the other chose not to speak. After that, the Hearings Officer asked if anyone else wanted to speak, including persons who hadn't indicated an interest in doing so, but no one did.

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

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

DATED: Honolulu, Hawaii, August 25, 2021.



Steven Jacobson
Hearings Officer

**Public Comment (July 23, 2021 through August 25, 2021)
Response to Comments on Proposed Draft
National Pollutant Discharge Elimination System (NPDES) General Permits in
Hawaii Administrative Rules (HAR), Chapter 11-55, Appendices B, E, F, G, and K**

Between July 23, 2021 through August 25, 2021, the Department of Health (DOH), Clean Water Branch (CWB) sought early stakeholder written input on proposed draft NPDES General Permits in HAR 11-55 Appendix B (industrial storm water), Appendix E (once through cooling water less than one million gallons per day), Appendix F (hydrotesting), Appendix G (dewatering), and Appendix K (small Municipal Separate Storm Sewer Systems or MS4s). Below are the DOH-CWB responses to the early stakeholder outreach comments received.

State of Hawaii Department of Transportation

Comment 1: *Page 55-B-26, Section 1.2.1.3, Table 1-2*

Increase the NOI submission deadline to 180 days from 90 days for facilities, such as airports, that must develop a comprehensive SWPPP in coordination with tenants.

The new requirements for a Comprehensive SWPPP that includes all tenant information and controls will be very onerous for entities such as DOT Airports Division to meet when dealing with multiple tenants. The timeline of 90 days is unrealistic if the SWPPP must be prepared prior to the submittal of the NOI.

Response: This has been revised.

Comment 2: *Page 55-B-27, Section 1.2.1.3, Table 1-2*

*Revise the deadlines for new operators as follows: New operators of existing industrial activities with discharges previously authorized under the **2013 Appendix B MSGP**.*

The requirement for new operators of existing industrial activities cites discharges previously authorized under the 2013 Appendix B; however, it is not clear how new operators would be covered under the 2013 Appendix B. New operators would have had to file for an individual permit after the expiry of the 2013 Appendix B. Reviewing the corresponding language of the EPA's 2015 MSGP, it appears the correct citation is the current MSGP.

Response: The deadline specified in the MSGP is correct, as it is for situations where a facility's (not the operator) discharge was previously covered under the 2013 Appendix B, and a new operator has since taken operation of the facility. If the facility is covered by an NPDES Individual Permit, the new owner would have to either complete a transfer of permit per 40 CFR 122.62 or submit an NOI to be covered under the MSGP.

Comment 3: *Page 55-B-40, Section 2.1.2.3*

*Suggest the following edits: “Cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth **and keeping the debris surface at least six inches below the lowest outlet pipe.**”*

In some locations, catch basins may have water within six inches below the outlet due to conditions such as ground water level, weather, tidal influence, or discharges to/from connecting conveyances.

Response: This requirement refers to keeping the debris surface at least six inches below the lowest outlet pipe. It is not referring to water depth. No changes have been made to the proposed permit.

Comment 4: *Page 55-B-51, Section 3.1*

*Suggest the following edits: “At least once per calendar year, the routine inspection must be conducted during a period when a stormwater discharge is occurring, **if safe and during normal business hours.**”*

Please clarify the intent of this inspection. In addition, could this be considered one of the four quarterly inspections. Inspections should be done in a safe manner and during normal working hours. Personnel should not be expected to be outside during inclement weather. In addition, some facilities are secured during nonbusiness hours.

Response: The intent is that the permittee will have at least one inspection performed during wet weather per calendar year. Yes, this could be considered one of the four quarterly inspections. If a permittee could not perform an inspection, they would be required to document the reason. No change has been made to the proposed permit.

Comment 5: *Page 55-B-71, Section 5.2.3*

*Suggest clear definition of “**acid rain**”, as it relates to the paragraph. “Acid rain” is a broad term to include any form of precipitation with acidic components.*

Response: Thank you for the comment. The DOH will consider this in the future.

Comment 6: *Page 55-B-84, Section 6.1.6*

*Suggest the following edits: If your facility is located in areas where limited rainfall occurs during parts of the year... You must **still** collect **with the best practical efforts during normal business hours** the required number of samples.*

This requirement can become very cumbersome due to lack of adequate rainfall for sampling, and erratic weatherchanging conditions.

Comment 7: *Page 55-B-98, Section 6.2.4.1*

*Suggest the following edit: “Discharges to impaired waters without a DOH established and EPA approved TMDL: Beginning in the first full quarter following 90 days after permit issuance...you must monitor all pollutants for which the waterbody is impaired... once per year at each **outfall identified or permitted discharge point...**”*

Some facilities may have distinct and identified discharge points rather than outfalls. In addition, we suggest that term “discharge point” be used in place of “outfall” for Appendix B.

Response: Thank you for your comment. The DOH will consider this in the future.

Comment 8: *Page 55-B-309, Section 8.S.3.3*

Clarify whether airport authorities who have filed a “No Exposure Certification (NOE)” is required to prepare a comprehensive SWPPP.

Section 1.4 (page 55-B-32) allows for a Conditional Exclusion for No Exposure. Section 8.2.3.3 states that a single comprehensive SWPPP must be developed for all storm water discharges associated with industrial activity at a facility such as an airport before submittal of any NOIs. Since “NOIs” implies all NOIs for airport industrial users (such as tenants), it is unclear the role and requirement of the comprehensive SWPPP if the airport authority or any of its tenants have obtained a NOE and is not required to file an NOI or SWPPP. Would the comprehensive SWPPP apply only to the airport operators that do not obtain a NOE?

Response: A comprehensive SWPPP is always required for airports that obtain coverage under Appendix B. A comprehensive SWPPP does not apply to tenants under a Conditional No Exposure Exclusion.

Comment 9: *Page 55-K-6, Section 4(a)*

*Suggest leaving the 30 days instead of revising for 180 days: “New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete NOI no later than **thirty 180 calendar** days before the proposed starting date of the discharge.”*

Request that the existing 30-day submittal requirement for new permittees be unchanged. Additionally, recommend better defining “the proposed starting date of the discharge” for new permittees. The proposed change from 30 days to 180 days seems onerous.

In addition, for an MS4 system that is in place, what would the “starting date of the discharge” be for new permittees?

Is there a “regulation date” by which the system is judged to be a regulated MS4? Recommend clarification.

Response: The 2-step approach requires a longer processing time and accounts for DOH’s review, request for additional information, public comment

period, response to comments, and time for DOH to determine the final permit conditions. Therefore, the 180 days is necessary.

The starting date for the discharge of an MS4 system that is in place, is the date the Permittee may be assumed to be covered under an NPDES permit. All discharges occurring before this date and before the Notice of General Permit Coverage is issued are not covered.

The regulation date is after the urban area has been identified in the U.S. decennial census and the DOH has notified the municipality of the deadline to apply for coverage.

Comment 10: *Page 55-K-14, Section 6(c)*

*Recommend the following revision: “**Any m** Modifications to the BMPs and measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed.”*

We are concerned that the language in this section could discourage permittees from enhancing their program beyond the BMPs and measurable goals in the SWMP if an opportunity to do so arises over a 5-year permit cycle. In addition, something proposed in the SWMP might not provide the benefit sought and the permittee may develop an alternative approach to better meet or exceed the same goals. The rigidity of the proposed language (i.e., “ANY modifications...”) could discourage permittees from adapting the program measures to meet desired outcomes. While the measurable goals may be protected, we believe it is better for there to be more flexibility in the BMPs or measures themselves.

Response: The recommended revision will not provide adequate public notice and opportunity to request a hearing. Please refer to the MS4 remand rule. We recommend that your SWMP be flexible by containing a “toolbox” of all potential BMPs and alternative approaches for you to choose from.

Comment 11: *Page 55-K-16, Section 8(a)(ii)*

*Recommend clarification of the second paragraph by revising to read: “As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions, **unless an I&M Plan has already been developed by the DOH.** If compliance is expected to take longer than **1 year 4-year** after **DOH approval preparation** of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that **meets** the requirements of 40 CFR 122.47.”*

The revised language will provide clarification that an I&M plan will not need to be developed if already developed by the DOH and that the compliance timeline should begin after DOH approval of the Permittee's I&M Plan. Other revisions are grammatical.

Response: A Permittee specific I&M plan will still be required even if an I&M plan were developed by DOH. No changes were made to the proposed Appendix K from this comment.

Comment 12: *Page 55-K-18, Section 8(b)(iii)*

*Recommend clarification of the statement by revising to read: "A detailed and quantitative analysis which demonstrates that the proposed activities would **provide ensure** consistency with the WLA reductions consistent with the assumptions of the associated TMDL document."*

An analysis can demonstrate that the proposed activities are consistent with requirements but cannot reasonably ensure consistency.

Response: The DOH prefers the word "ensure" as it means to make something certain. No changes have been made to the proposed Appendix K from this comment.

Comment 13: *Appendix K Fact Sheet*

*(1) A brief description of the type of facility or activity which is the subject of the draft permit (3) Suggest the following edits: "This term includes systems similar to separate storm sewer systems in municipalities, such as systems at ~~military bases~~, large hospital or prison complexes, and **non-traditional MS4s (such as State of Hawaii Department of Transportation) highways and other thoroughfares.***

EPA recognizes the difference between traditional MS4s, county or local storm sewer systems and the non-traditional MS4s, such as department of transportations (See website: <https://www.epa.gov/npdes/stormwater-discharge-transportation-sources>). Non-traditional MS4s have unique circumstances and different issues to address than a traditional MS4.

The unique circumstances and the ability to be flexible to address non-traditional MS4 issues is confirmed in Part 4 of the DOH Fact Sheet which states " This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of its MS4s and for non-traditional MS4s (e.g. state department of transportation, public universities, and military bases).

Response: Thank you for the comment. No revision necessary.

County of Maui

Comment 1: *Chapter 11-55, Appendix B §1.2.1.3, Table 1-2.*

NOI Submittal Deadlines and Discharge Authorization Dates. The requirement for new operators of existing industrial activities cites discharges previously authorized under the 2013 Appendix B; however, it is not clear how new operators would be covered under the 2013 Appendix B. New operators would have had to file for an individual permit after the expiry of the 2013 Appendix B. Reviewing the corresponding language of the EPA's 2015 MSGP, it appears the language should be revised to, "New operators of existing industrial activities with discharges previously authorized under the MSGP."

Response: Please see response to Department of Transportation's Comment 2.

Comment 2: *Chapter 11-55, Appendix K §4(a).*

This section states that "New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete NOI no later than [thirty] 180 calendar days before the proposed starting date of the discharge." The change from 30 days to 180 days seems onerous. In addition, for an MS4 system that is in place, what would the "starting date of the discharge" be for new permittees? Is there a "regulation date" by which the system is judged to be a regulated MS4? Recommend clarification. Also, how would this time period apply if an existing Permittee's regulated MS4 is expanded geographically? As an existing permittee, is a new NOI and updated SWMP due within 120 calendar days from the date a new UA is identified or the existing UA is expanded (i.e., new census report date) or 180 calendar days before the "starting date of the discharge" as defined in response to the above?

Response: Please see response to Department of Transportation's Comment 9 regarding the "regulation date" and new permittee requirements. Whenever the results of a census causes a designation of a new permittee or causes an expansion of a regulated area of an existing MS4, the CWB will contact the affected permittees with instructions and deadlines.

Comment 3: *Chapter 11-55, Appendix K §6(c).*

The following paragraph was added at the end of this section: "Any modifications to the BMPs and measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed." We are concerned that, without clarification, this language could discourage permittees from enhancing their program beyond the BMPs and measurable goals in the SWMP if an opportunity to do so arises over a 5-year permit cycle. In addition,

something proposed in the SWMP might not provide the benefit sought and the permittee may develop an alternative approach that was previously unforeseen to better meet or exceed the same goals. The rigidity of the proposed language (i.e., “ANY modifications...”) could discourage permittees from adapting the program measures to meet desired outcomes. While the measurable goals may be protected, we believe it is better for there to be more flexibility in the BMPs or measures themselves. We recommend the following revision:

“[Any m]Modifications to the [BMPs and]measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed.”

Response: Please see response to Department of Transportation’s Comment 10.

Comment 4: *Chapter 11-55, Appendix K §8(a)(ii)*

Recommend clarification of the second paragraph by revising to read, “As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee’s approach to proposed activities for compliance with the WLA reductions, unless an I&M Plan has already been developed by the DOH. If compliance is expected to take longer than 1 year [1-year] after DOH approval [preparation] of the Permittee’s I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meets the requirements of 40 CFR 122.47.

Response: Please see response to Department of Transportation’s Comment 11.

Comment 5: *Chapter 11-55, Appendix K §8(b)(iii)*

Recommend clarification of the statement by revising to read, “A detailed and quantitative analysis which demonstrates that the proposed activities would provide [ensure] consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

Response: Please see response to Department of Transportation’s Comment 12.

City and County of Honolulu Department of Facility Maintenance

Comment 1: *Definition of “New Discharger” and “New Source.”*

The 2018 State of Hawaii Water Quality Monitoring and Assessment Report lists 58 inland water bodies and 78 marine water bodies on Oahu as impaired for at least one (1) pollutant (Source: <https://health.hawaii.gov/cwb/files/2018/09/Final-2018-State-of-Hawaii-Water-Quality-Monitoring-Assessment-Report.pdf>).

Appendix B Section 1.1.4.8 (Parts 1-7 PDF page 21) states that “new dischargers” or “new sources” are “ineligible for coverage under this permit [if they] discharge to an “impaired water,” unless the permittee takes additional steps such as preventing exposure of pollutants to stormwater or demonstrating to the DOH that the facility’s discharge will not exceed water quality standards. The City is concerned that this restriction may make it cost-prohibitive to construct new facilities in areas discharging to impaired waters. This restriction may affect City’s ability to provide services to certain areas.

The City requests that the DOH provide further clarification within Appendix B on the definition of “new discharger” and “new source.”

Response: Thank you for your concerns. If a waterbody is already impaired, the DOH, at a minimum, is responsible for preventing further impairment. Please see Section 1.1.4.7 of the proposed Appendix B for the definitions of “New Discharger” and “New Source”.

Comment 2: *Requirements Related to Monitoring for Impaired Pollutants.*

The 2018 State of Hawaii Water Quality Monitoring and Assessment Report lists 58 inland water bodies and 78 marine water bodies on Oahu as impaired for at least one (1) pollutant. The report states that “nutrients are the second leading cause of water quality exceedances” (Source: <https://health.hawaii.gov/cwb/files/2018/09/Final-2018-State-of-Hawaii-Water-Quality-Monitoring-Assessment-Report.pdf>).

The Appendix B permit fact Section 3 (Fact Sheet PDF page 7) indicates that monitoring is only required “if a parameter has been identified as having a benchmark or effluent limitation in the EPA’s 2015 MSGP or if the discharge is to an impaired waterbody.” The fact sheet further indicates on Fact Sheet PDF Page 7 that “TSS, TP, Nitrate+Nitrite Nitrogen, Oil and Grease, and pH, monitoring...[were] removed because if a sector didn’t already require that pollutant to be monitored in the EPA’s 2015 MSGP, then the EPA had already ruled out that pollutant to be a pollutant of concern.”

However, Appendix B Section 6.2.4.1 (Parts 1-7 PDF page 98) states that permittees “must monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136) once per year...”

The City requests that the DOH provide further clarification within Appendix B that though monitoring is required for impaired pollutants, there are no benchmarks, numeric effluent limits, or corrective action requirements associated with this requirement.

Response: The requirements for benchmark monitoring and numeric effluent limits are based solely on the facility’s sector. If there is an established benchmark monitoring requirement or effluent limitation (even for TSS,

TP, Nitrate + Nitrite Nitrogen, Oil and Grease, and pH) the facility is required to comply with the monitoring and limitation requirements.

While it is true that impairment monitoring does not trigger additional benchmark monitoring, effluent limitation, or corrective action requirements (i.e., beyond those required by the applicable sector), the facility must still comply with all sections of the general permit that specify the requirements for monitoring of discharges to impaired waterbodies. It should also be noted that regardless of impairment status of the waterbody, if the facility causes any violations of the State's basic water quality criteria applicable to all waters, corrective actions may be required as specified in the general permit.

Based on this, Fact Sheet PDF Page 7 was revised to add: "However, it should be noted that to be consistent with EPA's 2015 MSGP, a facility may be required to monitor for these pollutants if the receiving waterbody is impaired for these pollutants. Although we had removed TSS, TP, Nitrate + Nitrite Nitrogen, Oil and Grease, and pH monitoring requirements applicable to all facilities (not including ELGs, or benchmarks established in EPA's 2015 MSGP), they are still considered pollutants of concern if the receiving waterbody is impaired for that pollutant."

Comment 3: *Monitoring for Trash.*

Appendix B Section 6.2.4.1 (Parts 1-7 PDF page 98) states that permittees "must monitor all pollutants for which the waterbody is impaired and for which a standard analytical method exists (see 40 CFR Part 136) once per year..." Certain water bodies on Oahu are impaired for trash. It is the City's understanding that no standard analytical method exists in 40 CFR Part 136 for trash. Therefore, the City requests that the DOH provide further clarification within Appendix B that no monitoring for trash is required as part of permittee's impaired waters monitoring.

Response: Thank you for your comment. This is correct, as there is no 40 CFR Part 136 analytical method established for trash, there is no impaired monitoring requirements (i.e., annual sampling and monitoring) for trash. It should be noted however, that Appendix B requires compliance with the basic water quality criteria, which also includes (among other requirements) that waters shall be free of "Floating debris, oil, grease, scum, or other floating materials; Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;" [HAR 11-54-4(a)(2) and (3)].

Comment 4: *Definition of "Economically Practicable."*

The City requests that the DOH provide further clarification within Appendix B on the definition of the term “economically practicable” as used in Appendix B Section 1.1.3.1 (Parts 1-7 PDF page 16), Section 2 (Parts 1-7 PDF page 35), Section 4.2 (Parts 1-7 PDF page 62), Section 5.5 (Parts 1-7 PDF page 83), Section 6.2.1.2 (Parts 1-7 PDF page 90), and Section 7.5 (Parts 1-7 PDF page 104).

Response: Thank you for your comment. Please refer to the entire phrase in the permit where the term “economically practicable” is used. For example, refer to Section 1.1.3.1 where it states: “Minimize – for the purposes of this permit, minimize means to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practices.” As each industry has different practices, situations, and factors to consider, the definition of “economically practicable” would vary from industry to industry, and therefore, it is infeasible for DOH to have a more inflexible overarching definition applicable to all industries.

Comment 5: *Documentation of Infeasibility.*

The term “unless infeasible” prefaces several permit requirements in Appendix B Section 2.1.2.1 (Parts 1-7 PDF page 38) and throughout Section 8. The City requests that the DOH provide further clarification within Appendix B as to whether, if a permittee determines a permit requirement is infeasible, a permittee is required to document the rationale for this determination.

Response: Thank you for your comment. If a permittee determines a permit requirement is infeasible, a permittee is not required to document the rationale for this determination. However, if no rationale or justification for this determination is available, it is assumed the requirement is feasible and failure to comply with the requirement would be a non-compliance.

Comment 6: *Timing of Monitoring Report Results.*

Appendix B Section 6.2.2.3 (Parts 1-7 PDF page 96) and Section 7.6 (Parts 1-7 PDF page 104) each state that the permittee must submit an Exceedance report no later than 30 days after receiving laboratory results. For ease of reference, the City hereinafter refers to this requirement as “Rule 1.”

Section 7.4 (Parts 1-7 PDF page 102) states that “all monitoring data collected pursuant to Part 6.2 must be submitted to DOH via the e-Permitting Portal and also using an electronic reporting method no later than the 28th day following the month when the samples were taken.” (emphasis added). For ease of reference, the City hereinafter refers to this requirement as “Rule 2.”

The City requests that the DOH revise Section 7.4 (Parts 1-7 PDF page 102) to state that “all monitoring data collected pursuant to Part 6.2 must be submitted to DOH via the e-Permitting Portal and also using an electronic reporting method no later than 30 days after receiving laboratory results”. Permittees have little control over laboratory turn-around time, and therefore the “clock” for permittees to report results to the DOH should start when the permittee receives lab results.

Response: Thank you for your comment, however no revisions were made.

Comment 7: *Definition of Qualified Person.*

Appendix B Part 3.1 (Parts 1-7 PDF page 53) states that inspections of permitted facilities must be performed by “qualified personnel.” Part 5.1 (Parts 1-7 PDF page 67) states that the stormwater pollution prevention plan must be developed by a “qualified person.”

Appendix B defines “qualified persons” as “...those who are knowledgeable in the principles and practices of industrial storm water controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact storm water quality, and the education and ability to assess the effectiveness of storm water controls selected and installed to meet the requirements of the permit.”

The City requests that the DOH provide further clarification within Appendix B regarding the definition of “qualified persons” in the following areas:

- 1. The current definition in Appendix B references “education” as a determining factor as to whether a person is “qualified.” Does “education” refer to formal classroom education, such as a bachelor’s or master’s degree?*
- 2. Can “education” include certification courses such as EnviroCert International’s Certified Professional in Industrial Stormwater Management (CPISM)?*
- 3. Could a person be considered “qualified” if they were trained by someone else with CPISM certification?*
- 4. Would the DOH consider offering formal courses to become a qualified person as defined in Appendix B?*

Response: Thank you for your comment. It is the permittee’s responsibility to determine if a person is qualified.

Comment 8: *Photographic Documentation of Control Measure/Storm Water Pollution Prevention Plan (SWPPP) Implementation.*

Appendix B Part 6.2.2.3 (Parts 1-7 PDF page 96) requires that, concurrent with required stormwater monitoring, the permittee must collect and submit to the DOH photographic documentation of control measures and/or pollution control measures included in a SWPPP implemented for permit compliance purposes.

The City requests that the DOH provide further clarification within Appendix B as to whether photographs must be collected and submitted for all control measures and/or pollution control measures included in the SWPPP.

The City further requests that the DOH specify that photographs need only be collected and submitted within the drainage area that is being monitored.

Finally, the City requests that the DOH provide further guidance within Appendix B regarding collecting photographs at night and at facilities with security concerns such as wastewater treatment plants.

Response: Thank you for your comment. The permit says photo documentation of control measures and/or pollution control measures are required. The permit does not limit photo documentation to only areas that are being monitored.

It is up to the permittee to resolve any concerns for collecting photographs at night and at facilities with security concerns.

HAR, Chapter 11-55, Appendix B, Multi-Sector General Permit (MSGP) Fact Sheet

In accordance with NPDES regulations at 40 CFR 124.8(a) and 124.8(b) the following information is provided for HAR, Chapter 11-55, Appendix B.

1. A brief description of the type of facility or activity which is the subject of the draft permit;

The proposed Appendix B, MSGP covers storm water discharges from industrial activities. Industrial activities regulated under 40 CFR 122.26(b)(14) that meet the eligibility provisions described in Part 1.1 of the permit are subject to the proposed HAR, Chapter 11-55, Appendix B, Multi-Sector General Permit (MSGP), except construction activities at 40 CFR 122.26(b)(14)(x).

The proposed Appendix B, MSGP is available for the following 29 sectors of industrial activities, as well as any discharges not covered under the 29 sectors (Sector AD) that has been identified by the Department of Health (DOH) as appropriate for coverage. The sector descriptions are based on Standard Industrial Classification (SIC) codes and Industrial Activity Codes consistent with the definition of storm water discharge associated with industrial activity at 40 CFR 122.26(b)(14)(i-ix, xi). The sectors are listed below:

Sector A – Timber Products	Sector P – Land Transportation
Sector B – Paper and Allied Products Manufacturing	Sector Q – Water Transportation
Sector C – Chemical and Allied Products Manufacturing	Sector R – Ship and Boat Building or Repairing Yards
Sector D – Asphalt Paving and Roofing Materials Manufactures and Lubricant	Sector S – Air Transportation Facilities
Sector E – Glass, Clay, Cement, Concrete, and Gypsum Product	Sector T – Treatment Works
Sector F – Primary Metals	Sector U – Food and Kindred Products
Sector G – Metal Mining (Ore Mining and Dressing)	Sector V – Textile Mills, Apparel, and other Fabric Products Manufacturing
Sector H – Coal Mines and Coal Mining-Related Facilities	Sector W – Furniture and Fixtures
Sector I – Oil and Gas Extraction and Refining	Sector X – Printing and Publishing
Sector J – Mineral Mining and Dressing	Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Sector K – Hazardous Waste Treatment Storage or Disposal	Sector Z – Leather Tanning and Finishing

Sector L – Landfills and Land Application Sites	Sector AA – Fabricated Metal Products
Sector M – Automobile Salvage Yards	Sector AB – Transportation Equipment, Industrial or Commercial Machinery
Sector N – Scrap Recycling Facilities	Sector AC – Electronic, Electrical, Photographic and Optical Goods
Sector O – Steam Electric Generating Facilities	Sector AD – Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director

Currently, an estimated 170 industrial facilities are authorized to discharge (or are “covered”) by the existing Appendix B.

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

Storm water discharge associated with industrial activity, including certain allowable non-storm water.

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR 124.9 (for EPA-issued permits);

Basis for Draft Permit Conditions

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and... recreation in and on the water.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the CWA, which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the NPDES program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 47990. EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). In November of 1974, EPA authorized DOH to administer the

NPDES permit program in Hawaii. DOH's proposal is to issue Appendix B, MSGP under this statutory and regulatory authority.

In accordance with HAR 11-55-02(c), 11-55-19(a)(4)(B), and 40 CFR 123.25(a), the proposed revisions were meant to be consistent with the EPA's 2015 MSGP, which the DOH also believes is appropriate for Hawaii. Requirements from EPA's 2015 MSGP that were included in this proposed Appendix B, MSGP include eligibility requirements; allowable non-storm water discharges; control measures; non-numeric technology-based effluent limitations; Effluent Limitations Guidelines; benchmark and other monitoring requirements; requirements for discharges to impaired waters; inspection requirements; escalating actions for benchmark exceedances; Storm Water Pollution Prevention Plan requirements; reporting and record keeping requirements; and sector specific requirements.

The EPA's 2015 MSGP became effective on August 12, 2015 and all documents related to it, including the Fact Sheet are available at:

<https://www.epa.gov/npdes/final-2015-msgp-documents>. DOH's intent was to develop a permit modelled after the EPA's 2015 MSGP. Thus, the DOH recommends those interested in this Fact Sheet to refer to the EPA's 2015 MSGP Fact Sheet as the primary resource. Please also refer to the previous versions of the EPA's MSGP available at: <https://www.epa.gov/npdes/previous-versions-epas-msgp-documents> for information about how the EPA's MSGP has evolved to the 2015 version.

A majority of the requirements within this proposed Appendix B are the same as in the EPA's 2015 MSGP, however, the proposed Appendix B, MSGP was revised in consideration of the State's Administrative Rules and for situations not applicable to Hawaii (e.g., deicing, salt storage, Tier waters, etc.). Additionally, the proposed Appendix B, MSGP was revised from the previous version to allow certain sectors (refer to Table 1-1 of the permit) with Effluent Limitation Guidelines (ELGs) to be covered under this general permit, allow discharges to all State waters, except for discharges in or to natural freshwater lakes, saline lakes, or anchialine pools, and implement benchmark monitoring (if applicable) in lieu of previously required compliance with water quality-based numeric effluent limitations. If a sector has both benchmark and ELGs, both shall apply, however only the exceedance of the ELG would be a violation of the permit. For an exceedance of a benchmark, a violation would occur upon the Permittee's failure to implement corrective actions, which includes escalating levels of corrective actions. The proposed revision aims to require Permittees to implement corrective actions by making the facility's failure to implement corrective actions a violation of the permit, unless a sector specific ELG has already been promulgated. For the development of ELGs, please refer to the Federal Notice and Fact Sheets for EPA's previous versions at the website address provided above.

On Page 55-B-26, in Table 1-2, under “NOI Submission Deadline”, “No later than 90 days after permit issuance, unless DOH notifies you that your deadline is extended” was increased to 180 days so that facilities, such as airports, can develop a more comprehensive SWPPP in coordination with their tenants.

In the previous permit, exceedance of a numeric effluent limitation was a violation of the permit. However, the permit wasn't clear if a facility's failure to implement corrective actions to address the exceedance was also a violation (which made enforcement difficult). The DOH believes that the implementation of corrective actions, and if necessary numerous escalating actions, by the Permittee to be more important and a more effective method of removing pollutants prior to discharge from the facility. This is conceptually consistent with the approach taken by EPA's 2015 MSGP. The intent is to place greater emphasis on having the Permittee implement corrective actions to minimize further pollutant discharges. The permit violation occurs upon the Permittee's failure to take corrective actions when an exceedance of a benchmark occurs, since the implementation of corrective actions serves as the mechanism for the reduction of the pollutants in regulated discharge.

Also, DOH is modifying the permit compliance evaluation to focus on the Permittee's failure to take corrective action as a response to comments received regarding whether it is reasonable to assign numeric effluent limits for industrial storm water discharges based on the State's Water Quality Standards. The DOH has held multiple stakeholder meetings with various Permittees, including Federal, State, and County government agencies, who have all expressed concerns about the practicality of numeric Water Quality-Based Effluent Limitation (WQBELs) for industrial storm water discharges. After considering the concerns of the Permittees and evaluating the previous permit, the DOH has determined that it is no longer feasible to establish numeric WQBELs for industrial storm water discharges; BMPs shall be utilized when numeric effluent limits are infeasible per 40 CFR 122.44(k); and the benchmark monitoring and BMPs in the proposed Appendix B MSGP are appropriate WQBELs. Below are the reasons why the DOH believes the numeric WQBELs from the previous permit are no longer practicable:

- Storm events are variable in nature and the pollutants in the storm water that may or may not originate from the facility.
- It is challenging to objectively determine if a facility is in compliance with its permit requirements. The DOH acknowledges that requiring industrial storm water Permittees to comply with numeric WQBELs is viewed as an easier way to measure compliance, but it is not as simple as selecting a number directly from our WQS due to the unique nature of storm events and storm water discharges.
- There are pollutants in storm water discharges that did not originate from the facility (e.g., neighbor facility's run on, atmospheric deposition, etc.) or the

Permittee may not have the means to control the pollutant, and therefore, must be given special consideration.

- Monitoring for enforcement of numeric effluent limits is challenging. While spot checks can be made at some of the outfalls, there is a wide variation in storm water quality from area to area, facility to facility, and storm to storm. Geographical location and land use are important factors affecting storm water quality for most constituents. Since the storm-to-storm variation at any outfall can be high, it is unreasonable to expect all runoff levels to be below a numeric value. Also, there could be a number of storm events each year that are large in volume and/or intensity that can exceed the design capacity volume or flow rates of most BMPs. Assessing compliance during these larger events represents another challenge for DOH and the Permittee.
- There is no single protocol that enables an engineer to design with certainty a BMP that will produce a desired outflow concentration for a constituent of concern. Even if DOH uses % removal, it will vary directly with the inflow concentration. It will take substantial research to develop design criteria for the removal of pollutants with confidence intervals that enable DOH to make reliable estimates of the median and variance of the effluent concentrations expected from the various types of BMPs. Until this is done, it is infeasible and impracticable at this time to develop applicable numeric effluent limits for a particular type of BMP.
- Many facilities rely on non-structural control measures, which have a high degree of variability and accordingly performance; thus, creating a challenge to set numeric effluent limits because little is known about performance levels of non-structural controls.
- DOH considers the optimum balance between economic development of businesses subject to storm water regulations and environmental quality to satisfy public interest concerns.

The State has adopted its own WQS in HAR, Chapter 11-54, Water Quality Standards. The proposed Appendix B includes non-numeric WQBELs to ensure the authorized discharges will be controlled as necessary to meet applicable water quality standards. The provisions of Part 2.2 constitute the WQBELs of the proposed Appendix B, and supplement the permit's technology-based effluent limits in Part 2.1.

The WQBELs ensure that MSGP-authorized discharges will be controlled as necessary to meet applicable water quality standards, pursuant to CWA section 301(b)(1)(C) and 40 CFR 122.44(d)(1). The provisions of Part 2.2 constitute the WQBELs of the 2015 MSGP and supplement the permit's technology-based effluent limits in Part 2.1. The following is a list of the permit's WQBEL requirements:

- Use control measures to treat discharges as necessary to meet applicable water quality standards (i.e., discharges must not cause or contribute to a violation of applicable water quality standards) (See Part 2.2.1);

- Implement additional control measures that are necessary to be consistent with the assumptions and requirements of the applicable Total Maximum Daily Load (TMDL) and its Waste Load Allocation (WLA) [See Part 2.2.2.1]. For discharges to impaired waters without a TMDL, conduct impaired waters monitoring (See Part 2.2.2.2). Additionally, Permittees of new discharges to impaired waters must implement any measures required per the Part 1.1.4.8 eligibility requirements;

Prior to or after initial discharge authorization, DOH may require Permittees to implement additional measures on a facility-specific basis (i.e. conduct additional monitoring for pollutants of concern), or require Permittees to obtain coverage under an individual permit, if information in the NOI, required reports, or other sources indicate that, after complying with the technology-based limits in Part 2.1 and the WQBELs in Part 2.2, discharges will not be controlled as necessary to meet water quality standards.

Facilities that achieve the permit's technology-based limits through the careful selection, design, installation, and implementation of effective control measures are likely to be controlling their storm water discharges to a degree that would make additional water quality-based measures unnecessary. However, to ensure that this is so, the permit contains additional provisions in Part 2.2, which, along with the BAT/BPT/BCT limits in the permit, are as stringent as necessary to achieve water quality standards.

The WQBELs included in the permit are non-numeric. DOH, consistent with the EPA's 2015 MSGP, relies on narrative water quality-based effluent limits to ensure discharges are controlled as necessary to meet applicable water quality standards, to ensure that additional measures are employed where necessary to meet the narrative WQBELs, and to be consistent with the assumptions and requirements of an applicable TMDL and its WLAs. This is a reasonable approach for the proposed Appendix B, MSGP, based on the following considerations:

- Receiving waterbody information is not available for individual Permittees. Receiving waterbody information is necessary for DOH to determine what, if any, special protections apply to that waterbody.
- The EPA, along with the DOH, realizes there are greater cost burdens associated with analytical monitoring in comparison to visual examinations.
- If the Permittee is unwilling or unable to implement the required control measures, then the facility is not eligible for MSGP coverage and must instead apply for an individual permit.

The proposed Appendix B, MSGP maintains its regulatory authority under the CWA even as it shifts from numeric to narrative based water quality-based requirements. Importantly, the permittee shall not cause or contribute to a

violation of the basic water quality criteria specified in HAR 11-54-4(a) and (b) - refer to HAR 11-55, Appendix A, Department of Health Standard General Permit Conditions.

DOH has removed monitoring requirements for the parameters listed in the existing Appendix B, Table 34.1 (as discussed below), unless a parameter has been identified as having a benchmark or effluent limitation in the EPA's 2015 MSGP or if the discharge is to an impaired waterbody. In its place, the proposed Appendix B, MSGP has added detailed language to better describe the requirements necessary to meet the DOH expectations and thereby comply with the water quality-based permit conditions. Specifically, the language has been expanded within the Control Measures (Part 2), Inspections (Part 3), and Corrective Action (Part 4) parts of the proposed permit and as a result, DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards in all receiving water classifications.

In addition, the proposed Appendix B, MSGP follows the EPA's 2015 MSGP in covering certain allowable sources of non-storm water which have been both the EPA's and DOH's long standing practice of allowing those discharges from Municipal Separate Storm Sewer Systems (MS4s).

Currently in the existing Appendix B, Table 34.1, monitoring is required for Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Total Phosphorus (TP), Total Nitrogen (TN), Nitrate+Nitrite Nitrogen, Oil and Grease, pH and toxic parameters. DOH has determined that since WQBELs do not exist for BOD and COD, this requirement would be removed, unless a benchmark or effluent limit exists in the EPA's 2015 MSGP, as it only increased the cost for permittees to comply without any reported direct benefit to water quality or enforcement action. For TSS, TP, Nitrate+Nitrite Nitrogen, Oil and Grease, and pH, monitoring was also removed because if a sector didn't already require that pollutant to be monitored in the EPA's 2015 MSGP, then the EPA had already ruled out that pollutant to be a pollutant of concern. **However, it should be noted that to be consistent with EPA's 2015 MSGP, a facility may be required to monitor for these pollutants if the receiving waterbody is impaired for these pollutants. Although we had removed TSS, TP, Nitrate + Nitrite Nitrogen, Oil and Grease, and pH monitoring requirements applicable to all facilities (not including ELGs, or benchmarks established in EPA's 2015 MSGP), they are still considered pollutants of concern if the receiving waterbody is impaired for that pollutant.**

Toxics monitoring has been removed in the proposed Appendix B because, as discussed in the 2015 EPA's MSGP Fact Sheet, page 21 of 80: "EPA has determined that the technology-based numeric and non-numeric effluent limits in the 2015 MSGP, taken as a whole, constitute BPT for all pollutants, BCT for

conventional pollutants, and BAT for toxic and nonconventional pollutants that may be discharged in industrial storm water.” The DOH has incorporated the same technology-based numeric and non-numeric effluent limits in its proposed Appendix B. Besides those modifications to the EPA’s 2015 MSGP required to make the permit appropriate for the State (e.g., formatting, revising references to the EPA/Agency, workflow, etc.), the only substantive changes to the concepts within EPA’s 2015 MSGP were:

- 1) Deleting coverage to those facilities that use polymers and/or chemical treatments as part of their controls. Consistent with DOH’s HAR Chapter 11-55 Appendix C, coverage is not eligible if polymers are used, and
- 2) Deleting those requirements found in the EPA’s 2015 MSGP that are not currently applicable. Those not applicable to the State include requirements for: Endangered and Threatened Species and Critical Habitat as part of the Endangered Species Act Consultation or ESA Section 10 permit as required for the Federal Government; Historical Properties Preservation; Tribal areas; rail lines, salt storage piles or piles containing salt; areas subject to snow, snowmelt, and other requirements intended for other States/Regions.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l). The effluent limitations established in the proposed Appendix B, MSGP are consistent with State and federal anti-backsliding regulations because they are at least as stringent as those in the previous permit and are consistent with both State and federal anti-backsliding regulations [CWA Section 303(d)(4)(B) exception to the anti-backsliding provisions].

The previous permit contained monitoring requirements, numeric effluent limitations, inspection requirements, and requirements to comply with any applicable TMDL, WLA. The proposed Appendix B, MSGP is based on the EPA’s 2015 MSGP and contains additional and more prescriptive monitoring and inspection requirements, and also requires compliance with any applicable TMDL WLA. Requirements from EPA’s 2015 MSGP that were included in this proposed Appendix B, MSGP include eligibility requirements; allowable non-storm water discharges; control measures; non-numeric technology-based effluent limitations; Effluent Limitations Guidelines; benchmark and other monitoring requirements; requirements for discharges to impaired waters; inspections; escalating actions for benchmark exceedances; Storm Water Pollution Prevention Plan requirements; reporting and record keeping requirements; and sector specific requirements. The storm water requirements in the proposed Appendix B,

MSGP, in lieu of numeric effluent limitations, establishes non-numeric effluent limitations for storm water, including control measures, inspections, benchmarks, corrective actions, etc.) which when used in combination, are as, or more stringent than the numeric limitations. Additionally, Part 4 of the proposed Appendix B, MSGP contains an escalating corrective action requirement for repeated or excessive storm water results above benchmark levels. These escalating actions provide additional requirements so that Permittees will be more attentive, thoughtful, and complete in their initial responses/actions to reduce storm water pollutants from discharging and entering receiving water bodies and degrading water quality.

Additional requirements were added to the proposed Appendix B, MSGP that makes it more stringent than the previous permit:

- Part 1.1.4.5 of the proposed Appendix B, MSGP - Specifies that discharges that fail to comply with the narrative and numeric permit requirements are not authorized and may be subject to enforcement and applicable penalties.
- Parts 2.1 and 2.11 of the proposed Appendix B, MSGP – Requires control measures to be selected, designed, installed, and implemented in accordance with good engineering practice, manufacturers specifications, and the DOH direction.
- Part 2.2.1 of the proposed Appendix B, MSGP – Contains a narrative WQBEL from HAR 11-54-4 and specifies that the DOH can require a Permittee to undertake additional control measures (to meet the narrative water quality-based effluent limit) on a site-specific basis.

Consistent with HAR 11-54-4, Basic Water Quality Criteria Applicable to All Waters, this permit establishes a narrative WQBEL that prohibits discharges which cause or contribute to a State water exceeding or otherwise not complying with basic water quality criteria. Discharges authorized by this permit shall not include: 1) materials or substances that will settle to form sludge or bottom deposits; 2) floating debris, grease, oil, scum or other floating materials; 3) substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters; 4) high or low temperature effluent, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water; 5) substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and, 6) soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways;

subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

Storm water discharges authorized by this permit shall be of the quality necessary to comply with the basic water quality criteria identified above. Permittees shall achieve this by either isolating industrial activities from contact with industrial or other pollution generating activities or by treatment, implementation of best management practices, control measures, or other methods. Discharges which fail to meet the WQBEL above are in non-compliance with this permit and may be subject to enforcement actions as authorized by law.

- Parts 1.2.3 and 2.2.1 of the proposed Appendix B – Specifies that the DOH can require a Permittee under the proposed Appendix B to obtain coverage under an individual NPDES permit if there is information from any source indicating that the Permittee’s discharge is not being controlled as necessary to meet applicable water quality standards.
- Parts 4.1 and 4.2 of the proposed Appendix B, MSGP – Specifies that SWPPP review and revision must be done when specified by the DOH and so that DOH has no further technical comments or requirements.
- Parts 6, 6.2, and 6.3 of the proposed Appendix B, MSGP - Requires the Permittee to provide and submit photo documentation of the control measures and SWPPP implementation.

As authorized by HRS 342d-55(d), this permit requires monitoring of storm water discharges as well as photographic documentation of control measure implementation. This permit relies on multiple methods of monitoring, including, visual inspections as well as discharge sampling. To correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required, this permit requires the Permittee to take and retain photographic documentation of control measure/SWPPP implementation when storm water discharge sampling is required. Photograph documentation of control measure/SWPPP implementation coupled with chemical analysis of discharge samples ensures Permittees and the DOH have adequate information to determine effectiveness of control measures/SWPPPs and whether the Permittee is complying with the terms of the permit. The photographic documentation is to be treated consistent with other data associated with analytical storm water monitoring and both maintained and submitted by the Permittee. Given that monitoring information is to be electronically submitted, along with the prevalence of digital cameras, requiring photographic documentation is not expected to be a significant compliance burden but provides a strong incentive to ensure control

measures are in place and maintained prior to and during a storm even which results in storm water discharge.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed Appendix B, MSGP are no less stringent than in the previous permit. As explained above, the proposed Appendix B, MSGP is utilizing a different approach which follows EPA's 2015 MSGP and places greater emphasis on taking corrective actions to minimize further pollutant discharges than on exceeding a numeric limit DOH determined to be infeasible per 40 CFR 122.44(k). Therefore, the proposed Appendix B, MSGP is consistent with antidegradation provisions of 40 CFR 131.12 and HAR 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

5. A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under 40 CFR 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix B within HAR Chapter 11-55, Water Pollution Control.

6. Name and telephone number of a person to contact for additional information.

Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch

Department of Health
Ph. (808) 586-4309

7. For NPDES permits, provisions satisfying the requirements of 40 CFR 124.56. The CWA requires that discharges from existing facilities, at a minimum, meet technology-based effluent limitations considering, among other things, the technological capability of permittees to control pollutants in their discharges. WQBELs are required by CWA Section 301(b)(1)(C). Both technology-based and WQBELs are implemented through NPDES permits.

Both technology-based limits using the federally promulgated ELGs and State WQS have been applied.

8. Justification for waiver of any application requirements under 40 CFR 122.21(j) or (q) of this chapter.

Not applicable.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix E
Authorizing Discharges of Once Through Cooling Water
Less Than One (1) Million Gallons Per Day

- (1) A brief description of the type of facility or activity which is the subject of the draft permit.

This general permit covers facilities in the State of Hawaii that discharge once through cooling water of a total flow of less than one million gallons per day.

“Once through cooling water” means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.

This general permit is not intended for use by facilities which discharge once through cooling water of a total flow of one million gallons per day or greater nor for facilities which recirculate and reuse cooling water in excess of the definition of “once through cooling water.”

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

The allowed discharge is of cooling water of a total flow of less than one million gallons per day which is not commingled with other process water.

The most notable pollutant in the discharge is heat, however, additional pollutants may be present in the discharge dependent upon the source of the cooling water.

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits).

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]

7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [Removed]
14. Forms [Revised]

Table 34.3 Effluent Limitation and Monitoring Requirements for Discharge of Once Through Cooling Water Less Than One (1) Million Gallons Per Day [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.3 detail the effluent limitations and monitoring requirements for once through cooling water discharges.

Basis for Discharge Limitations and Monitoring Requirements

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for once-through, non-contact cooling water discharges of flow less than one (1) million gallons per day. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

Flow: The monitoring for flow is for quantification of the discharge.

Temperature: The temperature effluent limitation is based on HAR 11-54. Temperature criteria for all waterbody classification types require that the temperature not vary more than one degree Celsius from ambient conditions. This water temperature limitation as a discharge effluent limitation protects aquatic communities from thermal impacts.

Total Residual Oxidants: The permits established an effluent limitation for chlorine expressed as TRO. The source for the cooling water associated with these types of facilities are generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Also, the application of chlorine may be performed for the operation and maintenance of the piping system in regards to biofouling. Therefore, the general permit includes TRO limitations based on HAR 11-54-4, freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges.

Suspended Solids, Oil and Grease: The effluent limitations for suspended solids and oil and grease were based on the individual NPDES permits that were issued for this type of discharge. The limitation for oil and grease are to ensure that pumps and other mechanical equipment are being properly operated and

maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent. The limitation for suspended solids is to ensure that the operation and maintenance of the cooling water system does not result in excessive discharge of particulate material. In addition, the general permit includes a narrative prohibition that there shall be no discharge of wastes from the physical cleaning of the cooling systems.

pH: The pH effluent limitation is based on HAR Chapter 11-54, Water Quality Standards, for applicable pH criteria.

The general permit contains a narrative prohibition that there shall be no discharge of compounds used in closed-loop systems.

The discharges are not subject to regulations that govern the design and operation of intake structures [316(b) rule] as it has been determined that the discharges are short duration, of limited volume, and result in de minimis impacts.

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

Requirements for Discharge into Class 1 or Class AA Waters

For discharges to Class 1 and Class AA waters, the treatment system plan will be submitted with the NOI to allow for review of the plan.

Chapter 11-55, Appendix E Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is the maximum allowable term for NPDES permits for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(3) (NEW)

(3) Facilities with cooling water intake structures subject to the requirements of Section 316(b) of the Clean Water Act.

Rationale:

40 CFR 125, Subpart I contains requirements applicable to cooling water intake structures under Section 316(b) of the Clean Water Act for facilities that have at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes and has a design intake flow greater than two (2) million gallons per day. The DOH has decided not to cover these types of facilities under this general permit. The requirements in 40 CFR 125, Subpart I can be substantial, and the DOH believes this is more appropriate for an individual permit.”

Section 3(a)

Original: *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *A notice of general permit coverage under this general permit expires:*

- (1) *Four years after the effective date of this general permit;*
- (2) *When the notice of general permit coverage specifies; or*
- (3) *When amendments to section 11-55-34.02(b)(5) are adopted,]*
whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would

need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date.

This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.*

Revised:

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its authorized representative shall;*

Revised: *The owner or operator shall;*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(d)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent.

Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original *[From the previous section 4(d)]: The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)(4)(C) [Removed]

Original: *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result*

is "less than #," where the # is the lowest detection limit of the test method used.

Revised: (REMOVED)

Rationale:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(6).

Section 8(a)(2)

Original: The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.

Revised: The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying "no discharge" when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit's reporting requirements.

Section 8(a)(6) (NEW)

(6) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.3 in the proposed revision, and therefore, the previous

language has been added. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

Original: *The permittee shall;*

Revised: *The permittee or its duly authorized representative shall;*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

Original: *The permittee shall;*

Revised: *The permittee or its duly authorized representative shall;*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.

Section 9(a), 9(b), and 9(c)

Original: *The owner or its duly authorized representative shall;*

Revised: *The permittee or its duly authorized representative shall;*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13

Original: Request for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

Revised: (DELETED)

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. Section 13 was removed in accordance with this new process.

Section 14

Original: 14. Forms;

Revised: 13. Forms;

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.3

Original:

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (MGD)	{2}	Continuous	Recorder/ Totalizer
Temperature (°C)	±1 from ambient	Once/Quarter {11}	Grab
Total Residual Oxidants (mg/l) {3}	0.013{4} 0.019{5}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	5 {6}	Once/Quarter {11}	Grab {7}
Oil and Grease (mg/l)	15	Once/Quarter {11}	Grab {8}

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HAR Chapter 11-55, Appendix E

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
pH (standard units)	{9}	Once/Quarter {11}	Grab {10}

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

Revised:

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (MGD)	{2}	Continuous	Recorder/ Totalizer
Temperature (°C)	±1 from ambient	Once/Quarter {11}	Grab
Total Residual Oxidants {3} (<u>µg/l</u>)	<u>13</u> {4} <u>19</u> {5}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	5 {6}	Once/Quarter {11}	Grab {7}
Oil and Grease (mg/l)	15	Once/Quarter {11}	Grab {8}
pH (standard units)	{9}	Once/Quarter {11}	Grab {10}

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

µg/l = micrograms per liter

Rationale:

Appendix E limits Total Residual Oxidants to 19 µg/L (0.019 mg/L) for discharges to freshwater and 13 µg/L (0.013 mg/L) for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Clarifies that units for Appendix E are consistent with Chlorine in HAR Chapter 11-54-4(c)(3), micrograms per liter.

Table 34.3 Footnote 3

Original: Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.

Revised: Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136. If total residual chlorine cannot be analyzed immediately (i.e., within the 15-minute holding time as required by 40 CFR Part 136), total residual chlorine field test kits that are compliant with 40 CFR 136 methods may be utilized for measurement of total residual oxidants for compliance determinations. A test kit with a method detection limit of 20 µg/l or lower must be used. A discharge monitoring result with a total residual chlorine concentration greater than or equal to 20 µg/l shall be deemed out of compliance with the TRO effluent limitation. If the permittee cannot analyze for total residual chlorine within the 15-minute holding time, the permittee shall document the reason(s) why and include this explanation with their DMR.

Rationale:

Appendix E limits Total Residual Oxidants to 19 µg/L (0.019 mg/L) for discharges to freshwater and 13 µg/L (0.013 mg/L) for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Chlorine- and bromine-based biocides (total residual oxidants or TROs) are widely used for microbiological control in cooling tower systems. These halogen compounds for strong oxidizing agents in water, which is how they kill bacteria and other microorganisms. Therefore, DOH has determined that a reasonable potential exists for non-contact cooling water effluent discharges to cause or contribute to an excursion of the chlorine water quality criteria. Since chlorine makes up a portion of the TRO concentration, DOH has conservatively applied the chlorine limit in 11-54-5(c)(3) to TRO. DOH has thus implemented a water quality-based effluent limit for TROs as required per 40 CFR 122.44(d). 40 CFR 136 requires Total Residual Chlorine to be analyzed within 15 minutes of sample collection. During the past permit term, permittees that operate facilities that use non-contact cooling water informed DOH that their facilities are often located away from laboratories making it difficult, if not infeasible, in certain situations to meet the 15-minute holding time requirement. The laboratory method is ideal for compliance sampling, as it has a method detection limit low enough to determine

compliance with HAR 11-54 water quality standards, as other methods have method detection limits higher than the chlorine water quality standard. This footnote has been revised to specify that field test kits for total residual chlorine are acceptable for compliance monitoring provided that the method detection limit is 20 µg/l or lower which should be achievable by Standard Method 4500-CL G-2011 compliant field colorimeters. The permittee must also document and submit with the DMR why they could not comply with the 15-minute holding time to ensure that the field test kit was only used when the holding time was found to be infeasible.

- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

- (6) A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix E within HAR Chapter 11-55, Water Pollution Control.

- (7) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309*

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.

For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix F
Authorizing Discharges of Hydrotesting Water

- (1) A brief description of the type of facility or activity which is the subject of the draft permit.

This general permit covers facilities or activities in the State of Hawaii that release or discharge hydrotesting waters to state waters.

"Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

The allowed discharge is of hydrotesting waters which is not commingled with other process water or stormwater.

If potable water is used as the source water, the most notable pollutant in the discharge is residual chlorine used during the disinfection process. However, additional pollutants may be present in the discharge dependent upon a source water other than potable water.

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]

9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Removed]*
14. *Forms [Revised]*

Table 34.4 Effluent Limitation and Monitoring Requirements for Hydrotesting Water Discharges [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.4 detail the effluent limitations and monitoring requirements for hydrotesting water discharges.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from hydrotesting. The general permit requirements are based on the HAR Chapter 11-54, Water Quality Standards and the determination that discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.

Water used for hydrotesting may either be from potable or non-potable sources. The general permit requires the hydrotesting water be monitored prior to discharge. The analytical results shall be submitted to the Director of Health for review and approval. The information provided in the Notice of Intent (NOI) will be used for evaluating compliance with applicable water quality standards. If any constituents submitted in the NOI exceed the applicable water quality standards, the Director of Health may require the owner or operator to apply for an individual permit or provide treatment as needed.

The effluent parameters in Table 34.4 are based on the pollutants of concern for the discharge of hydrotesting water. The source for the hydrotesting water is generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Therefore, the general permit includes total residual chlorine limitations per HAR Section 11-54-04(c)(3), and freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges. Additional parameters that may require monitoring are based on the pollutants that may be present when non-potable water is used and/or when the vessel or lines being tested are not of new construction and residual substances may be present.

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

Requirements for Discharge into Class 1 or Class AA Waters

For discharges to Class 1 and Class AA waters, the hydrotesting best management practices plan shall be submitted with the NOI to allow for review of the plan.

Chapter 11-55, Appendix F Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(1)

Original: *Discharges of hydrotesting waters into a sanitary sewer system; and*

Revised: *Discharges of hydrotesting waters into a sanitary sewer system;*

Rationale:

The word “and” was removed to account for the new sections 2(a)(3) and 2(a)(4).

Section 2(a)(2)

Original: *Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.*

Revised: *Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;*

Rationale:

The period at the end of the sentence was replaced with a semi-colon to account for the new sections 2(a)(3) and 2(a)(4).

Section 2(a)(3) [New]

Original: (NEW)

Revised: Discharges of hydrotesting waters with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and

Rationale:

This limitation was added to prevent hydrotesting water discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(4) [New]

Original: (NEW)

Revised: Discharges of hydrotesting waters that the director finds more appropriately regulated under an individual permit.

Rationale:

This limitation was added to prevent hydrotesting water discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(c)(1) – (9) [New]

Original: (NEW)

Revised: (c) Permittees authorized by this general permit are required to comply with the following requirements:

(1) Treat hydrotesting waters with controls to minimize discharges of pollutants. Appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of hydrotesting controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

(2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;

- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if hydrotesting waters are expected to contain these materials after hydrotesting the tank or pipeline;
- (4) To the extent feasible, use vegetated, upland areas to infiltrate hydrotesting waters before discharge. State waters are prohibited from being used as part of the treatment area;
- (5) At all points where hydrotesting waters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters;
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process;
- (7) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications;
- (8) Ensure that the tank or pipeline to be hydrotested is clear of debris or other pollutants that may be mobilized by hydrotesting waters or provide adequate treatment to treat and/or remove these pollutants prior to discharge; and
- (9) Properly dechlorinate hydrotesting waters prior to discharge in accordance with the effluent limitation for total residual chlorine in Table 34.4.

Rationale:

Discharges authorized by this permit are often episodic. As this permit only authorizes the discharge of hydrotesting waters, facilities discharging under this permit are not permanent, do not have long term treatment systems, and may not feasibly have continuous discharge monitoring equipment.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards. For potable waters, the most likely pollutant of concern is chlorine. For non-potable waters, there may be a wide variety of potential pollutants, depending on the non-potable source. Further, Permittees commonly chlorinate the water used to perform hydrotesting and flushing, especially for hydrotesting of water utility pipes.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. “bag”) filtration to reduce the potential for the discharge of pollutants associated with the hydrotesting activity. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration. Permittees are also required to treat their discharge to remove any pollutants (such as sediments) that may be present in the tank being hydrotested. Proper dechlorination is also required to meet effluent limitations.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
 - *Achieves results similar in nature to numeric requirements.*
 - *Ensures that the receiving water isn’t visually degraded by the authorized discharge.*
 - *Reflects recognized variability in receiving water criteria.*
 - *Provides a qualitative limit that can continuously be monitored by discharger personnel.*

- *Strengthens enforceability including enforcement associated with complaints.*
- *Reduces the complexity and cost of discharge monitoring.*
- *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

Section 3(a)

Original: *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *A notice of general permit coverage under this general permit expires:*

- (1) Four years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(5) are adopted,*

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this

renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the

renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.*

Revised:

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(d)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original *[From the previous section 4(d)]: The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was added to this section. Further, while the owner or operator's certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator's responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

Revised: *The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4.*

Rationale:

As the proposed permit will not allow discharges of toxics above water quality standards, effluent limitations for toxics are not included in the proposed permit. The sentence in parentheses applied to effluent limitations for toxic constituents. Therefore, in accordance with the new restrictions and removal of toxic effluent limitations, the language in parentheses was removed. Further, applicability of limits based on discharges to fresh waters or saline waters are now exclusively identified in footnotes to Table 34.4 for clarity. Removal of toxic effluent limitations in the proposed permit are discussed later in this fact sheet.

Section 6(a)(4)(c) [Removed]

Original: *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

Revised: (REMOVED)

Rationale:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(3).

Section 8(a)(2)

Original: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

Revised: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

Section 8(a)(3)

Original: *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

Revised: *(3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL)*

and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.4 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as

how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

Original: *The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

Revised: *The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

Original: *The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

Revised: *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.

Section 8(d) [Removed]

Original: *The permittee shall notify the director of the start of the hydrotesting activities in writing within one week before the start of the hydrotesting activities.*

Revised: (REMOVED)

Rationale:

Previously, this requirement would be used to track when hydrotesting activities would begin for CWB's own records and use. In the past, this information has typically not been used to perform any compliance activities. Regulatorily, once the NGPC is effective, the permittee is required to comply with the terms of the general permit regardless of when discharge activities begin. Further, section 8(a)(2) has been revised to clarify that the reporting period begins on the effective date of the NGPC, with permittees reporting "no discharge" for calendar months with no discharge activities. Therefore, CWB would be able to determine when discharge activities begin based on what is reported in the DMR, should that information be necessary for regulatory actions. Ultimately, this requirement created additional reporting requirements on the permittee, and additional compliance submission processing time for CWB, for no real benefit to CWB's regulatory oversight and therefore has been removed.

Section 9(a)

Original: *The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378*

Honolulu, Hawaii 96801-3378

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(b)

Original: The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Revised: The permittee or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(c)

Original: *The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Revised: *The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13 [Removed]

Original: *Request for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.*

Revised: (REMOVED)

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for an NGPC has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. Section 13 was removed in accordance with this new process.

Section 14

Original: 14. Forms

Electronic notice of intent forms may be found at the Department’s e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch’s website at: <http://health.hawaii.gov/cwb/>

Revised: 13. Forms

Electronic notice of intent forms may be found at the Department’s e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch’s website at: <http://health.hawaii.gov/cwb/>

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.4

Original:

TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	Once/Discharge {12}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	Once/Discharge {12}	Grab {3}
Turbidity (NTU)	{2}	Once/Discharge {12}	Grab {3}
pH (standard units)	{4}	Once/Discharge {12}	Grab {3}, {5}
Total Residual Chlorine (µg/l) {6}	19{7} 13{8}	Once/Discharge {12}	Grab {3}
Toxic Pollutants {9}	{10}	Once/Discharge {12}	{3}, {11}

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = nephelometric turbidity units

Revised:

TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
Quantity of Discharge (gallons)	<u>Report</u>	Once/Discharge	Calculated or Estimated
Total Suspended Solids (mg/l)	55	Once/Discharge	Grab {3}
pH (standard units)	<u>6.0 - 8.0</u>	Once/Discharge	Grab {3}, {4}
Total Residual Chlorine (µg/l) {5}	19{6} 13{7}	Once/Discharge	Grab {3}

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = nephelometric turbidity units

Rationale:

(Note: Revisions to each footnote shall be discussed later in this fact sheet)

40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was

added. 55 mg/l is the applicable dry season water quality criteria for intermittent discharges to inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As mentioned in the rationale for the proposed addition of 2(c) in the permit, discharges authorized by this permit are often episodic discharges of relatively low volumes (the average reported discharge over the past five years was 45,000 gallons). As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, and still prohibits discharge of extreme pH values from hydrotesting waters that may potentially have immediate impacts at the location of discharge.

In addition, Toxics were also removed based on analysis of five (5) years of discharge monitoring data from hydrotesting (Appendix F) general permitted facilities. Within the past five (5) years, the DOH issued approximately 108 NGPCs associated with HAR 11-55, Appendix F. Of the 108 NGPCs, only ten (10) permittees reported any discharges and of the ten (10), only two (2) dischargers reported discharges of total residual chlorine greater than the associated waterbody's water quality standards (NPDES permit HI0021902 and NGPC File No. HI18FF718). The other eight (8) permittees did not report exceedances of water quality standard based effluent limits for toxics. It should be noted that due to the common practice of chlorination and dechlorination of hydrotesting waters, the total residual chlorine effluent limitation shall be retained in the proposed revision. It is also common that potable water is used for hydrotesting, which is not expected to contain elevated levels of toxics, as potable water is treated to levels sufficient for human consumption. Given that no dischargers reported violations of toxic effluent limitations (except for total residual chlorine), the largely episodic nature of the discharges, and the newly required treatment requirements under section 2(c), numeric limits for TSS, and inclusion of the narrative prohibition of discharges which cause exceedances of basic water quality criteria, there is no reasonable potential for toxics to cause or contribute to an exceedance of water quality standards and as such, toxic effluent limitations (except for total residual chlorine) were removed from the table.

In addition, the DOH is also not establishing effluent limitations for nutrients (i.e., total nitrogen, ammonia nitrogen, nitrate plus nitrite nitrogen, and total phosphorus). Water quality criterion for total nitrogen, ammonia nitrogen, nitrate plus nitrite, and total phosphorus, are established as geometric means, and not to exceed percentiles. They are not based on potential toxicity to aquatic life or human health impacts and are instead based on natural background concentrations that would be expected without human influence on the environment and are developed from water quality observed at high quality reference stations.

Unlike toxics, nutrients are not conservative pollutants. Because of the biological and physical variables, there is a delay from when the parameter is discharged until impacts are observed. Additionally, some nutrient criteria, such as chlorophyll a and turbidity are reflective of response conditions and short-term exceedances are often not indicative of the long-term quality of the receiving water. Thus, it is long-term impacts resulting in the change of biota and eutrophication of the receiving waters that must be considered. These impacts result over extended periods of time, ranging from months to years. Biological responses in the receiving water from day-to-day variation in effluent pollutant concentrations are not significant, as chronic biological responses occur over months to years of continuous elevated nutrient loading. DOH-CWB evaluates consistency with these criteria based on a 1-year exposure duration to allow for seasonal fluctuations within the receiving water concentrations and acknowledging that the environmental response to nutrients typically occurs in the far-field and shows minimal response over short periods of time. As mentioned in the rationale for the proposed addition of 2(c) in the permit, discharges authorized by this permit are often episodic discharges of relatively low volumes (the average reported discharge over the past five years was 45,000 gallons). The DOH expects there will be no water quality impacts or degraded waterbody conditions by not establishing numeric effluent limits for nutrients. For this reason, the DOH has decided not to require limitations on nutrients in this permit.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l).

Revisions to the total suspended solids effluent limitation comply with anti-backsliding requirements, as the new limit now imposes effluent limitations on all waterbodies, when the numeric limit would previously only apply to discharges to streams. The limit was also based on the most stringent

applicable water quality standard for streams and is therefore more stringent than the previous permit.

Removal of the turbidity limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on visible plumes that result from the discharge and a new requirement to provide treatment and filtration to further eliminate discharges with high turbidity. Further, by limiting total suspended solids, it is expected that turbidity will be reduced as a result of lower total suspended solids values in the discharge.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, while still prohibiting discharge of extreme pH values from hydrotesting waters that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Removal of the toxic pollutant limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on discharges that exceed toxic parameter water quality standards in HAR 11-54. Based on this prohibition, discharges covered under this permit will not have reasonable potential to cause or contribute to exceedances of water quality standards for toxic parameters. Therefore, the removal of the numeric effluent limitation for toxic parameters and the addition of the new prohibition means that the requirements for toxic parameters are more stringent than the previous permit.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR, 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR, 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

As discussed in the satisfaction of anti-backsliding requirements section above, effluent limitations and requirements are at least as stringent or more stringent than the previous permit. Compliance with the limits and requirements requires permittees to provide the best treatment applicable to their discharge. Based on this, discharges authorized under this permit are expected to be protective of the receiving water body, and will not degrade water quality within these water bodies in accordance with antidegradation policy requirements.

Table 34.4 Footnote 1

Original: Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

Revised: Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

Rationale:

The previous language did not specify the type of effluent limitation that was established for pollutants. To clarify, the term “single sample maximum” was added to footnote 1. As the permittee is required to sample once per discharge, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.4 Footnote 2

Original: The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then only monitoring and reporting is required.

Revised: If the permittee collects more than one sample during the month, the maximum value for each pollutant parameter shall be reported. For pH, only report the minimum and maximum for the month. Laboratory results of all sampling shall be included with the discharge monitoring report.

Rationale:

The previous language only applied to flow, TSS, and turbidity limits. As the TSS limit changed to a single value applicable to all discharges and the turbidity limit was removed, the previous language was replaced. For flow, the term “Report” was substituted for footnote 2.

The new language in footnote 2 provides directions and requirements for reporting when more than one sample is taken in a month. This language replaces the previous language in footnote 12.

Table 34.4 Footnote 4 [Removed]

Original: The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.

Revised: (REMOVED)

Rationale:

As the pH effluent limitation has been revised to have one pH range applicable to all discharges, this language is no longer applicable. Therefore, footnote 4 was removed.

Table 34.4 Footnote 5 [Removed]

Original: (5) The pH shall be measured within fifteen minutes of obtaining the grab sample.

Revised: (4) The pH shall be measured within fifteen minutes of obtaining the grab sample.

Rationale:

Footnote 5 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 6

Original: {6} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.

Revised: {5} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged. If total residual chlorine cannot be analyzed immediately (i.e., within the 15-minute hold time as required by 40 CFR Part 136), total residual chlorine field test kits that are compliant with 40 CFR Part 136 methods may be utilized for measurement of total residual chlorine for compliance determinations. A test kit with a method detection limit of 20 µg/l or lower must be used. A discharge monitoring result with a total residual chlorine concentration greater than or equal to 20 µg/l shall be deemed out of compliance with the chlorine effluent limitation. If the permittee cannot analyze for total residual chlorine within the 15-minute holding time, the permittee shall document the reason(s) why and include this explanation with their DMR.

Rationale:

Appendix F limits Total Residual Chlorine to 19 µg/L for discharges to freshwater and 13 µg/L for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Chlorine is typically utilized in the hydrotesting activity and/or potable water containing chlorine is typically utilized. Therefore, DOH has determined that a reasonable potential exist for hydrotesting effluent discharges to cause or contribute to an excursion of the chlorine water quality criteria, and a water quality-based effluent limit for chlorine is required per 40 CFR 122.44(d). 40 CFR 136 requires Total Residual Chlorine to be analyzed within 15 minutes of sample

collection. During the past permit term, permittees informed DOH that their hydrotesting activities are often located away from laboratories, making it difficult if not infeasible in certain situations to meet the 15-minute hold time requirement. The laboratory method is ideal for compliance sampling, as it has a method detection limit low enough to determine compliance with HAR 11-54 water quality standards, as other methods have method detection limits higher than the chlorine water quality standard. This footnote has been revised to specify that field test kits for total residual chlorine are acceptable for compliance monitoring provided that the method detection limit is 20 µg/l or lower which should be achievable by Standard Method 4500-CL G-2011 compliant field colorimeters. The permittee must also document and submit with the DMR why the 15-minute hold time could not be complied with, to ensure that the field test kit was only used when the hold time was found to be infeasible.

Footnote 6 was also re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 7

Original: (7) This limitation applies when hydrotesting water is discharged into fresh waters.

Revised: (6) This limitation applies when hydrotesting water is discharged into fresh waters.

Rationale:

Footnote 7 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 8

Original: (8) This limitation applies when hydrotesting water is discharged into saline waters.

Revised: (7) This limitation applies when hydrotesting water is discharged into saline waters.

Rationale:

Footnote 8 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 9 [Removed]

Original: The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.4 Footnote 10 [Removed]

Original: *Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.4 Footnote 11 [Removed]

Original: *The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 11 was removed.

Table 34.4 Footnote 12 [Removed]

Original: *If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.*

Revised: (REMOVED)

Rationale:

As the effluent limitations in the proposed permit are single sample maximums, monthly minimums and monthly averages are not relevant (except monthly minimum for pH). Requirements for reporting results when there is additional sampling in the month are now in footnote 2. Therefore, footnote 12 was removed, with the remaining relevant language moved to footnote 2.

- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

- (6) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix F within HAR Chapter 11-55, Water Pollution Control.

- (7) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309*

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.

For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix G

Authorizing Discharges Associated with Construction Activity Dewatering

- (1) A brief description of the type of facility or activity which is the subject of the draft permit.

This general permit covers facilities or activities in the State of Hawaii that discharge waters from the construction dewatering process to state waters.

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

The allowed discharge is of waters from construction dewatering activities which is not commingled with other process water or stormwater.

This general permit is not intended for return flow or overflow from dredged material dewatering or discharges of construction dewatering effluent from leaking underground storage tank remediation activities.

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [Removed]
14. Forms [Revised]

*Table 34.5 Effluent Limitations and Monitoring Requirements for
Construction Dewatering Discharges [Revised]*

Sections 1 through 5 and 7 through 13 are basic requirements necessary to the General Permit. Section 6, Section 14, and Table 34.5 detail the effluent limitations and monitoring requirements for construction dewatering discharges.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from construction dewatering activities. The general permit discharge limitations and monitoring requirements are based on HAR Chapter 11-54, Water Quality Standards.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected;*
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met; and*
- 3) Discharge to restricted "no discharge" areas is prohibited.*

The effluent parameters in Table 34.5 are based on the pollutants of concern for the discharges from construction dewatering activities.

The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-55, Appendix A.

Requirements for Discharge into Class 1 and Class AA Waters

For discharges to Class 1 and Class AA waters, the site-specific dewatering plan, dewatering system maintenance plan, and construction pollution prevention plan will be submitted with the Notice of Intent (NOI) to allow review of the plans.

Chapter 11-55, Appendix G Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is equivalent to the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(5)

Original: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and*

Revised: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; [and]*

Rationale:

Removed “and” to insert proposed Section 2(a)(6).

Section 2(a)(6) [New]

Original: (NEW)

Revised: *Discharges of construction dewatering effluent with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and*

Rationale:

This limitation was added to prevent dewatering discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(6)

Original: (6) *Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Revised: (7) *Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Rationale: Renumbered due to addition of proposed Section 2(a)(6).

Section 2(c) [New]

Original: (NEW)

Revised: *Permittees authorized by this general permit are required to comply with the following requirements.*

General Permit Fact Sheet for
HAR Chapter 11-55, Appendix G

- (1) Treat dewatering discharges with controls to minimize discharges of pollutants. Appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of dewatering controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets.
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
- (3) Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to control these materials.
- (4) To the extent feasible, use vegetated, upland areas to infiltrate dewatering water before discharge. State waters are prohibited from being used as part of the treatment area.
- (5) At all points where dewatering water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process.
- (7) Replace or clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

This permit authorizes the discharge of dewatering effluent associated with construction activity. This most often includes dewatering of storm water accumulated in excavated pits or groundwater infiltration during trenching, excavation, or other similar earth work activities. Discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity

vs. discharging during construction activity). As this permit only authorizes the discharge of dewatering effluent associated with construction activities, facilities discharging under this permit are not permanent, do not have long term treatment systems, and may not feasibly have continuous discharge monitoring equipment.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards due to the most likely pollutant (sediment) being present in the effluent. The current/previous permit authorizes discharges subject to numeric limits. However, the current/previous permit only requires the sampling and monitoring of effluent once per discharge. The current permit's discharge limitation and monitoring requirements fail to adequately protect receiving waters because the singular per discharge monitoring requirement doesn't reflect the variable nature of effluent quality.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from optical impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.
- Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants associated with the construction dewatering activity. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration. This approach is similar to the one taken by the EPA in the national construction general permit.
- Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:
 - Achieves results similar in nature to numeric requirements.
 - Ensures that the receiving water isn't optically degraded by the authorized discharge.

Commented [SSS1]: For some reason, I deleted this section from Codey's version in my version. IN OR OUT?

- *Reflects recognized variability in receiving water criteria.*
- *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
- *Strengthens enforceability including enforcement associated with complaints.*
- *Reduces the complexity and cost of discharge monitoring.*
- *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

Section 3(a)

Original: *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor[.] and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *A notice of general permit coverage under this general permit expires:*

- (1) *Four years after the effective date of this general permit;*
- (2) *When the notice of general permit coverage specifies; or*
- (3) *When amendments to section 11-55-34.02(b)(6) are adopted,*

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after*

the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified three scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until sixty days after effective date of the reissued general permit, unless one of three actions are taken by the permittee. In the new process, permittees would have sixty days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.*

Revised: *The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added,

which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its duly authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)(2)

Original: *Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Revised: *Legal name, street address, telephone number, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Rationale:

The DOH no longer requires or uses fax numbers. The requirement to submit a fax number is proposed to be removed.

Section 4(d)

Original: *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original *[From the previous section 4(d)]: The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was added to this section. Further, while the owner or operator's certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator's responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5.*

Rationale:

As the proposed permit will not allow discharges of toxics above water quality standards, effluent limitations for toxics are not included in the proposed permit. The sentence in parentheses applied to effluent limitations for toxic constituents. Therefore, in accordance with the new restrictions and removal of toxic effluent limitations, the language in parentheses was removed. Further, applicability of limits based on discharges to fresh waters or saline waters are now exclusively identified in footnotes to Table 34.5 for clarity.

Removal of toxic effluent limitations in the proposed permit are discussed later in this fact sheet.

Section 6(a)(4)(C)

Original: *If the test result is not detectable, indicate;*

Revised: *If the test result is not detectable, the permittee shall indicate that;*

Rationale:

The DOH is clarifying who shall provide the indication.

Section 8(a)(2)

Original: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

Revised: *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying "no discharge" when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit's reporting requirements.

Section 8(a)(3)

Original: *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

Revised: *For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).*

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

*(E) For purposes of calculated geometric means, 0.25*MDL shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.*

Commented [HC2]: Possibly remove.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.5 Footnote {2} in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Commented [HC3]: Remove if average and geomean language removed.

Sections 8(c)(2)

Original: The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

Revised: The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making oral reports to the DOH at the identified phone numbers.

Commented [SS54]: Be sure to share w/B&C change of statement.

Section 8(c)(3)

Original: The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:

Revised: *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making written reports.

Section 8(d) [Removed]

Original: *The permittee shall notify the director of the start of the dewatering activities in writing within one week before the start of the dewatering activities.*

Revised: (REMOVED)

Rationale:

Previously, this requirement would be used to track when dewatering activities would begin for CWB's own records and use. In the past, this information has typically not been used to perform any compliance activities. Regulatorily, once the NGPC is effective, the permittee is required to comply with the terms of the general permit regardless of when discharge activities begin. Further, section 8(a)(2) has been revised to clarify that the reporting period begins on the effective date of the NGPC, with permittees reporting "no discharge" for calendar months with no discharge activities. Therefore, CWB would be able to determine when discharge activities begin based on what is reported in the DMR, should that information be necessary for regulatory actions. Ultimately, this requirement created additional reporting requirements on the permittee, and additional compliance submission processing time for CWB, for no real benefit to CWB's regulatory oversight and therefore has been removed.

Section 9(a)

Original: *The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health
Clean Water Branch*

Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

Revised: The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(b)

Original: The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Revised: The permittee or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the

information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(c)

Original: *The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Revised: *The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13 [Removed]

Original: *Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.*

Revised: (REMOVED)

Rationale: *Request for renewals requires the permittee to certify in the NOI that they will comply with the new general permit. Request for renewals should not be submitted before the new general permit is issued. The*

permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within sixty days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.

Section 14

Original: 14. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

Revised: 13. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.5

Original:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (GPD or gpm)	{2}	{3} {11}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	{4} {11}	Grab
Turbidity (NTU)	{2}	{4} {11}	Grab

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Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Oil and Grease (mg/l)	15	{4} {11}	Grab {5}
pH (standard units)	{6}	{4} {11}	Grab {7}
Toxic Pollutants {8}	{9}	{4} {11}	{10}

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Revised:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
Quantity of Discharge (GPD or gpm)	[{2}] <u>Report</u>	[{3}] [<u>{11}</u>] <u>Once/Month</u>	Calculated or Estimated
Total Suspended Solids (mg/l)	[{2}] <u>55</u>	[{4}] [<u>{11}</u>] <u>Once/Month</u>	Grab
[Turbidity (NTU)]	[{2}]	[{4}] [<u>{11}</u>]	[Grab]
Oil and Grease (mg/l)	15	[{4}] [<u>{11}</u>] <u>Once/Month</u>	Grab [{5}]{3}

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Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
pH (standard units)	[{6}]6.0 - 8.0	[{4}] [{11}] Once/Month	Grab [{7}]{4}
[Toxic Pollutants {8}]	[{9}]	[{4}] [{11}]	[{10}]

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

[~~NTU = nephelometric turbidity units~~]

Rationale:

40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was added. 55 mg/l is the dry season water quality criteria for inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

In addition, required numeric effluent limits for pollutants specified in HAR 11-54-4(c)(3) (referred to as "toxics") were also removed based on analysis of three years of discharge monitoring data from dewatering (Appendix G) general permitted facilities. Between 2018 and 2021 the DOH issued approximately 25 NGPCs associated with HAR 11-55, Appendix G. Of the 25 NGPCs, only six permittees reported any discharges and of the six, only one discharger reported discharges of toxic parameters greater than the

associated waterbody's water quality standards (NGPC, File No. HI19GF810). The other five of six permittees either did not report discharges or did not report exceedances of water quality standard based effluent limits for toxics. Given the small number of discharges who were subject to WQBELs for toxics, the largely episodic nature of the discharges, and the newly required treatment requirements under section 2(c)(1), numeric limits for TSS, and inclusion the narrative prohibition of discharges which cause exceedances of basic water quality criteria, there is no reasonable potential for the discharge to cause or contribute to an exceedance of water quality standards for toxics. Numeric limits must be established when a discharge may cause or contribute to an exceedance of water quality standards for any pollutant(s). The DOH has determined based on the reasons outlined above, that numeric limits for toxics are not necessary, and the new requirements in the proposed general permit such as treatment requirements and the narrative prohibition on discharges that exceed basic water quality criteria are stringent enough to prevent authorized discharges from degrading receiving water bodies.

In addition, the DOH is also not establishing effluent limitations for nutrients (i.e., total nitrogen, ammonia nitrogen, nitrate plus nitrite nitrogen, and total phosphorus). Water quality criterion for total nitrogen, ammonia nitrogen, nitrate plus nitrite, and total phosphorus, are established as geometric means and not to exceed percentiles. They are not based on potential toxicity to aquatic life or human health impacts and are instead based on natural background concentrations that would be expected without human influence on the environment and are developed from water quality observed at high quality reference stations.

Unlike toxics, nutrients are not conservative pollutants. Because of the biological and physical variables, there is a delay from when the parameter is discharged until impacts are observed. Additionally, some nutrient criteria, such as chlorophyll a and turbidity are reflective of response conditions and short-term exceedances are often not indicative of the long-term quality of the receiving water. Thus, it is long-term impacts resulting in the change of biota and eutrophication of the receiving waters that must be considered. These impacts result over extended periods of time, ranging from months to years. Biological responses in the receiving water from day-to-day variation in effluent pollutant concentrations are not significant, as chronic biological responses occur over months to years of continuous elevated nutrient loading. DOH-CWB evaluates consistency with these criteria based on a 1-year exposure duration to allow for seasonal fluctuations within the receiving water concentrations and acknowledging that the environmental response to nutrients typically occurs in the far-field and shows minimal response over short periods of time. As mentioned in the rationale for the proposed addition

of section 2(c) in the permit, discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity vs. discharging during construction activity). The DOH expects there will be no water quality impacts or degraded waterbody conditions by not including numeric effluent limits for nutrients. For this reason, the DOH has decided not to require limitations on nutrients in this permit.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l).

The proposed construction dewatering effluent discharge requirements align with the EPA's issued NPDES permit that authorize similar discharges.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, while still prohibiting discharge of extreme pH values from construction dewatering effluent that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Removal of the toxic pollutant limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on discharges that exceed toxic parameter water quality standards in HAR 11-54. Based on this prohibition, discharges covered under this permit will not have reasonable potential to cause or contribute to exceedances of water quality standards for toxic parameters. Therefore, the removal of the numeric effluent limitation for toxic parameters and the addition of the new prohibition means that the requirements for toxic parameters are more stringent than the previous permit.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR, 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR, 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed permit, are no less stringent than in the current/previous permit. As explained above, the proposed permit is utilizing a different approach which follows EPA's NPDES permit and places greater emphasis on control measures and treatment to minimize further pollutant discharges than on exceeding a singular per discharge monitoring requirement that doesn't reflect the variable nature of effluent quality. The discharges are often episodic, low volume, and compositionally variable throughout the discharge period.

Therefore, the proposed Appendix G is consistent with antidegradation provisions of 40 CFR 131.12 and HAR 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

Table 34.5 Footnote 1

Original: *Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.*

Revised: *Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.*

Rationale:

The previous language did not specify the type of effluent limitation that was established for pollutants. To clarify, the term "single sample maximum" was added to footnote 1. As the permittee is required to sample once per discharge, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.5 Footnote 2

Original: *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.*

Revised: *The permittee shall take a minimum of one sample for each month that is representative of the discharge. If the permittee collects more than*

one sample during the month, the maximum value for each pollutant parameter shall be reported. For pH, only report the minimum and maximum for the month. Laboratory results of all sampling shall be included with the discharge monitoring report.

Rationale:

The previous language only applied to flow, TSS, and turbidity limits. As the TSS limit changed to a single value applicable to all discharges and the turbidity limit was removed, the previous language was replaced. For flow, the term "Report" was substituted for footnote 2.

The new language in footnote 2 provides directions and requirements for reporting when more than one sample is taken in a month. This language replaces the previous language in footnote 11.

Table 34.5 Footnotes 3 and 4 [Removed]

Original: {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.

{4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.

Revised: (REMOVED)

Rationale:

These footnotes are no longer applicable. The proposed general permit requires collection of a representative sample of the discharge and analysis once a month. It does not distinguish between intermittent and continuous discharges.

Table 34.5 Footnote 5

Original: {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Revised: {3} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Rationale:

Renumbered due to the removal of footnotes 3 and 4.

Table 34.5 Footnote 6 [Removed]

Original: *The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.*

Revised: (REMOVED)

Rationale:

As the pH effluent limitation has been revised to have one pH range applicable to all discharges, this language is no longer applicable. Therefore, footnote 6 was removed.

Table 34.5 Footnote 7

Original: {7} *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Revised: {4} *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Rationale:

Renumbered due to the removal of footnotes 3, 4, and 6.

Table 34.5 Footnote 8 [Removed]

Original: *The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored. The permittee shall measure for the total recoverable portion of all metals.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 8 was removed.

Table 34.5 Footnote 9 [Removed]

Original: *Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants*

which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.5 Footnote 10 [Removed]

Original: *The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.5 Footnote 11 [Removed]

Original: *If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.*

Revised: (REMOVED)

Rationale:

As the effluent limitations in the proposed permit are single sample maximums, monthly minimums and monthly averages are not relevant (except monthly minimum for pH). Requirements for reporting results when there is additional sampling in the month are now in footnote 2. Therefore, footnote 11 was removed, with the remaining relevant language moved to footnote 2.

- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

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- (6) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix G within HAR Chapter 11-55, Water Pollution Control.

- (7) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309*

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are required by CWA Section 301(b)(1)(C). Both TBELs and WQBELs are implemented through NPDES permits.

For this permit, the limits are WQBELs because effluent limitation guidelines and TBELs do not apply.

The proposed HAR 11-55, Appendix G, Section 2(c) implements the 40 CFR 450.21(c) requirement that prohibits “discharges from dewatering activities, including discharges from dewatering of trenches and excavations” unless managed by “appropriate controls.” The specific restrictions in HAR 11-55, Appendix G, Section 2(c) provide the permit’s interpretation of what is meant by “appropriate controls” in 40 CFR 450.21(c).

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

Fact Sheet for Appendix K

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

The subject of the draft National Pollutant Discharge Elimination System (NPDES) general permit is Small Municipal Separate Storm Sewer Systems (MS4s).

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;
- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings (the system must serve two (2) or more buildings).

The following is a list of Permittees that have applied for NPDES coverage:

1. Department of Transportation, Highways Division (DOT-HWYs) – Maui District, Kahului, Island of Maui, HI 15KE674
2. University of Hawaii, Maui College, HI 14KE369 (not yet issued)
3. University of Hawaii, West Oahu Campus, Kapolei, Island of Oahu, HI 14KE294
4. Department of Transportation, Airports Division (DOT-AIR), Kahului Airport, Kahului, Island of Maui, HI 14KE349
5. County of Maui, Kahului, Island of Maui, HI 14KE360
6. Department of Health, State Hospital, Kaneohe, Island of Oahu, HI 11KD929 (not yet issued)
7. Hawaii Community Development Authority, Kakaako Community Development District, Honolulu, Island of Oahu, HI 08KD270
8. University of Hawaii, Windward Community College, Kaneohe, Island of Oahu, HI 07KC937

9. University of Hawaii, Kapiolani Community College, Honolulu, Island of Oahu, HI 07KC926
10. University of Hawaii, Leeward Community College, Pearl City, Island of Oahu, HI 07KC817
11. Department of Business, Economic Development & Tourism, Hawaii Housing Finance and Development Corporation, Villages of Kapolei, Kapolei, Island of Oahu, HI 06KC738
12. University of Hawaii, Pearl City Urban Garden Center, Pearl City, Island of Oahu, HI 06KC682
13. Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility, Pearl Harbor, Island of Oahu, HI 06KC635
14. University of Hawaii, John A. Burns School of Medicine, Honolulu, Island of Oahu, HI 06KC589
15. Kaena Point Satellite Tracking Station, Waianae, Island of Oahu, HI 05KC128
16. University of Hawaii at Manoa, Honolulu, Island of Oahu, HI 03KB495
17. Department of Transportation, Harbors Division, Kalaeloa Barbers Point Harbor, Kapolei, Island of Oahu, HI 03KB488
18. Hawaii Community Development Authority, Kewalo Basin, Honolulu, Island of Oahu, HI 03KB487
19. Department of Transportation, Harbors Division, Honolulu Harbor, Honolulu, Island of Oahu, HI 03KB482
20. Department of Education, various locations, Island of Oahu, HI S000003
21. City and County of Honolulu, Board of Water Supply, various locations, Island of Oahu, HI S000062

Currently, all the above facilities are currently covered by the 2013 permit, except for #2 – University of Hawaii, Maui College, #6 – Department of Health (DOH), State Hospital, #20 Department of Education (DOE), and #21 Board of Water Supply (BWS). During the pendency of reissuing this general permit, the University of Hawaii, Maui College has submitted an Individual NPDES Permit application and is currently being processed. After issuance of this General Permit, Maui College may elect to seek coverage under the General Permit by submitting an NOI. The DOH, State Hospital has submitted an NOI to request coverage, however will be granted a waiver from the Phase II Permit requirements. The DOE is currently working under an Administrative Extension of their Individual NPDES Permit and the BWS has applied for an Individual NPDES permit. Both will be granted waivers from the Phase II Permit requirements, pursuant to authority in 40 CFR §122.32(d).

DOH expects that all of the above facilities that are currently covered would continue to be covered by the proposed permit, except for the Kaena Point Satellite Tracking Station and University of Hawaii, John A. Burns School of Medicine. The Kaena Point Satellite Tracking Station is not located within the urban area and the University of Hawaii, John A. Burns School of Medicine will be granted a waiver from the Phase II Permit requirements.

The Department of the Navy, Navy Region Hawaii has been issued an Individual NPDES permit for Joint Base Pearl Harbor-Hickam (JBPHH) Small MS4 and does not cover the Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (File No. HI 06KC635) as they are separate entities with separate controlling authorities. Both Department of Navy's facilities shall continue to obtain NPDES coverage for their Small MS4s.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

Storm water discharge and certain allowable non-storm water from Small MS4s.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

DOH published notice of its proposed revised Appendix K for the discharges of storm water and certain non-storm water discharges from Small Municipal Separate Storm Sewer Systems on May 31, 2016 and again on August 1, 2016. Public hearings were held on July 1, 2016 and September 29, 2016. DOH received comments on the proposed 2016 Appendix K. However, on December 6, 2016, the EPA issued its Final Rule to address a partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit. *Environmental Defense Center, et al. v. EPA*, 344 F.3d 832 (9th Cir. 2003). As a result of the Final Remand Rule and after considering the comments received on the 2016 Appendix K, the DOH has made significant changes to the previously proposed 2016 Appendix K. Because of the significant changes made from the previously proposed 2016 Appendix K, the DOH is proposing to offer the proposed 2017 Appendix K for public review and comment and opportunity to request a hearing rather than providing responses to 2016 Appendix K comments.

EPA selected proposed Option 3 (the "State Choice Approach") for the Final Remand Rule. The EPA renamed this option the "Permitting Authority Choice Approach". Under this approach, the NPDES permitting authority (i.e. DOH) may choose between two alternative means of establishing permit requirements in general permits for small MS4s. Whenever issuing a small MS4 general permit, 40 CFR 122.28(d) as amended by the final rule requires permitting authorities to choose either of these two types of general permits: the "Comprehensive General Permit" or "Two-Step General Permit." The DOH has chosen the Two-

Step approach for its General Permit. The Two-Step General Permit allows the DOH to establish some requirements in the general permit and others applicable to individual MS4s through a second proposal and public comment process. This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of its MS4s and for non-traditional MS4s (e.g. state department of transportation, public universities, and military bases).

Polluted storm water runoff is often transported to municipal separate storm sewer systems (MS4s) and ultimately discharged into local rivers and streams without treatment. EPA's Stormwater Phase II Rule establishes an MS4 stormwater management program that is intended to improve the Nation's waterways by reducing the quantity of pollutants that stormwater picks up and carries into storm sewer systems during storm events. Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and carelessly discarded trash, such as cigarette butts, paper wrappers, and plastic bottles. When deposited into nearby waterways through MS4 discharges, these pollutants can impair the waterways, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with the habitat for fish, other aquatic organisms, and wildlife.

In 1990, EPA promulgated rules establishing Phase I of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The Phase I program for MS4s requires operators of "medium" and "large" MS4s, that is, those that generally serve populations of 100,000 or greater, to implement a stormwater management program as a means to control polluted discharges from these MS4s. The Stormwater Phase II Rule (64 FR 68722) extends coverage of the NPDES stormwater program to certain "small" MS4s but takes a slightly different approach to how the stormwater management program is developed and implemented.

A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II Rule automatically covers on a nationwide basis all small MS4s located in "urbanized areas" (UAs) as defined by the Bureau of the Census (unless waived by the NPDES permitting authority).

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Storm Water Management Plan Requirements [Revised]
7. Basic Water Quality Criteria and Inspections [Revised]

8. TMDL Implementation and Monitoring [New]
9. Corrective Actions
10. Reporting Requirements [Revised]
11. Submittal Requirements [Revised]
12. Additional Conditions
13. Public Notice of Permit Actions and Public Comment Period [New]
14. Public Comments and Public Hearing [New]
15. Record Retention
16. Falsifying Report
17. Renewal [New]
18. Forms [New]

The General Permit currently in effect expired on December 6, 2016. The proposed General Permit will be effective for a term of 5 (five) years (revised from 3 years, refer to Section 3 of the General Permit).

Proposed Changes:

The draft 2017 Appendix K includes the following proposed changes (the sections referenced below are that of the General Permit):

1. A paragraph was added to the beginning of the permit to explain the revised Small MS4 General Permit approach pursuant to the MS4 Final Remand Rule. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016. Included is a definition of "40 CFR," which is different than that in HAR, §11-55-01.

In accordance with 40 CFR 122.28(d), the Director has selected the Two-step general permit approach to regulate Small MS4s under the State's NPDES Permit Program. See 40 CFR §122.28(d)(2). The DOH will follow the Two-Step General Permit Approach in accordance with FR Vol. 81, No. 237 pg. 89330, Section V.B.

2. Revised Section 1(a), 2nd paragraph to delete the word "include" because use of that word indicated a non-exclusive list.

Revised from:

Non-storm water discharges authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards, include:

to,

The following non-storm water discharges are authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards:

3. Added a paragraph to the end of Section 1(a) to allow in the MS4 additional non-storm waters that the Permittee does not expect to be significant sources of pollutants (e.g., charity vehicle wash water). The Permittee shall document in the Storm Water Management Plan the terms and conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Permittee's MS4.
4. Section 1(b), extended coverage to all State waters, except for discharges to natural freshwater lakes, saline lakes, or anchialine pools (i.e., Hawaii's "no discharge" policy, refer to HAR, Chapter 11-54, §11-54-5.2(a)). The proposed revision allows the General Permit to cover discharges to Class 1, Inland Waters, and Class AA, Marine waters, instead of requiring coverage under an Individual NPDES Permit. The "two-step" general permit approach is the same as the DOH's individual NPDES approach for Small MS4s. The "two-step" approach allows the DOH to consider the receiving water classification and the need, if any, for additional BMPs during the processing of coverage and therefore, the traditional Individual NPDES process is no longer needed.
5. Sections 3(a) and 3(b), revised the expiration and effective dates from three (3) to five (5) years.
6. Section 4, 1st paragraph, added language from 40 CFR 122.33(b)(1)(ii) which describes the NOI requirements as a result of the Final Remand Rule.
7. In Section 4(a), added requirements for new and existing permittee NOI submittal deadlines.
8. Revised Section 4(b)(4) to clarify that the assessment of the effectiveness applies to "each control measure." Deleted redundant language which said "in reducing discharges of pollutants to the maximum extent practicable and protecting water quality." Added language to clarify that the assessment is only required for those MS4s covered under the previous general permit. Replaced the word "modifications" with "revisions" to prevent any confusion since modifications are not allowed after the Permittee is issued coverage.

9. Added in Section 4(b)(5) the acronym for Storm Water Management Plan (SWMP).
10. Deleted in Section 4(b)(5) language that allowed the NOI to be submitted without the SWMP. Following the “two-step” approach the SWMP must be submitted with the NOI. Also, deleted having to keep the SWMP and revisions at a nearby field office since that requirement is not applicable.
11. Added Section 4(b)(6) to address TMDL implementation and monitoring. An Implementation and Monitoring (I&M) Plan is required where the Permittee is subject to wasteload allocations (WLAs) and must be submitted with the NOI to be reviewed by the DOH and public noticed during the second step of the two-step Small MS4 approach. Also required is a proposed compliance schedule, if compliance is not expected within 1-year that meets the 40 CFR 122.47 requirements to comply as soon as possible.
12. Revised Section 6, 1st sentence to clarify that the SWMP is a written document and added the “MS4 permit standard” wording to mean, “reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.”
13. Revised Section 6, 2nd sentence to clarify that the SWMP shall include “a description of the best management practices that the Permittee will implement for each of the minimum control measures...” Refer to 40 CFR 122.33(b)(2)(i) and FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338, 3rd Column, 2nd paragraph, where it states: “Likewise, an MS4 that is seeking an individual permit or coverage under a Two-Step General Permit, can propose BMPs or other management measures to the permitting authority that reflect its judgment about how and to what extent permit terms and conditions should change or stay the same.”

Added requiring the “timing and frequencies, as appropriate” and replaced “measure” with “BMP.” Refer to FR Vol. 81, No. 237/Friday, December 9, 2016, page 89323, 1st column, 1st paragraph. Also, revised to clarify that the SWMP must include the measurable goals, which is already an existing condition (refer to Section 6(b)) and frequencies.

14. Added information to Section 6 to comply with the Final Remand Rule. 40 CFR 122.34 states that the terms and conditions must be **clear, specific, and measurable**. DOH interprets this to mean that the BMPs as proposed by the Permittee must also be clear, specific, and measurable. DOH will review the information provided by the Permittee and determine the permit terms and conditions. As such, if the proposed BMPs are described by the Permittee in clear, specific and measurable terms, then the DOH is able to provide permit terms and conditions also expressed in clear, specific, and measurable terms. For clarity, DOH has provided reference to the EPA's "Municipal Separate Storm Sewer System Permits, Compendium of Clear, Specific & Measurable Permitting Examples," November 2018, EPA-830-S-16-002.

15. Added language to Section 6 to explain that the rationales provided by the Permittee must be to the satisfaction of the DOH because DOH is responsible for establishing permit requirements that meet the MS4 permit standard. The purpose of the language is to directly address the Ninth Circuit remand that the regulations need to preclude the small MS4 from determining on its own what actions are sufficient to meet the MS4 standard. DOH is the ultimate authority to determine what Small MS4s must do to meet the MS4 permit standard and the rationales provided by the Permittee are needed to make this decision because the BMPs as proposed by the Permittee reflect their rationales.

The DOH is required to issue permits that independently meet the MS4 permit standard based on an evaluation of, among other things, how well the past permit conditions worked and what more can be reasonably achieved in the next permit term. This evaluation involves factors that are necessarily unique to the permit jurisdiction, therefore, the DOH is not compelled to consider the terms and conditions of permits in other jurisdictions in determining the need to modify their own permits. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338-89339.

16. Added language to Section 6 explaining that the contents of the SWMP document are enforceable under this permit since the DOH intends that the BMPs in the SWMP and measurable goals, including any revisions as required by the DOH (prior to public notice in the 2nd step), contain the supplemental terms and conditions of the general permit.

17. Section 6(a) was revised to reference the 40 CFR 122.34(b)(1) through (6) for the minimum control measures requirements for regulated small MS4 permits. Concurrently with these amendments, the definition of "40 CFR"

in Hawaii Administrative Rules (HAR), Chapter 11-55 is being revised to mean the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2017, unless otherwise specified.

18. Section 6(b) was revised to specify that the measurable goals apply to the Permittee's BMPs as described in the SWMP. A definition of "measurable" was added to mean "that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. Refer to FR Vol. 81, No. 237 pg. 89336, 3rd column, 2nd paragraph."
19. Replaced the existing language in Section 6(c) with the following: "Any modifications to the BMPs and measurable goals will require submittal of a new NOI, unless clearly accounted for in its SWMP and that has been public noticed." The SWMP maybe written to provide for options based on the Permittee's evaluation of its program. For example, the Permittee may have begun educating its audience on housekeeping measures, however survey results indicated that their knowledge of housekeeping measures was already adequate. Therefore, the Permittee wanted to change their message to target pesticide use instead. If this option was already accounted for its SWMP then the change would not be considered a modification.
20. Section 7(b), replaced "timely" with "as indicated in its SWMP," since the word "timely" is not defined.
21. Section 8 – TMDL Implementation and Monitoring was added to comply with 40 CFR § 122.44(d)(1)(vii)(B).

DOH is directly implementing the TMDL WLAs applicable to Small MS4s as Water Quality-Based Effluent Limits (WQBELs).

Currently, there are eight (8) TMDLs that have been approved by the EPA and adopted by the Department:

- KANEOHE STREAM, OAHU
- UPPER KAUKONAHUA STREAM, OAHU
- NAWILIWILI, KAUAI
- HANAIEI, KAUAI
- KAPAA, OAHU
- KAWA, OAHU
- WAIMANALO, OAHU
- ALA WAI, OAHU

Of the eight (8) TMDLs, only Kaneohe Stream, Upper Kaukonahua Stream, and Kawa Stream, have Small MS4s that have been assigned a specific WLA. The Small MS4s located within these areas include, the State of Hawaii, Department of Defense; Department of Education, Department of Health, University of Hawaii, Windward Community College; and the Navy Region Hawaii, Department of the Navy. The State of Hawaii, Department of Defense has been identified as being assigned Wasteload Allocations (WLAs) in both Kaneohe and Kawa Stream TMDLs, but is not currently covered under an NPDES permit. The DOD areas are within the Veteran's Cemetery and the DOH does not intend to require coverage because, unless information becomes available to show otherwise, the facility does not meet the definition of a Small MS4.

WLAs have been assigned to the Department of Education for Kawa and Kaneohe Streams and to the Department of Health for Kawa Stream, but the Department is granting both facilities waivers from the Phase II Permit requirements.

The University of Hawaii, Windward Community College (WCC) is currently covered under an NGPC and under this proposed General Permit must comply with the assigned WLAs consistent with the assumption of the TMDL document within the timeframes as specified in its I&M Plan.

For all other Permittees, the proposed General Permit requires compliance with any assigned WLAs, as additional TMDLs are adopted by DOH and approved by the EPA, consistent with the TMDL document within the timeframes as specified in its I&M Plan, unless an I&M Plan has already been developed by the DOH. If an I&M Plan has been developed by the DOH, then the Permittee shall comply with those timeframes and requirements.

As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLAs will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions. The DOH expects the two-year timeframe to be sufficient because it is expected that stakeholders will participate in the development of the TMDL. If compliance is expected to take longer than 1-year after preparation of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet the requirements of 40 CFR 122.47. A new NOI shall be submitted to DOH upon submittal of the

Permittee's I&M Plan to provide opportunity for public comment and request for a public hearing.

22. Section 8(b) was added to specify the minimum requirement of the I&M Plan.

To ensure BMP effectiveness, the plan shall identify the activities to be implemented and explanation for selecting those activities based on an analysis of "actual or literature documentation of the estimated effectiveness." To determine the actual effectiveness after implementation, a baseline would first need to be determined, if not already determined in the TMDL document, and then compared to post activity monitoring results.

23. In Section 10, added: "Annual Reports shall be submitted in compliance with Federal eReporting Rule requirements starting no later than December 21, 2020."

24. Section 10(a)(1) was revised to add "the terms and" to be consistent with the Final Remand Rule. Also, EPA replaced the term "effluent limitations" with "terms and conditions" to be consistent with changes made to 40 CFR 122.34(a).

Refer to FR, Vol. 81, No. 237/ Friday, December 9, 2016, page 89337, 1st column, 3rd paragraph.

EPA has substituted the term "terms and conditions" for "effluent limitations" because stakeholders (in response to the Remand Rule) asserted the term effluent limitations connotes end-of-pipe numeric limits even though EPA is not insisting that these types of limitations be used. In sum, EPA intends that terms and conditions are a type of effluent limitations and that they are interchangeable and both mean permit requirements.

25. Section 10(a)(2) replaced "storm water management plan" with "effectiveness of each component in its SWMP" because the assessment is required of each component and not just the SWMP in its entirety. Also, replaced "progress towards implementing each minimum control measure" with "the status of achieving the measurable goals for each BMP" since compliance shall be met when meeting its measurable goals.
26. Deleted Sections 10(a)(3) and 10(a)(5) because modifications to the SWMP are no longer allowed. Modifications to the SWMP that have not

been accounted for (i.e., the SWMP may provide for BMP if/then options) and publicly noticed require submission of a new NOI and SWMP.

27. Revised Section 10(b) to be consistent with recent individual permit's standard conditions.
28. Added Section 10(c) to require reporting on the status of TMDL compliance.
29. Added Section 11(d) to ensure that all submittals use the forms as specified by the DOH.
30. Added Section 11(e) to comply with the Federal eReporting Rule.
31. Added Sections 13 and 14 to address requirements for the Public Notice of Permit Actions, Public Comments, the Public Comment Period and Public Hearings.

The public shall be notified of the DOH's proposal to authorize the MS4 to discharge under the general permit and, consistent with 40 CFR 124.10, make available for public review and comment and opportunity for public hearing the NOI (refer to Section 14 of the general permit), and the specific BMPs, milestones, and schedules from the NOI that the Director proposes to be incorporated into the permit as enforceable requirements. The Public Notice document will provide directions as to how the above information may be obtained. In accordance with Hawaii Revised Statutes, §1-28.5 Publication of Notice – whenever a public notice shall be given, notice shall be provided as follows:

For Oahu

Honolulu Star-Advertiser
Current contacts: Lisa Kaukani, Account Executive
Phone: (808) 529-4344
Fax: (808) 529-4829
Email: lkaukani@staradvertiser.com

Name: Rose Rosales, Account Executive
Phone: (808) 529-4825
Fax: (808) 529-4829
Email: rrosales@staradvertiser.com

For Maui

The Maui News
Current contact: Terri Yip-Komoda, Classified Advertising Sales
Representative
Ph. (808) 242-6333/Fax: (808) 242-6389
Email: tykomoda@mauinews.com or e-mail: class@mauinews.com

All publication and mailing costs associated with the public notification(s) on the draft permit terms and conditions shall be paid by the Permittee. The Permittee shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the Director, is a basis to deny issuance of permit coverage. The process for submitting public comments and hearing requests, and the hearing process if a hearing is granted, must follow the procedures applicable to draft permits in 40 CFR 124.11 through 124.13. The DOH shall respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary revise the proposed BMPs and/or timelines to be included as terms of the permit.

32. Added Sections 16 and 17 for renewal and forms. The language specifies that requests for coverage under a renewed (reissued) general permit must be received within the timeframes as specified in the reissued general permit. Requests must be made on forms provided by DOH. Forms will be available on the Department's e-permitting portal.

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

(6) A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR 11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 919 Ala Moana Blvd., Room 310, Honolulu, Hawaii 96814. The procedures for requesting a hearing shall follow 40 CFR 124.11.

(7) Name and telephone number of a person to contact for additional information.

Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

Refer to 40 CFR 122.30 through 122.37.

40 CFR 122.34 requires Small MS4 to reduce pollutant discharge to the Maximum Extent Practicable which requires the implementation of minimum control measures.

(9) Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

Not applicable.

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
§11-55-02	General policy of water pollution control
§11-55-03	General prohibition
§11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
§11-55-05	Receipt of federal information
§11-55-06	Transmission of information to regional administrator
§11-55-07	Identity of signatories to NPDES forms

§11-55-08 Formulation of tentative determinations
 and draft permit
 §11-55-09 Public notice of applications
 §11-55-10 Fact sheet
 §11-55-11 Notice to other government agencies
 §11-55-12 Public access to information
 §11-55-13 Public hearings
 §11-55-14 Public notice of public hearings
 §11-55-15 Issuance of NPDES permits
 §11-55-16 Modification or revocation and reissuance
 of NPDES permits
 §11-55-17 Termination of permits and denial of
 renewal
 §11-55-18 Reporting discontinuance or dismantlement
 §11-55-19 Application of effluent standards and
 limitations, water quality standards,
 and other requirements
 §11-55-20 Effluent limitations in issued NPDES
 permits
 §11-55-21 Schedule of compliance in issued NPDES
 permits
 §11-55-22 Compliance schedule reports
 §11-55-23 Other terms and conditions of issued
 NPDES permits
 §11-55-24 National pretreatment standards and users
 of publicly owned treatment works
 §11-55-25 Transmission to regional administrator of
 proposed NPDES permits
 §11-55-26 Transmission to regional administrator of
 issued NPDES permits
 §11-55-27 Renewal of NPDES permits
 §11-55-28 Monitoring
 §11-55-29 Recording of monitoring activities and
 results
 §11-55-30 Reporting of monitoring results
 §11-55-31 Sampling and testing methods
 §11-55-32 Malfunction, maintenance, and repair of
 equipment

§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms
§11-55-34.04	General permit conditions
§11-55-34.05	Requiring an individual permit
§11-55-34.06	Reserved
§11-55-34.07	Degree of waste treatment
§11-55-34.08	Notice of intent
§11-55-34.09	Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage
§11-55-34.10	Review of coverage issues and notice of intent and notice of general permit coverage decisions
§11-55-34.11	Notice of general permit coverage revocation and/or termination
§11-55-34.12	General permit compliance
§11-55-35	Penalties and remedies
§11-55-36	Hearings and appeals
§11-55-37	Severability clause
§11-55-38	Repealed
§11-55-39	Public interest
§11-55-40	Field Citations; non-compliance with NPDES requirements
<u>§11-55-41</u>	<u>Zones of mixing</u>
<u>§11-55-42</u>	<u>Intake credits</u>

Appendix A	Department of Health Standard General Permit Conditions
Appendix B	NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities

Appendix C	NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity
Appendix D	NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions.

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2018 unless otherwise specified.

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

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or

defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge

(e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State

waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations

of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or [~~desiccant~~]desiccant, that[+]is a:

- (1) [~~is a eucaryotic~~]Eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) [~~is a procaryotic~~]Procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or
- (3) [~~is a parasitically~~]Parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic

mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)). "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage

of a facility's intake flow that is used for cooling purposes in 40 CFR §125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any

pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is

intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads

with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter

promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure"

exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(f) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.

"Pesticide" means the same thing as defined in section 11-54-4(f) (1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides

pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;
- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the

canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute State waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological

monitoring," "contiguous zone," "discharge,"
"discharge of a pollutant," "effluent limitations,"
"municipality," "navigable waters," "ocean,"
"pollutant," "schedule of compliance," "territorial
sea," and "toxic pollutant." [Eff 11/27/81; am and
comp 10/29/92; comp 09/23/96; am and comp 09/22/97; am
and comp 01/06/01; am and comp 11/07/02; am and comp
08/01/05; am and comp 10/22/07; comp 6/15/09; am and
comp 10/21/12; am and comp 12/6/13; am and comp
11/15/14; am and comp 2/9/19; am and
comp] (Auth: HRS §§342D-4, 342D-5; 33
U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a),
183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution

- control.** (a) It is the public policy of this State:
- (1) To conserve State waters;
 - (2) To protect, maintain, and improve the quality of State waters:
 - (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses;
 - (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;

- (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
- (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C.

§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion.

(a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least ~~[one hundred eighty]~~three hundred sixty days before the expiration date of the existing permit. The director may waive this ~~[one hundred eighty]~~three hundred sixty day requirement by issuing the

permit with an effective date before the
[~~one hundred eighty~~] three hundred sixty days
expire;

- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system

is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b) (14) (x) or small construction activity as defined in 40 CFR §122.26(b) (15) (i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit

application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

(1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been

granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;

- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application; and
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g) (1) through 122.26(g) (4), except 40 CFR §122.26(g) (1) (iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;

- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from

- the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
 - (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES

forms. (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business

function, or any other person who performs similar policy- or decision-making functions for the corporation, or

- (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall

operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);

- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company[~~—~~
~~(A)](a) duly authorized representative may thus be either a named individual or any individual occupying a named position[~~—~~];~~
- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the

requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
 - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
 - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed

- effluent limitations, identified under sections 11-55-21 and 11-55-22;
- (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
 - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)

The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33

U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) ~~[Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:~~
 - ~~(A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;~~
 - ~~(B) Posting near the entrance to the owner's or operator's premises and in nearby places; or~~
 - ~~(C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.]~~ Notice shall comply with section 1-28.5, HRS;
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and

considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);

- (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
- (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation

under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
 - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
 - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
 - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
- (3) The tentative determinations required under section 11-55-08;

- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
 - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and
 - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
 - (6) The name and telephone number of a person to contact for additional information; and
 - (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.
- (c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

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(2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests

for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the

information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit~~[-]~~, provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a)

Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice

of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published [~~at least once in a newspaper of general circulation within the geographical area of the discharge;~~] in accordance with section 1-28.5, HRS;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;
- (6) The purpose of the hearing, including a concise statement of the issues raised by

the persons requesting the hearing, as applicable:

- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or

attainment of applicable water quality standards;

- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
 - (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
 - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
 - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
 - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste

outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS

Chapter 91. "Interested" means any person with "standing" as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

(1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.

(2) Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16.

(i) The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D;

125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification as defined in 40 CFR 122.63. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; am and comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370,

1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).
- (5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.

(6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
 - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or

- (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;
 - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
 - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412;
or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
 - (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants[-];
 - (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it[-];
 - (9) Intake credits in accordance with 40 CFR §122.45(g) and [HAR]section 11-54-12[-]; and
 - (10) Recreational criteria for all State waters in [HAR]section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.
- (b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an

issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09;

comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
 - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more

than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each

interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
 - (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
 - (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
 - (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).
- (c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements

issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(1), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the

director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);

- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
 - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
 - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be

- incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
- (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
 - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
 - (C) The quality and quantity of effluent to be introduced into a treatment works; and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33

U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; ~~and~~
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

(11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
 - (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
 - (3) Sample any discharge of pollutants or effluent.
- (d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.
- (e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:
- (1) Establish and maintain records;
 - (2) Make reports;
 - (3) Install, use, and maintain monitoring equipment or methods;
 - (4) Sample effluent and State waters;
 - (5) Provide access to and copying of any records which are maintained; and
 - (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §122.41(i))

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§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C.

§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

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- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and
- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period[~~7~~]:

- (1) A ten-year period beginning on the date of completion of the construction;

- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored

by the permittee for at least the items listed in subsection (c).

- (c) Monitored items:
 - (1) Flow (in gallons per day or cubic feet per second); and
 - (2) All of the following pollutants:
 - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
 - (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
 - (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
 - (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2,

342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
 - (A) The date, exact place, and time of sampling or measurements;
 - (B) The individual(s) who performed the sampling or measurements;
 - (C) The date(s) the analyses were performed;
 - (D) The individual(s) who performed the analyses;
 - (E) The analytical techniques or methods used; and
 - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp

09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; comp 10/22/07; comp
6/15/09; comp 10/21/12; comp 12/6/13; comp
11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2,
342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts
122; 123; 124, Subparts A and D; 125;
122.41(j))

§11-55-30 Reporting of monitoring results. The
director shall require periodic reporting (at a
frequency of not less than once per year) on the
proper NPDES discharge monitoring report form, or
other form as specified by the director, of monitoring
results obtained by a permittee under monitoring
requirements in an NPDES permit. In addition to the
NPDES discharge monitoring report form, or other form
as specified by the director, the director may require
submission of any other information regarding
monitoring results as determined to be necessary.
[Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am
and comp 09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; am and comp 10/22/07; comp
6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14;
comp 2/9/19; comp] (Auth: HRS
§§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33
U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts
122; 123; 124, Subparts A and D; 125; 122.41(1)(4),
122.44(i))

§11-55-31 Sampling and testing methods. (a)
All sampling and testing shall be done in accordance

with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least

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twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2,

342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of

income. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
 - (A) Involve the same or substantially similar types of operations;
 - (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - (D) Require the same or similar monitoring; and
 - (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;

- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a) (11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated December 6, 2013;
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated [+]February 9, 2019;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities~~[+]~~, dated July 13, 2018;

- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less[+], dated July 13, 2018;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water[+], dated July 13, 2018;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity[+], dated July 13, 2018;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals[+], dated July 13, 2018;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities[+], dated July 13, 2018;
- (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated [+]February 9, 2019;

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- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated December 6, 2013;
- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks, dated ~~[]~~February 9, 2019; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of ~~[Pesticides.]~~Pesticides", dated July 13, 2018. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/23/96; comp

09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05;
comp 10/22/07; comp 6/15/09; comp 10/21/12; comp
12/6/13; comp 11/15/14; comp 2/9/19;
comp] (Auth: HRS §§342D-4, 342D-5; 33
U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.
§§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions.

(a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to State waters;

- (B) The size of the discharge;
- (C) The quantity and nature of the pollutants discharged to the State waters; and
- (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; comp 2/9/19; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:

- (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp]
- (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)
- (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

- (b) A notice of intent shall:
 - (1) Be submitted on forms provided by the director;
 - (2) Comply with the notice of intent requirements of the respective general permit; and
 - (3) Be accompanied by all pertinent information which the director may require in order to

establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or

addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500; and
 - (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
- (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;
 - (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than ~~[30]~~thirty calendar days after the start of construction activities;
 - (3) The expiration date of the existing general permit; or
 - (4) The expiration date of the existing notice of general permit coverage.

- (k) (Reserved).
- (l) (Reserved).
- (m) A notice of intent shall be submitted to the director for:
 - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
 - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent

shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b) (2) (ii) and (iii), 123.25(a) (11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage.

(a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its

duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e) (2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage [~~upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first~~]. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the [Permittee] permittee otherwise. The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for coverage, shall remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The permittee's submittal of a notice of cessation;
- The issuance of an individual NPDES permit;
- A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit;
or
- A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.

The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance [will]may be [automatically] terminated and may be required to apply for individual NPDES permit coverage. [If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.]

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or

- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

(f) A person claiming coverage in writing under the automatic provision of subsection (e) (2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion

and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e) (2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an

individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren §11-55-34.10, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp

10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19; comp] (Auth: HRS §§342D-4, 342D-5,

342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected.

[Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19;

comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [R 6/15/09]

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;

- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp 2/9/19;

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

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;

- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
 - (v) Any person who fails to retain on-site or at a nearby office or field office:
 - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
 - b) storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,
 - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion, or
 - d) discharge monitoring reports;
 - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:

- (i) \$500 for any person who violates paragraphs (1) (A) (i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;
 - (ii) \$100 for any person who violates paragraph (1) (A) (v) for the first violation, and \$200 for a subsequent violation;
 - (iii) \$500 for any person who violates paragraph (1) (A) (vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
 - (i) Signing the field citation;
 - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
 - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (iv) Correction within seven days, or unless otherwise specified on the

- field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
 - (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (ii) Pay the amount indicated; and
 - (iii) Correct the violation;
 - (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form. [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp 2/9/19; comp]
 (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-55-41 Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.

(b) Establishment, renewal, and termination.

- (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.
- (2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.
- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
- (4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and

procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.

- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
 - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
 - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
 - (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
 - (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under

conditions consistent with the reasons within the following limitations:

- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;
- (B) The director may issue a zone of mixing for a period not exceeding five years;
- (C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established. Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the

- applicant may be required if research is deemed prudent by the director; and
- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.
- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall

comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.

- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-55-42 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant that is present in the intake water body.

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

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

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

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

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value

- equal to the intake pollutant value; and
- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.
- (d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.
- (e) The director shall grant credit for water quality-based effluent limits only if:
- (1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;
- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,
- (4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.
- (f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.
- (g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:
- (1) Documentation showing a complete and detailed

- description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water" or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and
 - (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.
- (h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee:
- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term; and
 - (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.
- (i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.
- (j) All other water quality criteria established under this chapter continue to apply." [Eff and comp] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

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 11-55, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED AS TO FORM:

Dale K. Sakata

Deputy Attorney General

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

SUMMARY

1. Title amended.
2. §11-55-01 is amended.
3. §11-55-04 is amended.
4. §11-55-07 is amended.
5. §11-55-09 is amended.
6. §§11-55-13 to 11-55-15 are amended.
7. §11-55-17 is amended.
8. §11-55-19 is amended.
9. §11-55-23 is amended.
10. §11-55-27 is amended.
11. §11-55-34.02 is amended.
12. §§11-55-34.08 and 11-55-34.09 are amended.
13. A new §11-55-41 is added.
14. A new §11-55-42 is added.
15. Chapter 55 is compiled.

III. Old Business – After Public Hearing

B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, 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 & Ocean Recreation

Administrative Rule Title and Chapter: Title 13, Chapter 256

Chapter Name: Ocean Recreation Management Rules and Areas

Contact Person/Title: Todd Tashima/General Professional

Phone Number: 808-587-0142

E-mail Address: todd.h.tashima@hawaii.gov Date: 10/7/21

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 notified affected businesses about public hearings and how to submit testimony on the rules.

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

Yes, a clarification was included regarding the types of vessels and equipment that may be used in the area.

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.

Stakeholders were notified by DOBOR's AlertMedia system, the DLNR Communications Office also released a press release.

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

Some opposed the shift permitting system, and some supported an outright ban on commercial activity. Most agreed that regulations were needed to address safety and user conflict concerns.

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

DOBOR believes the shift system in the original proposal allows the greatest number of businesses to operate while ensuring natural resource protection: there would be 8 available permits, an increase from the existing limit of 4. DOBOR does not support an outright ban on commercial activity.

- 4. The number of persons who:

(i) Attended the public hearing: Approximately 40

(ii) Testified at the hearing: 20

(iii) Submitted written comments: 48

- 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.

DOBOR supports the original proposal for the reasons provided in VI. 3. above.

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>

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

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

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

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

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

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

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

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

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

IV. NEW BUSINESS – Before Public Hearing June 2021 Meeting Minutes

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

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

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

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

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

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

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

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

V. ADMINISTRATIVE MATTERS

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

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

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

DEPARTMENT OF LAND AND NATURAL RESOURCES

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

[Date of adoption by agency]

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

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 256

OCEAN RECREATION MANAGEMENT RULES AND AREAS

Subchapter 1 General Provisions

Historical note

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

Subchapter 2 North Shore Kauai Ocean
Recreation Management Area

Historical note

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

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

Subchapter 3 South Shore Kauai Ocean Recreation Management Area

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

Subchapter 4 North Shore Oahu Ocean Recreation Management Area

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

§§13-256-66 to 13-256-70 (Reserved)

Subchapter 5 Windward Oahu Ocean Recreation
Management Area

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

Subchapter 6 South Oahu Ocean Recreation

Management Area

- §13-256-86 Definition
- §13-256-87 Hanauma Bay restricted zone
- §13-256-88 Maunalua Bay waters
- §13-256-89 Waialae-Kahala restricted areas
- §13-256-90 Diamond Head restricted area
- §13-256-91 Waikiki ocean waters restricted zones
- §13-256-92 South Shore parasail area
- §13-256-93 Kahakaaulana Islet (Harris Island)
commercial zone
- §13-256-94 Reef Runway Zone F
- §13-256-95 Koko Head and Makapuu commercial high
speed boating zone
- §13-256-96 Ke'ehi Lagoon canoe racing zone
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Subchapter 7 West Maui Ocean Recreation Management Area

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

Subchapter 8 South Maui Ocean Recreation Management Area

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

Subchapter 9 North Maui Ocean Recreation
Management Area

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

Subchapter 10 East Hawaii Island
Ocean Recreation Management Area

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

Subchapter 11 West Hawaii Island
Ocean Recreation Management Area

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

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

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

SUBCHAPTER 1

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Two per cent of the gross receipts which are directly attributable to the use of the commercial use permit issued by the department for the twelve month period prior to the date of sale; or

(2) Ten per cent of the net value of the sale of the stock or interest in the business as determined by the difference between the sale price and an equal percentage of the appraised value of the assets of the business.

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

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

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

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

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

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

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

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

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

§13-256-11 Fees. (a) Fees required to be paid to the department are as follows:

- (1) Registration fee. A registration fee payable at time of issuance and renewal shall be as prescribed in section 13-253-1;
- (2) Operator permit fee. A commercial operator permit fee payable at time of issuance and or renewal of the permit shall be as prescribed in §13-253-2;
- (3) Commercial operating area use permit fee. A monthly commercial use permit fee shall be the greater of \$75.00 per month, payable in advance, or 2% of the monthly gross receipts. The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form

acceptable to the department. A permittee possessing both a harbor commercial use permit and a commercial operating area use permit who is paying 2% of gross receipts under the commercial harbor use permit shall not be required to pay an additional 2% of gross receipts under the commercial operating area use permit.

(b) Delinquency in the payment of any fees owed to the department will result in automatic revocation of the commercial operating area use permit. [Eff 2/24/94; comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§13-256-12 Gross receipts. Each commercial permittee shall be responsible for submitting to the department a monthly statement of its gross receipts. [Eff 2/24/94; am 12/31/18; comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-13 Mooring of rafts and platforms. Except as permitted by the department, permanent or temporary mooring of rafts and platforms for use in thrill craft, parasailing and other water sports activities is prohibited. Rafts and platforms shall be removed daily from state waters or located in a designated anchorage or harbor in accordance with a valid permit issued by the department. Ground tackle for mooring of rafts and platforms shall not be placed on live coral. [Eff 2/24/94; am 6/16/03; comp] (Auth: HRS §§200-22, 200-24)
(Imp: HRS §§200-6, 200-22, 200-24)

§13-256-14 Safety and enforcement. The restrictions cited in this chapter shall not apply in the event of an emergency, to law enforcement or

rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department or the U.S. Coast Guard. [Eff 2/24/94; comp] (Auth: HRS §200-40) (Imp: HRS §§200-2, 200-3, 200-40)

§13-256-15 Commercial vessel shoreline access.

No commercial vessel shall land, embark or discharge passengers at any state or county facility, or at other public beaches except for locations at which the permittee has been issued an appropriate permit by the department or a lease or permit by the board of land and natural resources or a county, or within designated ingress/egress zones. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-16 Thrill craft operations; general provisions. (a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to:

- (1) Avoid possible adverse impacts on humpback whales or other protected marine life;
- (2) Provide for increased public access;
- (3) Reduce user conflicts; and
- (4) Promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from a state approved course on the safe use and operation of a

thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1.

(f) All persons holding or receiving a certificate of completion under this section are exempt from section 13-244-15.5 for purposes of operating thrill craft. [Eff 2/24/94; am 7/5/03; am 12/31/18; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-17 Recreational thrill craft operations.

(a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) Thrill craft operation shall be prohibited in state waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau. In all other non-designated ocean recreation management areas of state waters, recreational thrill craft may operate seaward of five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater.

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private beachfront property.

(f) The State may exempt thrill craft from the requirements of this section, and allow thrill craft to operate outside of designated thrill craft areas, as described in subchapters two through eleven, conditioned upon application for, and receipt of, a miscellaneous use permit pursuant to section 13-231-3(a)(8). [Eff 2/24/94; am 12/31/18; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-18 Commercial thrill craft operations, commercial high speed boating and water sledding operations.

(a) No commercial thrill craft, high speed boating or water sledding activities shall be conducted on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated commercial thrill craft, high speed boating or water sledding operating area, in addition to any commercial use permit required for state-owned facilities. No more than one commercial operating area use permit shall be issued to an owner to conduct commercial thrill craft, high speed boating or water sledding.

(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area. Water sledding operations may be conducted in the designated thrill craft areas only if no other thrill craft activity is ongoing in said area.

(c) No more than one vessel shall be permitted to operate under a commercial operating area use permit issued for high speed boating or water sledding.

(d) Access to and from designated areas shall be only from harbors and ramp facilities, or areas designated by a valid conservation district use permit issued by the Department of Land and Natural Resources or areas designated by the Department.

(e) Commercial thrill craft, high speed boating and water sledding operators shall proceed at a speed of slow-no-wake, or as otherwise posted, by the most direct route consistent with safety considerations. Thrill craft, high speed boating and water sledding operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(f) No other activity is permitted in designated commercial thrill craft operating areas or recreational and commercial water skiing or water sledding areas during the time of authorized operations for safety purposes.

(g) Commercial thrill craft operators shall be required to establish a safety instruction program for customers that includes, but is not limited to, the safe use of a thrill craft, boundaries of operating areas and the use of a personal flotation device.

[Eff 2/24/94; am 7/5/03; am 8/8/11;
comp] (Auth: HRS §§200-4, 200-22,
200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-22,
200-24, 200-37)

§13-256-19 Parasailing activities. (a)

Parasailing operators shall comply with rules and regulations promulgated by the U. S. Coast Guard in addition to the following provisions:

- (1) All parasailing vessels shall have access to designated areas only from harbors or ramp facilities by the most direct route consistent with safety considerations.
- (2) No commercial parasailing vessel shall

operate on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated parasail operating area, in addition to any commercial use permit required for state-owned facilities.

- (3) No operator shall be issued more than one commercial operating area use permit for a designated parasailing operating area.
- (4) No permittee shall be allowed to operate more than one parasail vessel with a parasail aloft in the designated parasailing operating area.
- (5) No parasailing vessel shall be engaged in parasailing activities while it is within three hundred feet of the shoreline or any marked channel entrance.
- (6) All parasail vessels shall carry at least one crew member in addition to the captain whose duty it shall be to observe the passenger in the chute.

(b) Parasailing operations shall be curtailed in certain designated areas under this chapter as necessary to avoid possible adverse impacts on humpback whales or other protected marine life. In designated areas during the whale season, the maximum vessel speed for parasailing shall be eighteen (18) knots, and maximum transit speed for shuttling passengers to and from the parasailing zones shall be fifteen (15) knots or minimum planing speed, whichever is less, unless governed by other limits such as slow-no-wake zones or as marked by signs. [Eff 2/24/94; comp] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-20 Windsurfing. [~~a~~] Windsurfing activity shall be governed by the provisions of this chapter.

- (1) Ingress/egress to the shoreline shall be made by the most direct route dictated by

- wind conditions.
- (2) Maneuvering shall be in accordance with rules of the road pertaining to sailing vessels. (Navigation Rules, COMDTINST M16672.2B. Rule 12)
 - (3) Sailboard operators shall approach no closer than two hundred feet to a dive flag, indicating dive activity in progress. [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-21 Ultralight float equipped aircraft.

- (a) For the purpose of this section, ultralight or experimental float equipped aircraft means an ultralight or experimental aircraft as defined by section 13-230-8.
- (b) The takeoff, landing and inflight portions of all ultralight or experimental float equipped aircraft operations on or above any ocean recreation management area shall be governed by Parts 91 and 103 of the Federal Aviation Regulations, which are incorporated by reference. No person shall operate an ultralight or experimental float equipped aircraft in a careless or reckless manner so as to endanger the life or property of another.
- (c) The operator of any aircraft designed to maneuver on the water shall abide by all rules governing the operation of motorized vessels during the launching, retrieval and taxi. No person shall operate an ultralight or experimental aircraft registered as an experimental or ultralight aircraft by the Federal Aviation Administration when operating within a designated ocean recreation management area while carrying passengers for hire.
- (d) The use of shuttle vessels in support of ultralight or experimental float equipped aircraft operations is prohibited on the ocean waters of the State, except for small watercraft carried aboard the aircraft. [Eff 2/24/94; am 12/31/18;

comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-22 Tow-in surfing. (a) The State assumes no responsibility or liability associated with tow-in surfing.

(b) Only thrill craft may be used for tow-in surfing.

(c) All thrill craft being used for tow-in surfing shall be recorded with the department using forms provided by the department.

(d) Tow-in surfing decals shall be provided at the time the vessel is recorded with the department and shall be required to be prominently displayed on the front half of the vessel.

(e) Thrill craft not recorded with the department for tow-in surfing are prohibited from displaying a tow-in surfing decal.

(f) Effective September 1, 2004, both the thrill craft operator and surfer, who engage in, or operate a thrill craft for tow-in surfing, shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education in Hawaii on the safe use and operation of a thrill craft in high surf, that includes but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) Hawaii Administrative Rules as they apply to boating;
- (3) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (4) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(g) When operating a thrill craft for tow-in surfing, all operators shall:

- (1) Carry on board a two-way communicating device;
- (2) Tow-in a maximum of one person at any one

time;

- (3) Carry dive fins and a safety knife on their person; and
- (4) Yield right of way to all other boating or ocean recreation activities by leaving the same surfing break area and remaining a minimum of one thousand feet from the other activities.

(h) Notwithstanding section 13-256-17, within designated ocean recreation management areas, thrill craft used for tow-in surfing may enter the ocean recreation management area to gain access to and from a surfing site and for board and personnel recovery, rescue, and emergency purposes only in areas designated specifically for this activity as described in sections 13-256-23, 13-256-24 and 13-256-25.

(i) Unless otherwise provided by rule, towing surfers into waves within a designated ocean recreation management area shall be prohibited.

(j) Tow-in surfing may only be conducted during periods of high surf warning as declared by the National Weather Service in the region or around the island or islands for which the high surf warning has been issued.

(k) Notwithstanding section 13-244-18, surfers engaged in tow-in surfing shall not be required to wear a life-saving device.

(l) Thrill craft used for tow-in surfing may gain access to [~~State~~]state waters from boat ramps, harbor facilities or from private beach front property and access the designated tow-in surfing area by the most direct route consistent with safety considerations.

(m) In addition to equipment required by the U.S. Coast Guard for vessels, all thrill craft used for tow-in surfing shall be equipped with the following:

- (1) A rescue sled that is a minimum of three feet wide, four feet long and three inches thick. The sled shall have a minimum of five hand-grip handles, two of which shall be on the port side, two on the starboard

side and one at the bow of the sled. The sled shall not exceed the thrill craft load capacity recommended by the manufacturer;

(2) A quick-release tow-rope a minimum of thirty-feet long; and

(3) A bow tow-line a minimum of six feet long.

(n) Notwithstanding section 13-244-9, thrill craft used for tow-in surfing may be in proximity of the shoreline and tow-in surfers and travel at a speed greater than slow-no-wake when accessing the ocean or shoreline or when retrieving a surfboard or surfer in accordance with this subchapter.

(o) The thrill craft shall be operated at all times with due care for the rights and safety of people and property and the operator shall abide by any state or federal laws as they pertain to protected species.

(p) All participants in tow-in surfing special events shall be required to possess a certificate of completion as described in subsection (f).

(q) Notwithstanding section 13-256-17(d), operators of a thrill craft used for filming tow-in surfing shall possess a certificate of completion as required by subsection (f). [Eff 10/2/03; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-23 Oahu [~~Tow-in~~] tow-in surfing areas.

(a) Persons may conduct tow-in surfing seaward of the North Shore Oahu Ocean Recreation Management Area (ORMA) between Kaena Point at 21 degrees 34.488 minutes north, 158 degrees 16.835 minutes west, and Kahuku Point at 21 degrees 42.817 minutes north, 157 degrees 59.061 minutes west, and may extend their operation into the ORMA waters for board and personnel recovery, rescue, and emergency purposes, except within the following restricted areas as shown on Exhibit "I-A," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas North Shore

Oahu," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

- (1) Area A, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary, including the waters of Kawela Bay, beginning at 21 degrees 42.573 minutes north, 157 degrees 59.902 minutes west, then proceeding along the shoreline to 21 degrees 41.617 minutes north, 158 degrees 01.155 minutes west, facing the "Dog Island";
- (2) Area B, which includes the waters seaward and perpendicular to the shoreline bounded by a line drawn from the shoreline at 21 degrees 40.753 minutes north, 158 degrees 02.530 minutes west, then west to the seaward boundary of the ORMA at 21 degrees 40.753 north, 158 degrees 03.580 minutes west, then south to the shoreline at 21 degrees 39.750 north, 158 degrees 03.580 minutes west;
- (3) Area C, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at the north end of Shark's Cove at 21 degrees 39.318 minutes north, 158 degrees 03.818 minutes west, then proceeding south along the shoreline to 21 degrees 38.351 minutes north, 158 degrees 04.227 minutes west at the west end of Waimea Bay; and
- (4) Area D, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at 21 degrees 35.019 minutes north, 158 degrees 08.090 minutes west facing the eastern edge of "Hammerheads" surf break, then proceeding west along the shoreline to 21 degrees 35.015 minutes north, 158 degrees 08.435 minutes west facing the western edge of "Hammerheads" surfbreak. No thrill craft,

except for rescue and enforcement units, shall operate in these restricted areas; provided that thrill craft operated under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g), and has been issued a permit pursuant to section 13-244-19 for tow-in surfing training, may be allowed in Area "B" during calm sea conditions in the summer months as provided in these rules.

(b) The following described areas are designated for training and instruction in tow-in surfing techniques, as shown on Exhibit "I-A," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas North Shore Oahu," dated January 4, 2002, and located at the end of this subchapter. The trainee shall be under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g), and has been issued a permit pursuant to section 13-244-19:

- (1) Training Area 1, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at Kahuku Point at 21 degrees 42.817 minutes north, 157 degrees 59.061 minutes west, then proceeding to the western shore of Turtle Bay at 21 degrees 42.573 minutes north, 157 degrees 59.902 minutes west (contiguous with the eastern boundary of restricted area A); and
- (2) Training Area 2, which includes all waters seaward and perpendicular to the shoreline within the ORMA boundary beginning at 21 degrees 41.617 minutes north, 158 degrees 01.155 minutes west, facing "Dog Island", then southwest along the shoreline to 21 degrees 40.753 minutes north, 158 degrees 02.530 minutes west, fronting the "Revelations" surf site. [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS

§§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-24 Kauai [~~Tow-in~~]tow-in surfing areas.

(a) Areas of ocean waters, excluding the designated ocean recreation management areas (ORMA), surrounding the island of Kauai where tow-in surfing is allowed are shown on Exhibit "1-B," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Areas Island of Kauai," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

- (1) Area I, which includes waters seaward and perpendicular to the shoreline beginning at Kailiu Point at 22 degrees 13.430 minutes north, 159 degrees 34.855 minutes west, then east along the shoreline (including Hanalei Bay) and ending at the southeastern point of Moloaa Bay at 22 degrees 11.675 minutes north 159 degrees 19.495 minutes west;
- (2) Area II, which includes waters seaward and perpendicular to the shoreline beginning at the northeast point of Papaa Bay at the 22 degrees 10.675 minutes north, 159 degrees 18.630 minutes west, then south along the shoreline and ending at Hanamaula Bay at 21 degrees 59.658 minutes north, 159 degrees, 20.050 minutes west;
- (3) Area III, which includes waters seaward and perpendicular to the shoreline beginning at Hanapepe Bay at 21 degrees 53.755 minutes north, 159 degrees 35.855 minutes west, then west and north along the shoreline ending at the shoreline at Keawanui Point at 22 degrees 09.000 minutes north, 159 degrees 43.385 minutes west. Persons engaged in tow-in surfing activities may extend their operation into designated ORMA waters for board and personnel recovery, rescue, and

emergency purposes.

(b) Training and instruction in tow-in surfing techniques may be conducted on a case by-case basis at selected areas in accordance with a permit issued pursuant to section 13-244-19, provided that the trainee is under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22(g). [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§13-256-25 Maui [~~Tow-in~~] tow-in surfing areas.

(a) The area of ocean waters, excluding the designated ocean recreation management area (ORMA), north of the island of Maui that is designated for tow-in surfing activities is shown on Exhibit "I-C," titled "Ocean Recreation Management Areas Designated Tow-in Surfing Area Island of Maui," dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates):

Waters seaward and perpendicular to the shoreline beginning at the base of the Kahului Harbor west breakwater located at 20 degrees 53.890 minutes north, 156 degrees 28.790 minutes west, then east along the shoreline ending at the eastern point of Kuau Beach at 20 degrees 55.780 minutes north 156 degrees 22.000 minutes west; Persons engaged in tow-in surfing activities may extend their operation into ORMA waters located within three thousand feet of the shoreline for board and personnel recovery, rescue, and emergency purposes.

(b) Training and instruction in tow-in surfing techniques may be conducted on a case-by-case basis at selected areas in accordance with a permit issued pursuant to section 13-244-19, provided that the trainee is under the direct supervision of an

instructor who possesses a certificate of completion as described in section 13-256-22(g). [Eff 10/2/03; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

§§13-256-26 to 13-256-30 (Reserved)

SUBCHAPTER 2

NORTH SHORE KAUAI OCEAN RECREATION MANAGEMENT AREA

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

§13-256-31 Definition. The "North Shore Kauai Ocean Recreation Management Area" means all ocean waters and navigable streams located between eastern boundary of Moloaa Bay and the southernmost boundary of Na Pali Coast State Park extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "A", dated June 30, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

**§13-256-32 Commercial [~~Operator~~
~~Licensee]~~operator licensee experience requirements.**

(a) No commercial vessel operator shall be issued a commercial operator permit to operate or navigate within the Na Pali Coast ocean waters unless the applicant has a minimum of ninety days experience operating within the Na Pali Coast ocean waters attested to by two persons each of whom holds a valid commercial operator permit issued by the department.

(b) No commercial kayak tour guide license shall be issued a commercial operator licensee unless the operator meets the following conditions:

- (1) Possesses a current Red Cross Advanced Life Saving Certificate,
- (2) Has knowledge of elementary first aid;
- (3) Is physically qualified to perform as a kayak tour guide as evidenced by a written report of a physical examination made no earlier than thirty days prior to the application for the license; and
- (4) Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in the Na Pali Coast restricted area during the preceding six-month period.

(c) The department shall establish an advisory committee of not less than three commercial operator licensees to review applications and make recommendations for commercial operator licenses required by this section. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-33 Priority and procedures in the issuance of commercial vessel permits. (a) All commercial use permits shall be valid for not more than one year and shall automatically terminate on the expiration date.

(b) An application for a commercial use permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date; provided, however, priority for applicants who held a commercial use permit for Hanalei Bay or river in November 2000 shall be based upon the date the department issued such permit. An applicant must file a new application form each year but the effective filing date shall remain the same.

(c) Only when the number of commercial use permits issued under subsection (a) falls below the number authorized in section 13-256-38 or section 13-256-39, will the department offer a permit to the applicant with the next highest priority date; provided that in no event shall the limit set in section 13-256-38 or section 13-256-39 be exceeded thereby. [Eff 2/24/94; am 8/8/11; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-34 Review, acceptance, or rejection of the application. (a) The department shall examine and determine the genuineness of each application for a commercial vessel permit and may require additional information or conduct an independent investigation as may be deemed necessary for its determination.

(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.

(c) An application shall not be accepted for consideration and shall be rejected if:

- (1) The application fee is not paid at the time the application is made;
- (2) The applicant is delinquent in payment of any moneys due and payable to the department; or
- (3) The applicant is in violation of the rules of the department.

(d) Upon rejection of an application, the department shall notify the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefor. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application.

[Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-35 Repealed. (R 12/31/18)

§13-256-36 Repealed. (R 8/8/11)

§13-256-37 Fees. (a) Fees required to be paid to the department are described in Chapter 13-234 and more specifically as follows:

- (1) Registration fee. A registration fee payable at the time of issuance shall be prescribed in section 13-253-1.
- (2) Operator license fee. A commercial operator license fee payable at time of issuance of the license shall be \$2.00.
- (3) Commercial vessel permit fee. A monthly commercial vessel permit fee shall be the greater of \$75.00 or two per cent of the monthly gross receipts.

(b) Delinquency of any fees owed to the department will result in automatic revocation of the commercial vessel permit. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-38 Anini Beach ocean waters. (a) Anini Beach ocean waters means the area confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point at the low watermark from Honono Point, thence along a straight line on an azimuth of 142 degrees measured from true south to the inner edge of the reef of the channel, thence clockwise along the outer edge of the reef to the intersection of a line drawn on an azimuth of 197 degrees from a point on the shoreline, then 017 degrees to the low water mark of the shoreline, then in a northerly direction along the Anini Beach shoreline to the point of beginning.

- (b) Restrictions. Anini Beach ocean waters.
- (1) Anini Beach ocean waters shall be limited to providing commercial sailboard instruction only. No more than sixteen commercially owned sailboards may be employed in

- instructional use at any one time.
- (2) Motorized vessels operating within Anini Beach ocean waters shall not exceed a speed of "slow-no-wake" (five miles per hour) within two hundred feet of the shoreline.
 - (3) Motorized vessels and sailboards shall not proceed within one hundred feet of persons engaged in fishing. This restriction shall apply to vessels transiting the channel to or from the launching ramp.
- (c) ~~[Swimming Zone A, Anini Beach ocean waters.]~~
(1) Swimming Zone A, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:
Beginning at a point on the low water mark seventy-five feet east of the launching ramp, then proceeding in a straight line perpendicular to the low water mark seaward for a distance of one hundred feet, then proceeding in a straight line to a point on the extended eastern property line of Anini Beach Park located one hundred feet from the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.
- (d) ~~[Swimming Zone B, Anini Beach ocean waters.]~~
(1) Swimming Zone B, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:
Beginning at a point on the low water mark on an azimuth measured clockwise from True South of 167 degrees from Honu Point, proceeding in a straight line for a distance of one hundred feet, then proceeding in a straight line to the extended western property line of Anini Beach Park located at a point in the water one hundred feet from

the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.

(e) Restrictions. Swimming Zones A and B of Anini Beach ocean waters are designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within these zones. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-39 Hanalei Bay ocean waters, general restrictions. (a) Hanalei Bay ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, and described as follows:

Beginning at a point on the shoreline at the northernmost tip of Makahoa Point on the western end of the bay, thence along a straight line drawn tangent to the shoreline of Puu Poa Point on the eastern end of the bay, thence clockwise along the shoreline, including the banks of all navigable streams to the upper limit of tidal influence, to the point of beginning.

(b) In addition to all federal, state, and county laws, rules, and ordinances, the following restrictions shall apply to all activities in Hanalei Bay ocean waters.

- (1) No person shall operate a vessel at a speed in excess of "slow-no-wake" within five hundred feet of the shoreline, an ingress/egress zone, designated mooring area, or on the Hanalei River.
- (2) No person shall navigate a motorboat within three hundred feet of a diver's flag or a designated swimming area. Vessels thirty feet or less overall engaged in fishing are exempt from the [~~three-hundred~~]three hundred foot shoreline restriction, except that they

- may not enter designated swimming areas.
- (3) No person shall anchor or moor a vessel, raft, barge, platform or other contrivance except within the designated mooring area.
 - (4) No fishing vessel longer than thirty feet overall may engage in fishing except by pole and line within Hanalei Bay ocean waters.
 - (5) No commercial vessel shall load or unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto without a permit issued by the department and approval by the County of Kauai. All vessels authorized to load and unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto shall travel to and from the beach only through a designated ingress/egress zone.
 - (6) The department may issue up to five (5) commercial use permits for the use of self-propelled vessels to load and unload passengers at Hanalei Bay. Priority for the initial issuance of permits under this 2011 amendment shall be given to the persons that held a commercial use permit and operated under said permit in November 2000 for Hanalei Bay ocean waters. Through attrition of these initial five permittees, the maximum number of permits issued shall be reduced to three (3) permits. Permits shall be limited to passenger vessels certified by the Coast Guard to carry twenty-five or fewer passengers, and each permit shall authorize the carrying of no more than thirty passengers daily.
 - (7) The department may issue up to two (2) commercial use permits for the Hanalei launch ramp for the purpose of conducting guided kayak tours in Hanalei Bay ocean waters. The maximum number of passenger kayaks per trip per permit shall not exceed (8), and no more than thirty passengers shall be allowed per day under each permit. A guide kayak shall be required for each

group of eight passenger kayaks. Priority for the initial issuance of permits under this 2011 amendment shall be given to the operators that held a commercial use permit in November 2000 for Hanalei Bay ocean waters to conduct kayak tours.

- (8) No commercial water sports instruction or tours may be conducted in the Hanalei Bay ocean waters from the adjacent beaches without a permit from the department and approval by the County of Kauai. The department may issue a total of up to eight (8) permits for commercial water sports instruction within the Hanalei Bay ocean waters, including surfing and stand-up paddle boarding. Each permit shall authorize one instructor per day to conduct water sports instruction. The instructor shall have no more than four students at any given time. The instructor shall have a minimum of three (3) years surfing experience and possess a current Red Cross advanced life saving certificate. The department may designate the site of instruction at Hanalei Bay and hours of operation for each permittee, and may change the site whenever such changes is found by the department to be necessary. For the purpose of this section, commercial water sports instruction or tours include, but are not limited to, commercial kayak tours, canoe rides, diving, snorkeling, parasailing, surfing, sailboarding and other water-related recreational activities.

(c) Swimming Zones B-1 and B-2, Hanalei Bay ocean waters.

- (1) Zones B-1 and B-2 mean the areas confined by the boundaries shown and described in Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, as follows:
Zone B-1 swimming area extends three hundred

feet seaward of the low water mark for a distance of three hundred feet on each side of Hanalei Pier.

Zone B-2 swimming area extends three hundred feet seaward of the low water mark between the extended boundary lines of the county park containing the beach pavilion.

- (2) Restriction. Zones B-1 and B-2 are designated for bathing and swimming. No person shall operate or moor a vessel, sailboard, or any other recreation device within Zones B-1 and B-2, provided that this restriction shall not apply to:
 - (A) Vessels engaged in small-scale surround net fishing without the use of motors or fishing and crabbing from shore;
 - (B) Hawaiian design outrigger canoes.

(d) The designated mooring area for the mooring or anchoring of vessels, rafts, barges, platforms and other watercraft, is the area encompassed by the boundaries shown on Exhibit "C" dated December 1, 2010, located at the end of this subchapter and incorporated herein, and which are described as follows:

Beginning at a point on the northwest corner of Hanalei Pier by azimuths clockwise from True South, 123 degrees for a distance of six hundred seventy-five feet; 346 degrees for a distance of one thousand two hundred seventy-seven feet; 022 degrees for a distance of seven hundred fifty-six feet; 127 degrees for a distance of three thousand two hundred twenty-five feet; then on a straight line to the point of beginning.

- (1) All vessels, rafts, barges, platforms, and other watercraft within Hanalei Bay ocean waters shall be moored or anchored solely within the designated mooring area.
- (2) No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance

- with U.S. Coast Guard regulations.
- (3) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department.
 - (e) Ingress/Egress zones.
 - (1) Vessels shall access the beach and shall be accessed from the beach solely through the following Ingress/Egress zones. Zone number one begins at the southern boundary of the County Park pavilion parcel and extends southwest along the shoreline a distance of three hundred feet, then seaward to the designated mooring area. Zone number two begins at the north bank of Hanalei River and extends southward across the Hanalei River mouth to the northern boundary of Black Pot Park, and then extends seaward to the designated mooring area.
 - (2) Zone number one and Zone number two are designated for use by both commercial and recreational vessels. [Eff 2/24/94; am 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-40 Haena ocean waters, general

restrictions. (a) The Haena ocean waters are subject to the following restrictions. This section shall not apply in the event of an emergency, to law enforcement or to rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department, Coast Guard or Hawaiian design outrigger canoes engaged in crew training.

- (1) No commercial motorized vessel shall land, or discharge or load passengers from shore within Haena ocean waters, unless the owner possesses a valid commercial use permit for the use of the beach for this purpose issued by the board of land and natural resources. The total number of vessels operating from

- this area shall not exceed ten passenger carrying vessels and one support craft.
- (2) No person shall solicit business or offer goods or services for rent, sale or use within Haena ocean waters.
 - (3) Non-motorized commercial vessels may be permitted to land at the beach area fronting the western half of the county beach park.
 - (4) Vessels may be moored or anchored only during daylight hours.
 - (5) Motorized vessels shall not exceed a speed of "slow-no-wake" (five miles per hour) within Haena ocean waters.
- (c) Recreational Zone A, Haena ocean waters.
- (1) Zone A means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at the intersection of the edge of the inner reef and the mean low water mark on the south side of the boat channel, then clockwise along the outer edge of the inner reef to the intersection of the edge of the reef and a straight line drawn between a marker pole on the shoreline and the exposed rock on the southern tip of the outer reef, then along this line to the exposed rock, then along a line drawn at a ninety degree angle to the outer edge of the reef, then clockwise along the outer edge of the reef to the point where it becomes tangent to the Haena ocean waters boundary line, then clockwise along the boundary line to the mean low water mark to the point of beginning.
 - (2) Restrictions. Zone A is designated for recreational use. No commercial motorized vessel shall be permitted within Zone A, provided that customers patronizing commercial vessels anchored or moored within Zone C shall be allowed to enter Zone A for

- snorkeling or scuba diving activities.
- (3) Notwithstanding the provisions of subsection (b) (2), commercial vessels whose owners possess a valid use permit issued by the department of land and natural resources shall be permitted direct access to the beach area specified in the permit for the purpose of passenger pick-up or discharge.
 - (d) Swimming and Snorkeling Zone B, Haena ocean waters.
 - (1) Haena Zone B means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988 located at the end of this subchapter and described as follows:

Beginning at the intersection of the western boundary of Haena ocean waters and the mean low water mark, then along the western boundary of Haena ocean waters for a distance of two hundred feet, then clockwise along a line drawn parallel to the low water mark at a distance of two hundred feet to the outer edge of the inner reef, then along the outer edge of the inner reef to the mean low water mark, then along the mean low water mark to the point beginning.
 - (2) Restrictions. Haena Zone B is designated for swimming and snorkeling activities. No motorized vessel shall be permitted within Zone B.
 - (e) Snorkeling Zone C, Haena ocean waters.
 - (1) Haena Zone C is as shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter. Haena Zone C includes those ocean water areas outside Zone A and Zone B.
 - (2) Restrictions. Haena Zone C is an area designated for the use of motorized vessels with passengers engaged in snorkeling and scuba diving activities, Haena ocean waters include those ocean areas outside Zone A and Zone B. No vessel shall moor within Zone C except at three mooring buoys approved for installation by the board of land and

natural resources along the outer edge of the inner reef at the locations shown on Exhibit "D" dated June 30, 1988. No more than two vessels may be moored to each buoy at any one time, for a period not exceeding forty-five minutes per vessel.

- (3) Anchoring during daylight hours may be permitted within Zone C except in areas containing coral growth. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-41 Na Pali Coast ocean waters, general restrictions. (a) Na Pali Coast ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "E" dated June 30, 1988, located at the end of this subchapter and described as follows:

Beginning at the intersection of the southwestern boundary of the Na Pali Coast State Park and the shoreline, thence in a straight line drawn perpendicular to the shoreline to the intersection with the territorial sea base line, then along a straight line drawn perpendicular to the territorial sea base line seaward for a distance of three thousand feet, thence along a line drawn parallel to the territorial sea base line in a clockwise direction to the intersection of the western boundary of Haena ocean waters, thence along this line to the western boundary of Haena ocean waters to the point where it intersects the shoreline, thence along the shoreline to the point of beginning.

(b) The Na Pali Coast ocean waters are subject to the following restrictions:

- (1) No person shall navigate a commercial motorboat or conduct a commercial kayak tour within Na Pali Coast ocean waters except for persons who have been issued a permit by the department to operate within Na Pali Coast

ocean waters in accordance with this subchapter.

- (2) In no case shall a commercial vessel having a passenger carrying capacity of fifty or more passengers be permitted to operate within the Na Pali Coast ocean waters.
 - (3) No commercial operator shall embark or disembark passengers along the shoreline within Na Pali Coast ocean waters unless that operator has been issued a permit by the board of land and natural resources for use of the area at the location where passengers are embarked or disembarked.
- (c) Vessel operations within sea caves.
- (1) Commercial vessel operators shall maintain a listening watch on a radio frequency to be designated by the North Shore Charter Boat Association when operating within three hundred feet of the entrance to a sea cave.
 - (2) Vessel operators intending to enter a sea cave shall ensure that no other vessel traffic is operating within the cave.
 - (3) A vessel exiting a sea cave shall have the right-of-way over vessels preparing to enter a sea cave.

(d) The Nualolo Kai restricted zone is the area encompassed by the boundaries shown on Exhibit "F", dated March 1, 1989, located at the end of this subchapter, and which is described as follows:

Beginning at a point on the shoreline at the low water mark of the westernmost tip of Makuai Point, then by ~~[azimuth]~~ azimuths measured clockwise from True South; 241 degrees for a distance of two thousand one hundred feet to a point tangent to the outer edge of the reef, then along the outer edge of the reef to the westernmost edge of the shoreline of Alapii Point, then along the shoreline to the point of beginning.

- (1) Restrictions on commercial use. No more than six commercial vessels may anchor or moor within the Nualolo Kai restricted zone at

any one time, none of which may have a passenger carrying capacity exceeding eighteen passengers. The maximum time limit which a commercial vessel may moor within the Nualolo Kai restricted zone shall not exceed forty-five minutes. The limitation on commercial vessel provisions by this subsection shall not apply to commercial vessels whose owner possesses a valid permit issued by the board of land and natural resources to embark or disembark passengers at this location.

- (2) Restrictions on operation over reef areas. No motorized vessel shall operate over coral reefs subzone as shown on Exhibit "F". No vessel shall anchor or moor on live coral. Mooring shall be permitted only at day use moorings. A "day use moorings" means a mooring established by the department for daylight hour uses only. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-42 to 13-256-49 (Reserved)

SUBCHAPTER 3

SOUTH SHORE KAUAI OCEAN RECREATION MANAGEMENT [AREAS] AREA

§13-256-50 Definition. The "South Shore Kauai Ocean Recreation Management Area" means all waters of

the State from Lae Niau located at the north boundary of Kealia Beach, Kauai, Hawaii, to the west boundary of Salt Pond Beach Park, Hanapepe, Kauai, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "G", "South Shore Kauai, Hawaii," dated February 27, 1998, located at the end of this subchapter. [Eff 2/24/94; am 10/19/02; comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200- 24)

§13-256-51 Hanamaulu Bay restricted zones. (a)

Zone A, Hanamaulu Bay.

- (1) Zone A, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark at the tip of land which is six hundred feet from the mouth of the Hanamaulu Stream, then by ~~[azimuth]~~azimuths measured clockwise from True South; 180 degrees to a point on the low water mark of the northern boundary of Hanamaulu Bay; thence along the low water mark of the bay to the point beginning.

- (2) Restrictions. Zone A, Hanamaulu Bay is designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within Zone A.

(b) Zone B, Hanamaulu Bay.

- (1) Zone B, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point on the low water mark on the northern tip of Ahukini State Park; thence by ~~[azimuth]~~azimuths measured clockwise from True South; 170 degrees to a

point on the low water mark on the shoreline; then westward along the low water mark to the northern boundary of Zone A; then southward along the boundary of Zone A to the low water mark on the shoreline; then eastward along the low water mark to the point of beginning.

(2) Restrictions. Zone B, Hanamaulu Bay is designated as a "slow-no-wake" zone. All watercraft within this zone shall not exceed a speed of slow-no-wake.

(c) Hanamaulu Bay Ingress-Egress Corridor.

(1) Zone C, Hanamaulu Bay Ingress-Egress Corridor means the ocean waters confined by the boundaries for said corridor as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point on the low water mark at the south opening of Hanamaulu Stream; thence by [~~azimuth~~] azimuths measured clockwise from True South; 240 degrees to a point on at the west boundary of Zone B and the low water mark on the shoreline; then along western boundary of Zone B for a distance of one hundred feet; then 063 degrees to a point at the low water mark of the Hanamaulu Beach; the along the low water mark of the shoreline to the point of beginning.

(2) Restrictions. Zone C, Hanamaulu Bay Ingress-Egress Corridor is designated for use by recreational motorized vessels. All watercraft within this zone shall not exceed a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-52 Nawiliwili Bay restricted zones. (a) Zone A, Nawiliwili Bay is the ocean waters encompassed

by the boundaries of the zones as shown on Exhibit "I", dated November 23, 1988 located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark on the southern tip of Kukii Point then by azimuths measured clockwise from True South; 090 degrees across the bay to a point on the jetty; then proceeding north along the low water mark along the shoreline of Kalapaki Bay to the point of beginning.

Zone A, Nawiliwili Bay is designated for general ocean recreation activities. No person shall moor a vessel or operate at a speed in excess of slow no wake within Zone A. [Eff 2/24/94; comp]
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-21, 200-22, 200-24)

§13-256-53 Nukumoi [~~Restricted Zones~~] restricted zones.

- (a) Nukumoi Swimming Zone
- (1) Nukumoi swimming zone means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:
- Beginning at a point at the low water mark on the southern tip of the Nukumoi Point, then proceeding on a straight line to the low water mark of the southern point of Kihouna Heiau, then along the low water mark of Nukumoi Beach in an easterly heading to the point of beginning.
- (2) Restrictions. Nukumoi swimming zone is designated for swimming and bathing. No person shall operate or moor a vessel or other watercraft within this zone.
- (b) Nukumoi Ingress/egress Corridor.
- (1) Nukumoi ingress/egress corridor means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated

September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark adjacent to the west side of the basalt rock on Nukumoi Beach then by ~~[azimuth]~~azimuths measured clockwise from True South, 018 degrees for a distance of three hundred feet and the swim zone boundary; 112 degrees for a distance of fifty feet; 198 degrees to the shoreline; then along the low water mark of Nukumoi Beach in an easterly direction to the point of beginning.

- (2) Restrictions. Nukumoi ingress/egress corridor is designated for the use of nonmotorized vessels. No person shall operate or moor a motorized vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-54 Koloa Landing [~~Restricted Area.~~]restricted area. (a) The Koloa Landing restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "K", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of Lae O Kohala, thence by ~~[azimuth]~~azimuths measured clockwise from True South; 130 degrees to a point on the low water mark at the western edge of Keawaloa Bay; then long the low water mark of the shoreline in a northerly direction and then on an easterly heading to the point of beginning.

(b) Restrictions. Koloa Landing restricted area is designated for swimming and diving. No person shall operate or moor a vessel in this area, except that a vessel may enter or depart the area by a

straight line from the boat launching area to the closest seaward boundary line. All vessels transiting the area shall not exceed a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-55 Salt Pond Park [~~Restricted Area.~~] restricted area. (a) The Salt Pond Park restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "M", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark which is five hundred feet east of the centerline extension of Salt Pond Road; then on the low water mark along the beach in a southerly direction for a distance of approximately one thousand two hundred fifty feet; then on a straight line to the point of beginning.

(b) Restrictions. The Salt Pond Park restricted area is designated for swimming and bathing. No person shall operate or moor a vessel within this area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-56 Wailua River restricted area. (a) Restrictions described in this section shall not apply to department vessels, department personnel or emergency, patrol, or rescue craft while performing official duties.

(b) The Wailua River restricted area means the navigable waters of the Wailua River, Kauai, as defined by the boundaries as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted [~~Area,~~]Area" dated February 27, 1998, and located at the end of this subchapter. The boundaries begin at a point at the high water mark at the mouth of the Wailua River and include all the navigable waters

along the Wailua River in a westerly direction to the base of Kaholalele Falls on the north fork of the river and all of the navigable waters to the base of the Wailua Falls on the south fork of the river.

(c) The Wailua River restricted area shall be divided into four zones:

- (1) Zone 'A' includes all the navigable waters beginning fifty feet into the river from the western side of the Wailua River bridge and from seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline, then extends from the banks of the north shoreline to approximately seven hundred and eighty-three yards upstream as indicated by navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B', as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone ~~['A']~~'A'" dated February 27, 1998, and located at the end of this subchapter.
- (2) Zone 'B' includes all waters extending approximately two miles upstream from the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B' to the base of Kaholalele Falls on the north fork of the river and approximately three and a half miles from the navigational aids designating the boundary between Zones 'A' and 'B' to the base of the Wailua Falls on the south fork of the river as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted ~~[Area]~~Area" dated February 27, 1998, and located at the end of this subchapter.
- (3) Zone 'C' includes the waters beginning at the west side of the Wailua River bridge between the north and south banks and extends fifty feet into the river, then

proceeds along the north shoreline extending seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone [~~'A'~~, 'A']" dated February 27, 1998, and

located

at the end of this subchapter.

- (4) Zone 'D' begins at the eastern boundary of Zone 'C' and extends under the Wailua River bridge between the north and south banks, extending to the shoreline.
- (d) General rules for Wailua River.
- (1) Only commercial and recreational vessels not exceeding twenty-one feet in length shall be allowed to utilize the Wailua River and shall be limited to:
 - (A) Vessels used for waterskiing;
 - (B) Motorized vessels, excluding thrill craft; and
 - (C) Manually-propelled vessels.
- (2) Commercial barges, or vessels otherwise allowed by the department, shall be exempt from vessel length restrictions described in paragraph (1).
- (3) Recreational motorized vessels, and recreational and rented manually-propelled vessels may utilize Zones 'A', 'B' and 'C' as provided for in this section.
- (4) Zone 'C' shall be designated a swimming zone indicated by marker buoys. Motorized vessels launching from launch ramp 'A' shall proceed with caution while within Zone 'C'.
- (5) All manually-propelled vessels shall be required to operate along side the northern river bank.
- (6) All vessel operators shall possess a state park permit to embark or disembark along the shores only within the state park in Zone 'B'.

(e) Commercial vessel activity requirements for Wailua River.

- (1) Unless otherwise provided by law, anyone conducting commercial activities on the Wailua River shall possess a valid commercial activity permit from the department.
- (2) All individuals possessing a commercial activity permit to utilize the Wailua river as of June 11, 1999, may retain the commercial activity permit on the effective date of these rules.
- (3) All available commercial activity permits may be issued in accordance with section 13-231-60.
- (4) Reissuance of commercial activity permits shall be in accordance with section 13-231-61.
- (5) Commercial barges, or vessels otherwise allowed by the department, may only utilize Zones 'A' and 'B'.
- (6) All commercial vessel activity is prohibited from Zones 'C' and 'D'.
- (7) Commercial waterskiing commercial activity permittees shall abide by the requirements described in subsection (g).
- (8) Commercial manually-propelled vessel commercial activity permittees shall abide by the requirements described in subsection (f).

(f) Commercial manually-propelled vessel requirements for the Wailua River.

- (1) Not more than fifteen manually-propelled vessel commercial activity permits, with a maximum of twelve vessels per commercial activity permit per day, and with a maximum of four guides per permit, may be issued for guided tours for the Wailua River.
- (2) Not more than four manually-propelled vessel commercial activity permits, with a maximum of six vessels per commercial activity permit, may be issued for rented manually-

propelled vessels for the Wailua River.

- (3) In addition to the provisions in subsection (e)(1), manually-propelled vessel commercial activity permittees utilizing the Wailua River shall abide by the following:

- (A) For guided tours, a minimum of one tour guide shall be required for each group of twelve people;
- (B) Tour guides shall be required to wear a bright orange shirt with the company name printed on the shirt when guiding tours; and
- (C) All commercial manually-propelled vessels permittees shall be provided a Wailua River restricted area decal for each commercial manually-propelled vessel and shall be required to display it on the bow of the vessel.

(g) Waterskiing activity requirements for the Wailua River.

- (1) Waterskiing may be conducted in Zone 'A' in an area designated by the department, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone [~~'A'~~, "'A']" dated February 27, 1998, and

located

at the end of this subchapter, and shall be prohibited in Zone 'C'.

- (2) Waterskiing may be conducted in Zone 'B' only between sunrise to 9:00 a.m. and from 5:00 p.m. to sunset.
- (3) A maximum of one commercial activity permit may be issued for waterskiing activities.
- (4) The vessel towing water skiers may tow not more than one person at any one time.
- (5) Waterskiing shall be conducted in accordance with section 13-244-18.
- (6) Waterskiing activities shall be exempt from the speed restrictions of section 13-244-9.
- (7) Waterskiing vessel traffic patterns shall be in a counter-clockwise direction.
- (8) Waterskiing tow ropes shall not exceed

- seventy-five feet in length.
- (9) Vessels engaged in waterskiing activities shall not exceed a speed of thirty-six miles per hour.
 - (10) The only water towing apparatus allowed shall be those equipped with boots, straps, or a leash on the board or ski.
 - (h) ~~[Launch ramp restrictions.~~
 - ~~(1)]~~ All commercial vessels are prohibited from utilizing Launch ramp 'A', as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone

~~['A',"]'A'"~~

dated February 27, 1998, and located at the end of this subchapter, and shall be required to utilize Launch ramp 'B', as shown in Exhibit ~~["L-1,"]~~"L-1" titled "Island

of

Kauai, Wailua River Restricted Area, Zone ~~['A',"]~~'A'" dated February 27, 1998, and

located

at the end of this subchapter.

(i) The eastern half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A' ~~[,]"~~" dated February 27, 1998, and located at the end of this subchapter, shall be used exclusively for the launching and recovery of Hawaiian outrigger canoes.

(j) The western half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone ~~['A',"]~~'A'" dated February 27, 1998, and located at the end of this subchapter, may be utilized by recreational vessels, other than Hawaiian outrigger canoes, allowed on Wailua River. [Eff 10/19/02; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§§13-256-57 to 13-256-59 (Reserved)

SUBCHAPTER 4

NORTH SHORE OAHU OCEAN RECREATION MANAGEMENT AREA

§13-256-60 Definition. The "North Shore Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from Kaena Point to Kahuku Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "N", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200- 4)

§13-256-61 Haleiwa [~~Restricted Zones.~~]restricted zones. (a) Zone A, Haleiwa restricted zone is the area encompassed by the boundaries of the area shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark at the western edge of Alii Beach Park, then by [~~azimuth~~]azimuths measured clockwise from True South, 128 degrees for a distance of four hundred feet; 200 degrees for a distance of one thousand feet; then on a straight line to the low water mark of the corner of the breakwater at Haleiwa Small Boat Harbor; then along the low water mark in a westerly heading to the point of beginning. Zone A Haleiwa restricted area is designated a swimming and bathing area. No person shall operate or moor a vessel within this zone.

(b) Zone B, Haleiwa restricted zone is the area encompassed by the boundaries of the area shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water by [~~azimuth~~]azimuths measured clockwise from True South, 090 degrees for a distance of one hundred feet from the low water mark at the end of the breakwater at Haleiwa Small Boat Harbor; 060 degrees for a distance of one thousand six hundred feet; 175 degrees for distance of one thousand three hundred feet; then on a straight line to [~~a~~]the point of beginning.

Zone B is designated a surfing and bodysurfing zone. No person shall operate or moor a vessel, within this zone.

(c) Zone C Haleiwa [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point from the low water mark of the western tip of Kawaihoa Beach, thence by [~~azimuth~~]azimuths measured clockwise from True South, 075 degrees for a distance of one hundred feet; 300 degrees for a distance of eight hundred feet; then on a straight line to the low water mark at the end of the groin located at the southern boundary of Haleiwa Beach Park; then along the low water mark along the groin and beach in a northerly direction to the point of beginning.

Zone C is designated as a swimming and bathing zone. No person shall operate or moor a vessel, surfboard, or sailboard within this zone.

(d) Zone D, Haleiwa restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water by [~~azimuth~~]azimuths measured clockwise from True South, 038 degrees for a distance of four hundred ninety feet from Pua'ena Point, then by a on a radius of two hundred feet around that point Zone D is designated as a commercial thrill craft zone. No more than six rental thrill craft shall be operated at any time.

(e) Zone E Haleiwa restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point from the low water mark on the tip of the breakwater of Haleiwa Small Boat Harbor, then by [~~azimuth~~]azimuths measured clockwise from True South, 110 degrees for a distance of two thousand eight hundred feet; 020 degrees for a distance of two thousand feet; 110 degrees for a distance of one thousand feet; 200 degrees for a distance of two thousand feet; then by a straight line to the point of beginning.

Zone E is designated as a recreational thrill craft zone. No person shall operate a commercial thrill craft in this zone. This zone shall be closed to all thrill craft operations from December 15 to May 15 of the following year.

(f) Zone F Haleiwa restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "O", dated November 23, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning from the low water mark at Pua'ena Point, then by [~~azimuth~~]azimuths measured clockwise from True South, 125 degrees for a distance of four hundred thirty feet to a point in the water; then 140 degrees for a distance of one thousand feet; 230 degrees for a distance of two thousand feet; 320 degrees for a distance of one thousand feet; then 050 degrees for two thousand feet and the point of beginning.

Zone F is designated as a recreational thrill craft zone. No person shall operate a commercial thrill craft in this zone. [Eff 2/24/94; am and comp] (Auth: HRS §§200-21, 200-22, 200-24, 200-37) (Imp: HRS §§200-21, 200-22, 200-24, 200-37)

§13-256-62 Repealed. [R 4/27/02]

§13-256-63 Sharks Cove, Three Tables, and Waimea Bay ocean waters. (a) Sharks Cove, Three Tables, and Waimea Bay ocean waters means the area confined by the boundaries shown on Exhibit "Q", titled "Ocean Recreation Management Areas, Sharks Cove, Three Tables and Waimea Bay ocean waters", dated October 20, 2000, and located at the end of this subchapter.

- (1) Zone 'A' begins at a point in the water at approximately 21°38.296 N, 158°04.092 W, then in a northerly direction along the shoreline to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a straight line in a southwesterly direction for approximately one thousand eight hundred thirty-seven feet back to the point of origin.
- (2) Zone 'B' begins at a point in the water Three Tables Point at approximately 21°38.751 N, 158°03.925 W; then along the shoreline in a northeasterly direction to a point in the water at approximately 21°39.010 N, 158°03.842 W, then due west to approximately 21°39.010 N, 158°03.874 W, then in a straight line in a southwesterly direction back to the point of origin.
- (3) Zone 'C' begins at a point in the water at approximately 21°39.010 N, 158°03.842 W, then in a northerly direction along the

shoreline to Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then in a straight line in a southwesterly direction to approximately 21°39.010 N, 158°03.874 W, then in a straight line due east back to the point of origin.

- (4) Zone 'D' begins at Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then due west for one hundred yards, then in a straight line in a southwesterly direction to the Wananapaoa Islet at approximately 21°38.340 N, 158°04.198 W, then in a straight line in a southeasterly direction to 21°38.296 N, 158°04.092 W, then in a straight line in the northeasterly direction to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a northeasterly direction along the shoreline to approximately 21°38.751 N, 158°03.925 W and then in a straight line in a northeasterly direction to the point of origin.
- (b) Following are restrictions for Zone 'A':
 - (1) Except where permitted by law, motorized vessels, except sailing vessels with auxiliary engines, are prohibited in Zone 'A'.
 - (2) Sailing vessels with auxiliary engines shall be required to enter and leave Zone 'A' on sail power or by oar only.
 - (3) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline of Zone 'A'.
 - (4) Any vessel anchoring within Zone 'A' shall be prohibited from anchoring within two hundred feet of the shoreline and shall anchor only in sandy areas.
 - (5) All vessels shall proceed at a speed of slow-no-wake, as defined in section 13-230-8, when in Zone 'A'.
- (c) Following are restrictions for Zone 'B':
 - (1) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline

in Zone 'B'.

- (2) Except where permitted by law, motorized vessels, including sailing vessels with auxiliary engines, are prohibited in Zone 'B'.

(d) Except where permitted by law, all vessels are prohibited from embarking or disembarking from the shoreline into Zone 'C'.

(e) In addition to any federal, state or county law, rule, permit or ordinance requirements, a commercial activity permit shall be required to conduct commercial SCUBA or commercial snorkeling activities in Zone [~~'C,'~~]'C', issued by the department. This applies to all for-profit and not-for-profit companies or organizations. Allocation of the commercial activity permits shall be in accordance with section 13-231-60 and the applicant shall submit the following with the application:

- (1) A list of all instructors or guides to be named on the commercial activity permit. The onus shall be on the commercial activity permittee to update any additions or deletions of the names of the persons utilized for instruction or guided tours;
- (2) Proof of insurance, as described in section 13-231-65, for each individual listed on the commercial activity permit;
- (3) A copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;
- (4) Vehicle license numbers for vehicles utilized for shuttling customers; and
- (5) Proof of a leadership level professional credential, i.e., dive master or above, from an internationally recognized SCUBA diving training agency, e.g., PADI, for each instructor or guide listed on the commercial activity permit for commercial SCUBA and snorkeling activities.

(f) Commercial activity permits for commercial SCUBA or snorkeling activities shall be valid for a period not to exceed one year.

(g) Renewal of a commercial activity permit shall be in accordance with section 13-231-61, except that paragraphs of section 13-231-61(b)(1), (4) and (8) shall not apply. The minimum revenue standard shall be the fees provided in subsection (j).

(h) A yearly non-refundable commercial activity permit application fee of \$50 shall be paid at the time the application is submitted.

(i) In addition to the commercial activity permit described in subsection (e), a use permit, as described in subsection (j) shall be required when using Zone 'C'.

(j) A maximum of six use permits, with a combination of commercial activity permittees and customers not to exceed ten individuals, including instructors and assistants per use permit, shall be issued for any one of three time periods and the permittee shall only be allowed to use Zone 'C' during the periods reserved by the permittee via a reservation system established by the department.

(k) Use permit fees, that shall be paid in full at the time of the reservation for use periods, shall be as follows:

- (1) A seasonal user fee of \$420;
- (2) A monthly user fee of \$75;
- (3) A weekly user fee of \$56; or
- (4) A daily user fee of \$10.

(l) Individuals who possess a commercial activity permit and pay fees in accordance with section 13-234-25, shall be exempt from the fee requirements provided in subsection (k) but shall be required to make reservations as described in subsection (j).

(m) Commercial activities may be allowed from April 1st through October 31st of each year but shall be prohibited between the hours of 9:00 p.m. to 8:00 a.m. and from November 1st through March 31st of each year.

(n) Individuals conducting instruction or guided tours shall be required to make available to representatives of the department a copy of the use permit upon demand.

(o) Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules shall be subject to fines as prescribed in sections 200-14, 200-14.5, and 200-25, Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.

(p) Commercial activity permittees shall make available to customers: maps or charts that show the boundaries of the area(s), outlined restricted zones, and dangerous areas and conditions and shall establish an education program acceptable to the department addressing the historical, cultural, ecological significance of the area, and any rules or laws pertaining to protected species and marine resource conservation etiquette.

(q) Unless otherwise allowed by the County, commercial activity permittees shall be required to shuttle their customers to and from the parking area fronting Zone 'C', when utilizing [~~Shark's~~Sharks Cove for commercial activities.

(r) Following are restrictions for Zone 'D'.

(1) All vessels shall proceed at a speed of slow-no-wake, as defined in section 13-230-8, when in Zone 'D'.

(2) When installed, all vessels mooring in Zone 'D' shall utilize [~~day-use moorings~~]day use moorings or shall anchor in sandy areas.

(s) Individuals conducting special events in Zones 'A', 'B', 'C' or 'D', shall be required to obtain a special events permit in accordance with section 13-244-19. Eff 2/24/94; am 4/27/02; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

§13-256-64 Sunset Beach [~~Restricted Area~~]restricted area.

(a) The Sunset Beach restricted area means the area confined by the boundaries for said area shown on Exhibit "R", dated,

August 21, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark on the shoreline located two hundred fifty feet along the low water mark of the shoreline in a northerly direction from the mouth of Kalunawaikaola Stream, then by ~~[azimuth]~~azimuths measured clockwise from True South, 125 degrees; then 130 degrees for a distance of one thousand feet; 220 degrees for a distance of nine thousand four hundred fifty feet; 310 degrees to a point on the low water mark of the shoreline; then in a southerly direction along the low water mark to Ehukai Beach Park Swimming Zone; then in a southerly direction along the makai boundary of that zone; then along the low water mark of the beach to the point of beginning.

(b) Restrictions. The Sunset Beach restricted area is designated for surfing, kayaking and windsurfing. No person shall operate a motorized vessel or sailing vessel in this area during the months of October 1st through April 30th. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-65 Kawela Bay [~~Restricted Area.~~]restricted area. (a) Kawela Bay restricted area means the area confined by the boundaries for said area shown on Exhibit "S", dated, June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark on the tip of the shoreline of the bay, then by straight line to the low water mark on the shoreline of the northern tip of the bay; then in a southerly direction along the low water mark to the point of beginning.

(b) Restrictions. No person shall operate a vessel in Kawela Bay in excess of slow-no-wake speed. Water ski activity is prohibited. [Eff 2/24/94; am

and comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-66 to 13-256-70 (Reserved)

SUBCHAPTER 5

WINDWARD OAHU OCEAN RECREATION MANAGEMENT AREA

§13-256-71 [~~Definition.~~] Definitions.

"Commercial ocean use activities" means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, or any other similar commercial ocean recreation activity.

"Family [~~Member~~]member" means any person and his or her spouse as well as their legal children.

"Windward Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from northwest boundary of Kahana Bay to Makapuu Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "T", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-39)

§13-256-72 Kualoa [~~water~~]waters restricted zones. (a) Zone A Kualoa waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," dated September 8, 1998, incorporated herein, and located at

the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at approximately 21° 31' 16.6" N / 157° 50' 06.9" W, then going in an easterly direction to approximately 21° 31' 16.6" N / 157° 49' 58.2" W, then going in an southerly direction to approximately 21° 31' 11.5" N / 157° 49' 58.2" W, then going in a westerly direction to approximately 21° 31' 11.5" N / 157° 50' 07.3" W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in Zone A when being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zone A on Sundays or federal holidays.

(b) Zone B Kualoa waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "U", "Kualoa, Oahu, Hawaii," dated September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point at approximately 21° 31' 16.6" N / 157° 49' 58.2" W, then in an easterly direction to approximately 21° 31' 16.6" N / 157° 49' 56.0" W, then in an southerly direction to approximately 21° 31' 06.4" N / 157° 49' 56.5" W, then in a westerly direction to approximately 21° 31' 06.4" N / 157° 50' 07.5" W, then in a northerly direction to approximately 21° 31' 11.5" N / 157° 50' 07.7" W, then in an easterly direction to approximately 21° 31' 11.5" N / 157° 49' 58.2" W, then in a northerly direction by straight line to the point of beginning. Zone B is designated as a non-exclusive commercial ocean water sports zone. High speed towing, water skiing, and water sledding shall be prohibited.

All vessels transiting Zone B shall proceed with extreme caution.

(c) All commercial ocean use activities are prohibited within Kualoa waters restricted zones and on Sundays and federal holidays. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-4, 200- 22, 200-23, 200-24, 200-37, 200-39)

§13-256-72.1 Kualoa waters restricted zones permit. (a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules;
- (2) All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
- (3) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;
- (4) The maximum number of customers per day may

be established through the conservation district use permit application process, but shall not exceed [~~one-hundred~~]one hundred and fifty customers;

- (5) Water sledding, water skiing, and high speed towing shall be prohibited;
- (6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and
- (7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.

(c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.

(e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73 Kaneohe Bay ocean waters. (a)

Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

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

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

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

(d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N / 157° 47' 45.5" W.

(e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located

at the end of this subchapter. The boundaries of Zone B are as follows:

Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N / 157° 48' 08.5" W.

(f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

(g) Zones A, B, and C are subject to the following:

- (1) Zones A, B, and C are designated as commercial thrill craft zones where full service permittees shall be required to operate. Not more than six rental thrill craft shall operate within each of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.
- (2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C on Sundays or federal holidays.

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the

Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately 21° 28' 32" N / 157° 49' 39" W, then by a straight line in a due East (true) direction to approximately 21° 28' 32" N / 157° 49' 32" W, then in a straight line to approximately 21° 28' 10.5" N / 157° 49' 27" W, then in a straight line due West (true) to approximately 21° 28' 10.5" N / 157° 49' 34" W, then in a straight line back to beginning.

Zone D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27' 25" N / 157° 47' 46.5" W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone F are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of

beginning. Zone G is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(l) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.

Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of

towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:

Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

(o) Kaneohe Bay speed restrictions. In addition to speed restrictions found in section 13-244-9, slowno-wake restrictions shall apply in Kaneohe Bay

offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu [~~O Laka Island,~~] o Laka safety zone ("The Sand Bar").

(p) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef. [Eff 2/24/94; am 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.1 Kaneohe Bay ocean waters commercial use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial use permit issued by the department. For the purpose of this section, "full service permit" means a permit which includes thrill craft, water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sail boarding, and other

related water recreational activities approved by the department.

(b) The number and types of Kaneohe Bay ocean waters commercial use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit without thrill craft, water sledding, and high speed towing activities as authorized in section 13-256-73.4;
- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than ~~[one hundred]~~ one hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service

permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial use permit required under this section shall satisfy the requirement for all other harbor use permits required of commercial operators under chapter 13-231, with the exception of a mooring permit for each vessel moored in Heeia Kea small boat harbor or offshore.

(f) The Kaneohe Bay waters commercial use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted thereunder.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of

the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia Kea small boat harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea small boat harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more than three trailers per permit per day at the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea small boat harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardiopulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee.

[Eff 11/7/11; am and comp] (Auth:

HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.2 Large full service permit

restrictions. (a) Not more than [~~one-hundred~~]one hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) Two host vessels with an aggregate maximum carrying capacity of [~~one-hundred~~]one hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.
- (2) Six rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20;
- (4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit

capacity of [~~one hundred~~] one hundred fifty. Should the certified passenger capacity of the primary vessel be less than [~~one hundred~~] one hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.

(j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-

profit passengers shall not engage in thrill craft or high speed towing activities.

(k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.3 Small full service permit

restrictions. (a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20;
- (4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation. [Eff 11/7/11;

comp] (Auth: HRS §§200-4, 200-22,
200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3,
200-4, 200-22, 200- 23, 200-24, 200-37, 200-39)

**§13-256-73.4 Small full service permit
restrictions without thrill craft, water sledding, and
high speed towing activities.**

(a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft, water sledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers.
- (2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection so long as the capacity is not greater than 20.
- (3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United ~~[Stated]~~ States Coast Guard Certificate of Inspection; and
- (4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.

(g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.

(k) Thrill craft, water sledding, waterskiing and high speed towing are not authorized activities under this permit. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200- 24, 200-37, 200-39)

§13-256-73.5 Large snorkel tour permit restrictions. (a) No more than [~~one-hundred~~]one hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe [~~Bay~~]Bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted [~~zone~~]Zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written

approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted. [Eff 11/7/11; am 12/31/18; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.6 Small sail/snorkel tour permit restrictions. (a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only nonmotorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be

mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.7 Glass bottom boat tour permit restrictions. (a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no United States Coast Guard Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-

256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.8 Replacement vessels size restrictions. (a) Replacement vessels shall not be greater in vessel length overall than 10% of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the

department. [Eff 11/7/11; comp]
(Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS
§§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

§13-256-73.9 Shuttling restrictions. No
shuttling or transferring of customers among the
permittees for the purpose of exceeding the maximum
daily customer limit specified by type of permit or
exceeding the certified passenger capacity of the
vessel shuttling or receiving the passengers shall be
allowed. [Eff 11/7/11; comp]
(Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-
24, 200-37, 200-39)

§13-256-73.10 Permit [~~Issuance~~]issuance. (a)
Permittees holding valid commercial use permits on the
effective date of this rule shall be offered the
opportunity to apply for the permit category in which
they are operating upon the expiration of their
respective permits. If any permit offer is refused by
the permittee, that permit shall not be issued and
shall be eliminated from the total number of Kaneohe
Bay ocean waters commercial use permits.

(b) Permit applications shall be reviewed for
compliance with chapter 200, HRS, applicable rules,
and permit conditions. Failure to comply with any
permit condition, or having any record of inaccurate
submission of gross receipts, inconsistent or untimely
payments of fees and charges, or unsafe operations
during the last term of a valid permit held by the
applicant, may be cause for rejection of the permit
application.

(c) The following documents shall be submitted
for review at the time an application is made for the
issuance of a permit:

- (1) Vessel documentation or registration.
- (2) Vessel certificate of inspection (if

- applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable, and naming the State of Hawaii as an additional insured.
 - (4) Certificate of good standing from the ~~[Department of Commerce and Consumer Affairs.]~~ department of commerce and consumer affairs.
 - (5) Tax clearance certificate from the department of taxation.
 - (6) Conservation district use permits (if applicable).
 - (7) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers that have occurred within the past year.
 - (8) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United ~~[State]~~ States Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
 - (9) Affidavit describing any and all sales or transfers of any ownership interest in the business.
- (d) The department shall publish a list of Kaneohe Bay waters commercial use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area, with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual

supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as required of the permittee and names the State of Hawaii as an additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules. [Eff 11/7/11; am and comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

§13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor. Temporary mooring within Heeia Kea small boat harbor for any vessel that is authorized for commercial use in Kaneohe Bay ocean waters shall not exceed a cumulative period of 180 days in the same calendar year. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

§13-256-73.12 Kaneohe Bay ocean waters commercial use permit revocation. Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6. [Eff 11/7/11; comp] (Auth: HRS §§200-4, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone J, shown on Exhibit "O-9", "Kaneohe Bay Ocean Waters" dated April 21, 2015, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water at 21°28.462'N 157°49.203'W, then by straight lines drawn to a point at 21°27.9647'N 157°49.140'W, then to 21°27.514'N 157°48.115'W, then to 21°28.030'N 157°47.940'W, then back to the starting point.

(b) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone J is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (1) No person shall possess, use, or consume alcohol within Zone J;
- (2) No person shall enter or remain in Zone J while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone J shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;
 - (C) subject another person to offensively

coarse behavior or abusive language which is likely to provoke a violent response; or

- (D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

Noise is unreasonable, within the meaning of subparagraph (3)(B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law. [Eff 8/18/12; am 7/26/15; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-256-74 Kailua [~~Ocean Waters Restricted Zones.~~]ocean waters restricted zones. (a) Zone A Kailua ocean waters restricted zone is the area

encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the extension of the western boundary of Kailua Beach Park; then along the low water mark of the shoreline in a eastern direction for a distance of three hundred feet; then by ~~[azimuth]~~azimuths measured clockwise from True South, 180 degrees for a distance of one thousand one hundred fifty feet; 090 degrees for a distance of three hundred feet; then by a straight line to the point of beginning.

Zone A Kailua ocean waters restricted zone is designated for windsurfing. No person shall operate a motorboat and no person shall swim in the zone when used by windsurfers.

(b) Zone B Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the center of the bridge of Kawaihoa Road at the entrance to Kaelepulei Pond; then for fifty feet either side of a line by ~~[azimuth]~~azimuths measured clockwise from True South, 240 degrees for a distance of one thousand feet.

Zone B Kailua ocean waters restricted zone is designated an ingress/egress zone for manually propelled vessels. Swimming in the zone is prohibited when in use by vessels. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

§13-256-75 Waimanalo [~~Ocean Waters Restricted Zones.~~]ocean waters restricted zones. (a) Zone A Waimanalo restricted zone.

(1) Zone A Waimanalo [Ocean Waters]ocean waters restricted zone means the area confined by

the boundaries shown for said zone on Exhibit "AA", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark of the shoreline which is six hundred feet south of the south bank of the mouth of Waimanalo Stream; then by [~~azimuth~~]azimuths measured clockwise from True South, 265 degrees for a distance of one hundred feet; 355 degrees for a distance of five hundred feet; 085 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.

(b) Zone B Waimanalo [~~Restricted Zone.~~]restricted zone.

(1) Zone B Waimanalo restricted zone means the area confined by the boundaries shown for said zone on Exhibit "AA", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point on the low water mark of the shoreline which measures one thousand four hundred fifty feet in a southerly direction, along the low water mark from the south boundary of Zone A; then by [~~azimuth~~]azimuths measured clockwise from True South, 256 degrees for a distance of one hundred feet; 340 degrees for a distance of five hundred feet; 075 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.

(c) Zone C Waimanalo [~~Restricted Zone.~~]restricted zone.

(1) Zone C Waimanalo restricted zone means the area confined by the boundaries shown for said zone on Exhibit "AA", dated, June 30, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point on the low water

mark of the shoreline which measures nine hundred fifty feet, along the low water mark of the shoreline in a northerly direction from the extension of Aloiloi Street at the shoreline; then northward along the low water mark for a distance of five hundred feet; then by [~~azimuth~~azimuths measured clockwise from True South, 240 degrees for a distance of one hundred feet; 320 degrees for a distance of five hundred feet; 055 degrees to a point on the low water mark of the shoreline; then by a straight line to the point of beginning.

(d) Zones A, B and C Waimanalo restricted zones are designated for swimming and bathing. No person shall operate or moor a vessel, surfboard, or sailboard within these zones. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-76 Makapuu [~~Ocean Waters Restricted Zones.~~ocean waters restricted zones. (a) Zone A Makapuu restricted zone.

- (1) Zone A Makapuu restricted zone means the area confined by the boundaries shown for said zone on Exhibit "BB", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:
Beginning at a point on the low water mark of the shoreline south of the Makai Range Pier in line with the channel range lights; then by [~~azimuth~~azimuths measured clockwise from True South, 213 degrees for a distance of one hundred feet; 120 degrees for a distance of five hundred seventy feet; 033 degrees to a point on the low water mark of the shoreline; then along the low water mark in a northerly direction to the point of beginning.
- (2) Restriction. Zone A Makapuu restricted zone

is designated for swimming and bathing. No person shall operate or moor a vessel, surfboard, or sailboard within this zone.

- (b) Zone B Makapuu Restricted Zone.
- (1) Zone B Makapuu restricted zone means the area confined by the boundaries shown for said zone on Exhibit "BB", dated, June 30, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:
 - Beginning at a point on the low water mark of the eastern tip of Manana Island; then by a straight line to the northeastern tip of Kaohikaipu Island; then along the low water mark in a westerly direction to the western tip of the island; then by a straight line to the low water mark at the western tip of Manana Island; then along the low water mark in a easterly direction to the point of beginning.
- (2) Restriction. No person shall operate a vessel at a speed in excess of slow-no-wake in this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-77 Kaneohe recreational thrill craft zone. (a) The recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit "V", dated April 16, 2001, located at the end of this subchapter and incorporated herein. The boundaries of Zone K are as follows:

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects the Kaneohe Sampan channel range extending seaward with an azimuth measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured

clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea. As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W. This zone is designated as a recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [Eff 2/24/94; am 11/7/11; comp]
(Auth: HRS §§200-22, 200-24, 200-37, 200-39)
(Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

§§13-256-78 to 13-256-85 (Reserved)

SUBCHAPTER 6

SOUTH OAHU OCEAN RECREATION MANAGEMENT [~~AREAS~~] AREA

§13-256-86 Definition. The "South Shore Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from Makapuu Point to the west boundary of the Honolulu International Airport Reef Runway, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "CC", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-87 Hanauma Bay [~~Restricted Zone~~] restricted zone. (a) The Hanauma Bay [~~Restricted Zone~~] restricted zone means the area confined by the boundaries shown for said zone on Exhibit "DD", dated August 15, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at Palea Point then by [~~azimuth~~] azimuths measured clockwise from True South, 23 degrees 15 minutes and 50 seconds for a distance of one thousand nine hundred forty-six feet to Paioluolu Point; then along the shoreline of Hanauma Bay to the point of beginning.

(b) Restriction: Hanauma Bay is designated a swimming and snorkeling zone. No watercraft of any description shall operate or moor in this zone, except a person (1) engaged in law enforcement, rescue or other operations essential to preserve life or property; (2) engaged in research or other activities pursuant to a permit issued by the department of land and natural resources. [Eff 2/24/94; am and

comp] (Auth: HRS §200-4) (Imp: HRS
§§200-2, 200-3, 200-4)

§13-256-88 Maunalua Bay waters. (a) Maunalua Bay waters means the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the southern point on the shoreline of Kawaihoa Point, then by [~~azimuth~~]azimuths measured clockwise from True South, 107 degrees for a distance of seventeen thousand and eighty-five feet to the southwestern tip of Wailupe Peninsula, then along the shoreline of Maunalua Bay to the point of beginning.

(b) Commercial ocean recreation activities shall be restricted within Maunalua Bay waters as follows:

- (1) No commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motorboat towing a person engaged in water sledding during all weekends, and state or federal holidays.
- (2) All commercial ocean recreation activities in Maunalua Bay waters are prohibited on [~~Sunday~~]Sundays, effective January 1, 1991.

(c) Zone A [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point in the water, by [~~azimuth~~]azimuths measured clockwise from True South, which is 325 degrees for a distance of two thousand three hundred twenty-five feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two

hundred feet around that point.

(d) Zone B [~~Restricted Zone~~] restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, which is 330 degrees for a distance of one thousand six hundred eighty feet from a point on the low water mark on the east side of Maunaloa Bay boat ramp; then on a radius of two hundred feet around that point.

(e) Zone C [~~Restricted Zone~~] restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, which is 340 degrees for a distance of two thousand five hundred fifty feet from a point on the low water mark on the east side of Maunaloa Bay boat ramp; then on a radius of two hundred feet around that point.

Zones A, B and C are designated commercial thrill craft operating zones. No commercial operator permittee shall operate more than six rental thrill craft within each designated area at any one time. No commercial thrill craft shall be operated within Zones A, B and C except between the hours of 0900 (9:00 a.m.) and 1700 (5:00 p.m.), Mondays through Fridays. No commercial thrill craft shall be operated within Zones A, B and C on Saturdays, Sundays and state or federal holidays.

(f) Zone D [~~Restricted Zone~~] restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by

~~[azimuth]~~azimuths measured clockwise from True South, which is 012 degrees for a distance of seven hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zone D is designated a recreational thrill craft operating zone for use by inexperienced operators only. Commercial thrill craft operations are prohibited.

(g) Zone E [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water, by ~~[azimuth]~~azimuths measured clockwise from True South 076 degrees for a distance of four thousand one hundred feet from Buoy "1", then 076 degrees for a distance of eight thousand four hundred feet; 168 degrees for a distance of one thousand four hundred fifty-five feet; 259 degrees for a distance of eight thousand five hundred eighty feet; then in a straight line to the point of beginning.

Zone E is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft within this area. Other vessels shall exercise caution when transiting this area. This zone shall be closed to all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(h) Zone F [~~Restricted Zone~~]restricted zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water at Buoy "1", by ~~[azimuth]~~azimuths measured clockwise from True South, then 157 degrees for a distance of one thousand nine hundred thirty-five feet; 092 degrees for a distance of one thousand nine

hundred five feet; 085 degrees for a distance of three thousand three hundred feet; 075 degrees for a distance of four thousand two hundred eighteen feet; 347 degrees for a distance of two thousand four hundred feet; 259 degrees for a distance of eight thousand eight hundred eighty feet; 000 degrees for a distance of eight hundred eighty-five feet; then by a straight line to a point of beginning.

No person shall operate a vessel within this area at a speed in excess of slow-no-wake. This is a green sea turtle resting and foraging area.

(i) Zone G Maunalua Bay [~~Parasail Zone~~]parasail zone is the area encompassed by the boundaries shown of the zone on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at entrance buoy "1" to the Hawaii-Kai Marina and Maunalua Bay boat launching ramp, establishing the eastern boundary along the extended centerline of the Ku'i channel entrance; then by straight line to buoy R-2 off Diamond Head, establishing the western boundary.

Zone G Maunalua Bay [~~Parasail Zone~~]parasail zone is designated for parasail operations. All operating parasail vessels shall remain seaward of the boundary line. No more than two commercial operating area use permits for parasailing operations shall be authorized for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. No person shall operate within one thousand feet of any buoy when the parasail is aloft. All other vessels using this area shall exercise extreme caution. This zone, except for that portion which is encompassed by alternate parasail zone G1, shall be closed to parasail operations from January 6 to May 15 of each year.

(j) Zone G1 Maunalua Bay [~~Alternate Parasail Zone~~]alternate parasail zone is the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G1 are as follows:

Beginning at a point on the eastern boundary of Zone G at the intersection of the straight line following a line from Kawaihoa Point at Koko Head to buoy R-2 off Diamond Head, establishing the shoreward boundary; then at a point on the shoreward boundary intersected by a line on a bearing of 000 degrees to the Kahala Hilton Hotel establishing the western boundary.

Zone G1 Maunalua Bay [~~Alternate Parasail Zone~~]alternate parasail zone is that portion of parasail Zone G which is designated for parasail operations from January 6 to May 15 of each year. No permittee shall operate more than one parasail vessel within this zone during this period. No parasail vessel shall exceed the speed of 18 knots within this zone. All other vessels using this area shall exercise caution.

(k) Zone H [~~Ingress-egress~~]ingress-egress corridor means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point at the shoreward western boundary of Maunalua Beach Park boat ramp; then by [~~azimuth~~]azimuths measured clockwise from True South, 120 degrees for a distance of seventy-five feet, 030 degrees for a distance of one hundred feet to a point in the water; 120 degrees for a distance of one hundred feet to a point in the water; 218 degrees for distance of one hundred feet to a point on land; then in a straight line to the point of beginning.

Zone H is designated for recreational thrill craft ingress-egress to the ocean waters of Maunalua Bay. No person shall operate or moor a vessel, surfboard, or sailboard within this area.

(l) Zone I means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water 270

degrees by [~~azimuth~~] azimuths measured clockwise from True South, at a distance of twenty-five feet from daybeacon R"2" of Ku'i channel; then 270 degrees for a distance of three hundred feet, 025 degrees for a distance of one thousand one hundred twenty-five feet; 090 degrees for a distance of three hundred feet; then in a straight line to the point of beginning.

Zone I is designated for recreational water skiing and commercial water sledding. Only one commercial operating area use permit shall be issued for this zone for safety purposes.

(m) Maunalua Bay, Ku'i Channel speed restrictions.

- (1) The speed of any watercraft shall not exceed 10 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, located at the end of this Subchapter, and described as follows:

Beginning at a line drawn between buoys R"2" and G"1A", then through each and every daybeacon in ascending order to daybeacons R"8" and G"9".

- (2) The speed of any watercraft shall not exceed 5 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a line drawn between buoys R"8" and G"9", then through each and every daybeacon and buoy in ascending order to the boundaries of Hawaii Kai Marina Bridge, May Way Bridge and Kuli'ou'ou Stream. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-89 Waialae-Kahala [~~Restricted Areas.~~]restricted areas. (a) The Waialae-Kahala [~~Swimming Area~~]swimming area A.

- (1) The Waialae-Kahala swimming area A means the area confined by the boundaries shown for said zone on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at the southern tip of the Waialae Nui Stream groin, then by [~~azimuth~~]azimuths measured clockwise from True South; 205 degrees for a distance of five hundred fifty feet to a point in the water; then in a straight line to the southern tip of the rocky peninsula; then along the low water mark in a westerly direction to the point of beginning.

(b) The Waialae-Kahala [~~Swimming Area~~]swimming area B.

- (1) The Waialae-Kahala swimming area B means the area confined by the boundaries shown for said area on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at the southern tip of the rocky peninsula then by [~~azimuth~~]azimuths measured clockwise from True South; 340 degrees to the north tip of the islet; then along the low water mark on the eastern portion of the islet to the southeast tip; then in a straight line to the southern tip of the groin at the eastern boundary of the Kahala Hilton Hotel; then following the low water mark in a westerly direction to the point of beginning.

- (2) Restrictions. The Waialae-Kahala swimming areas A and B are designated for swimming and bathing and the use of water sports equipment. No person shall operate or moor a vessel, except as provided for in subsection (d), or surfboard, or sailboard within this area.

(c) Waialae-Kahala [~~Ingress-Egress Corridor.~~]
ingress-egress corridor.

- (1) The Waialae-Kahala ingress-egress corridor means the area confined by the boundaries shown for said area on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline which is adjacent to the east side of the groin at Waialae Beach Park; then by [~~azimuth~~]azimuths measured clockwise from True South, 006 degrees to the seaward end of the groin and the boat channel; then 253 degrees for a distance of one hundred forty feet along the boat channel; then 186 degrees to the low water mark of the shore; then along the shoreline to the point of beginning.

- (2) Restrictions. The Waialae-Kahala ingress-egress corridor is designated for use by windsurfing and manually propelled water sports equipment.

(d) Waialae-Kahala [~~Beach Boat Channel.~~]beach boat channel.

- (1) The Waialae-Kahala beach boat channel means the area confined by the boundaries shown on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of the Waialae Nui Stream groin, then by [~~azimuth~~]azimuths measured clockwise from True South, 205 degrees for a distance five hundred fifty feet, coincident with [~~Swimming Area~~]swimming area A boundary; then in a straight line to the low water mark at the [~~south eastern~~]southeastern tip of the rocky peninsula; then along the low water mark of the rocky peninsula and shoreline to a point one hundred twenty-five feet east of the rocky peninsula; then 343 degrees in a

straight line to intersect [~~Swimming Area~~]
swimming area B boundary; then along
[~~Swimming Area~~]swimming area B boundary to
the northern tip of the islet; then 160
degrees for a distance of four hundred
twenty-five feet; then 025 degrees for a
distance of four hundred seventy-five feet;
then in a northwesterly direction to the
point of beginning.

- (2) Restrictions. The Waialae-Kahala beach boat channel is designated for use by commercial vessels, operating under contract with the Kahala Hilton Hotel and holding a valid commercial use permit from the department. The operation of any other vessel is prohibited within this area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-90 Diamond Head [~~Restricted~~

~~Area.] restricted area.~~ (a) The Diamond Head [~~Restricted~~]restricted area means the area confined by the boundaries shown for said area on Exhibit "JJ", dated September 19, 1988, located at the end of this subchapter, the boundaries are as follows:

Beginning at a point at the low water mark of the shoreline on the western boundary of the Diamond Head Lighthouse; then by [~~azimuth~~]azimuths measured clockwise from True South, 345 degrees for a distance of two thousand eight hundred eighty feet; 253 degrees for a distance of two thousand two hundred fifty feet; then by a straight line to a point at the low water mark at the most eastern boundary of Diamond Head Beach Park; then along the low water mark in a westerly direction to the point of beginning.

(b) Restrictions. The Diamond Head [~~Restricted Area~~]restricted area is designated for surfboards, sailboards and manually propelled vessels. No person shall operate a motorized vessel within this area.

[Eff 2/24/94; am and comp] (Auth:
HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-91 Waikiki [~~Ocean Waters Restricted Zones.~~]ocean waters restricted zones. (a) Waikiki [~~Speed Zone.~~]speed zone. Waikiki speed zone means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water of the shoreline at the southern tip of Magic Island on a straight line to the Ala Wai [~~Entrance Buoy G "1",~~]entrance buoy G-1, then on a straight line to Diamond Head [~~Buoy R "2",~~]buoy R-2, then on a straight line toward Diamond Head Lighthouse to intersect the Diamond Head windsurfing zone boundary, then along the boundary to the low water mark at Diamond Head Beach Park, then along the low water mark following the shoreline to the point of beginning.

Restriction. No person shall operate a vessel or watercraft within the Waikiki speed zone at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers.

(b) Waikiki [~~Commercial Thrill Craft Zone~~]commercial thrill craft zone A.

Waikiki [~~Thrill Craft Zone~~]commercial thrill craft zone A means the area confined by the boundaries shown on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by [~~azimuth~~]azimuths measured clockwise from True South, 045 degrees for a distance of three thousand six hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(c) Waikiki [~~Commercial Thrill Craft Zone~~]commercial thrill craft zone B.

Waikiki [~~Commercial Thrill Craft Zone~~]commercial thrill craft zone B means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at a point in the water by [~~azimuth~~]azimuths measured clockwise from True South, 025 degrees for a distance of three thousand eight hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(d) Restrictions. Waikiki [~~Commercial Thrill Craft Zone~~]commercial thrill craft zones A and [Zone] B are designated commercial thrill craft areas. No commercial operator permittee shall operate more than six rented thrill craft within it assigned area at any one time. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200- 24, 200-37)

§13-256-92 South Shore [~~Parasail Area~~]parasail area. (a) South Shore [~~Parasail Area~~]parasail area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy G-1 of the Ala Wai channel; then by straight line to buoy R-2 off Diamond Head.

(b) South Shore [~~Parasail Area~~]parasail area is designated for the operation of parasail vessels. No more than four commercial operating area use permits shall be authorized in this area. No permittee shall operate more than one vessel with a parasail aloft at any one time. All operating parasail vessels shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of

any channel entrance buoys. All other vessels using this area shall exercise extreme caution. This area shall be closed to parasail operations from January 6 to May 15 of each year.

(c) South Shore [~~Alternate Parasail Area~~] alternate parasail area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy R-2 off Diamond Head.

(d) South Shore [~~Alternate Parasail Area~~] alternate parasail area is designated for parasail operations from January 6 to May 15 of each year. No more than four parasail vessels shall be operated within this area during this period. All parasail vessels with parasail aloft, shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of any channel entrance buoys. All other vessels using this area shall exercise extreme caution. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-93 Kahakaaulana Islet (Harris [~~Is-~~ Commercial Zone-]) Island) commercial zone. (a) Zone A

[~~Restricted Area~~] restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, which is 123 degrees for a distance of five hundred twenty-five feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(b) Zone B [~~Restricted Area~~] restricted area is the area encompassed by the boundaries shown of the

zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~ azimuths measured clockwise from True South, which is 208 degrees for a distance of four hundred fifty feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(c) Zone C ~~[Restricted Area]~~ restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~ azimuths measured clockwise from True South, which is 242 degrees for a distance of nine hundred feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(d) Zone D ~~[Restricted Area]~~ restricted area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by ~~[azimuth]~~ azimuths measured clockwise from True South, which is 115 degrees for a distance of six hundred forty-five feet from a point on the low water mark on the western tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(e) Zones A, B, C, and D are designated as commercial thrill craft zones. No commercial operator permittee shall operate more than six rented thrill craft within the assigned zones at any one time.

(f) Zone E restricted zone is the area encompassed by the boundaries shown on Exhibit "NN",

dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the northern tip of Kahakaaulana [~~Islet (Harris Is.)~~] Islet, then by [~~azimuth~~] azimuths measured clockwise from True South, which is 180 degrees for a distance of three hundred sixty feet; 090 degrees for a distance of one thousand fifty feet; 000 degrees for a distance of one thousand two hundred seventy-five feet; then by a straight line to the shoreline at the south tip of Kahakaaulana [~~Islet (Harris Is.)~~] Islet.

(g) Zone E restricted zone is designated a commercial ocean activities zone for commercial sailing, windsurfing and diving. Vessels transiting this area shall exercise extreme caution when occupied by commercial activities. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-94 Reef Runway Zone F. (a) The Reef Runway Zone F is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by [~~azimuth~~] azimuths measured clockwise from True South, 323 degrees for a distance of four hundred fifty feet from the low water mark of the western boundary of the Reef Runway 8R; then 323 degrees for a distance of two thousand seven hundred sixty feet; 270 degrees for a distance of thirteen thousand seven hundred ten feet; 180 degrees for a distance of two thousand two hundred fifty feet; then by a straight line to the point of beginning.

(b) The Reef Runway Zone F is designated for recreational thrill craft operations. No person shall operate a commercial thrill craft within this area. Any vessel transiting this area shall exercise extreme

caution when occupied by recreational thrill craft.
[Eff 2/24/94; am and comp] (Auth:
HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-
37)

§13-256-95 Koko Head and Makapuu commercial high speed boating zone. (a) The zone is the area defined on Exhibit "CC-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at point in the water, by [~~azimuth~~]azimuths measured clockwise from True South, 312 degrees from Kawaihoa Point, establishing the southwest boundary extending seaward; then on a line not less than one thousand five hundred feet from the shoreline to Makapuu Point; then 311 degrees extending seaward from Makapuu Point, establishing the northeast boundary.

(b) This zone is designated for the operation of commercial high speed boats. No more than four commercial operating area use permits for high speed boats shall be issued in this zone. All operating commercial high speed boats shall remain seaward of the shoreward boundary as shown on Exhibit "CC-1". All other vessels transiting this zone shall exercise extreme caution. This zone shall be closed to commercial high speed boat operations during the whale season, from December 15 to May 15 of the following year. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-96 Ke'ehi Lagoon canoe racing zone. (a) The Ke'ehi Lagoon canoe racing zone is the area encompassed by the boundaries of the zone shown on Exhibit "NN-1", dated August 15, 1990, and located at

the end of this subchapter. The boundaries of the zone are as follows:

Beginning at a point in the water, located by [~~azimuth~~]azimuths measured clockwise from True South, 043 degrees for a distance of one thousand ninety feet from the low water mark of the shoreline at the [~~Southwest~~]southwestern boundary of Ke'ehi Lagoon Beach [~~Park, ;~~]Park; then 235 degrees for a distance of two thousand eight hundred twenty-five feet; 325 degrees for a distance of nine hundred feet; 055 degrees for a distance of two thousand eight hundred twenty-five feet; then to the point of beginning.

(b) The Ke'ehi Lagoon canoe racing zone is designated for training and competitive Hawaiian canoe activities. No person shall anchor or moor a vessel in this zone at any time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-97 Ke'ehi Lagoon competitive water ski zone. (a) The Ke'ehi Lagoon competitive water ski zone is the area encompassed by the boundaries of the zone shown on Exhibit "NN-1", dated August 15, 1990, and located at the end of this subchapter. The boundaries of the zone are as follows:

Beginning at a point in the water, located by [~~azimuth~~]azimuths measured clockwise from True South, 000 degrees for a distance of ninety-five feet from the Kalihi Channel rear range light; then 048 degrees for a distance of one hundred eighty-five feet; 064 degrees for a distance of four hundred ten feet; 154 degrees for a distance of two thousand seven hundred forty feet; 244 degrees for a distance of four hundred fifty feet; then to the point of beginning.

(b) The Ke'ehi Lagoon competitive water ski zone is designated as a competitive waterski area. Individual recreational water ski activities shall be permitted except during scheduled competitive water

ski activities. No person shall anchor or moor a vessel in this zone at any time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-37) (Imp: HRS §§200-23, 200- 24, 200-37)

§§13-256-98 to 13-256-105 (Reserved)

SUBCHAPTER 7

WEST MAUI OCEAN RECREATION MANAGEMENT [~~AREAS~~]AREA

§13-256-106 Definition. The "West Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the northeast boundary of Honolua Bay to McGregor Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "00", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-107 Napili Bay [~~Restricted Area~~]restricted area. (a) The Napili Bay [~~Restricted Area~~]restricted area means the area confined by the boundaries shown for said area on Exhibit "PP", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the western tip of Kaelekii Point, then on a straight line across Napili Bay to a point at the low water mark at the north western point of Napili Bay, then along the low water mark of the shoreline in a southerly direction to the point of beginning.

(b) Restriction. The Napili Bay restricted area is designated for swimming and surfing. No person shall operate or moor a vessel within this area, except a vessel holding a valid mooring permit issued by the department. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-108 Lahaina-Kaanapali [~~Offshore Restricted Area.~~] offshore restricted area. (a) The Lahaina-Kaanapali [~~Offshore Restricted Area~~] offshore restricted area is the area encompassed by the boundaries shown of the area on Exhibit "QQ", dated October 24, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline between and in line with the Lahaina Harbor entrance range markers, by [~~azimuth~~] azimuths measured clockwise from True South, 045 degrees for a distance of three thousand one hundred twenty feet to a point in the water defining the southeastern boundary of the area; then 140 degrees for a distance of six thousand sixty feet; 180 degrees for a distance of six thousand three hundred feet; 167 degrees for a distance of twelve thousand three hundred feet, to a point in the water defining the northern boundary of the area.

(b) Restrictions. The Lahaina-Kaanapali [~~Offshore~~] offshore restricted area is designated as a parasailing area. Parasailing activity shall remain seaward of the described boundary when within three miles of the coastline, except when transiting to or from Lahaina Harbor, Mala ramp or a designated mooring area. No more than five commercial operating area use permits shall be issued for this zone. Persons operating vessels shall exercise due care when transiting this area. This area shall be closed to parasail operations from December 15 to May 15 of the following year. [Eff 2/24/94; am and

comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-109 Kaanapali [~~Commercial Thrill Craft Areas~~]commercial thrill craft areas. (a) The

Kaanapali [~~Commercial Thrill Craft Areas~~]commercial thrill craft areas are the areas encompassed by the boundaries shown of the areas on Exhibit "RR", dated March 1, 2002, and located at the end of this subchapter. The boundaries are as follows:

(1) Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 1.

The area within 200 yards of a line drawn between GPS position 20 degrees 54.170 minutes north latitude, 156 degrees 41.530 minutes west longitude and GPS position 20 degrees 54.340 minutes north latitude, 156 degrees 41.630 minutes west longitude.

(2) Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 2.

The area within 150 yards radius of GPS position 20 degrees 54.250 north latitude, 156 degrees 41.850 minutes west longitude.

(b) A maximum of three commercial thrill craft operating area permits may be issued for Kaanapali ocean waters. Notwithstanding the contrary provisions of sections 13-256-18, a person owning one or more business entities holding valid commercial thrill craft permits may consolidate all commercial thrill craft operations within Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 1; provided that no more than eighteen rental units and three safety units shall be operated at any one time. Kaanapali [~~Commercial Thrill Craft Area~~]commercial thrill craft area 2 is reserved for use by a single permittee. All support rafts or platforms shall be located within the operating area and shall display an anchor light at night.

(c) These areas shall be closed to all thrill craft operations during the whale season, from

December 15 to May 15 of the following year. [Eff
2/24/94; am 6/16/03; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-
6, 200-22, 200-23, 200-24, 200-37)

§13-256-110 Olowalu Beach [~~Restricted Area.~~]restricted area. (a) The Olowalu Beach [~~Restricted Area~~]restricted area means the area confined by the boundaries shown for said area on Exhibit "SS", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of Olowalu Beach which is by [~~azimuth~~]azimuths measured clockwise from True South, 256 degrees for a distance of three thousand feet from the southern tip of Hekili Point; then 360 degrees for a distance of five hundred feet; 295 degrees for a distance of three thousand feet; then 256 degrees to a point on the shoreline at the low water mark; then along the shoreline in a westerly direction to the point of beginning.

(b) Restrictions. This area is designated for swimming, snorkeling, scuba diving and shoreline fishing. No person shall operate or moor a vessel within this area. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-111 Kaanapali commercial water sledding zone. The Kaanapali commercial water sledding zone is encompassed by the boundaries shown on Exhibit "RR", dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a point in the water located by [~~azimuth~~]azimuths measured clockwise from True South, 090 degrees for a distance of one thousand fifty feet from the western tip of Kekaa Point, coincident with the Kaanapali Shore Waters

boundary; then 090 degrees for a distance of one thousand seven hundred twenty-five feet to the parasail boundary; then 346 degrees for a distance of eight thousand three hundred twenty-five feet along the parasail boundary; then 241 degrees for a distance of one thousand six hundred eighty feet to the Kaanapali Shore Waters boundary; then along the Kaanapali Shore Waters boundary in a northerly direction to the point of beginning.

- (1) This area is designated for commercial water sledding. No more than two commercial operating area use permits for water sledding shall be issued for this zone.
- (2) This area shall be closed to all commercial water sledding operations during the whale season, from December 15 to May 15 of the following year. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-112 Maui [~~Humpback~~]humpback whale protected waters. The Maui [~~Humpback~~]humpback whale protected waters means the area encompassed by the boundaries shown on Exhibit "00-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the shoreline of the southwestern tip of Puu Olai Point, then by azimuths measured clockwise from True South, 082 degrees for a distance of two nautical miles; 141 degrees for a distance of nineteen nautical miles; 164 degrees for a distance of three nautical miles; 184 degrees for a distance of two and five-tenths nautical miles; 200 degrees for a distance of four and three-tenths nautical miles; 295 degrees to Hawea Point; then along the shoreline of west and south Maui to the point of beginning.

Between December 15 and May 15 of the following year during the whale season, no person shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a motorboat towing a person engaged in water sledding or parasailing within this area. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§§13-256-113 to 13-256-115 (Reserved)

SUBCHAPTER 8

SOUTH MAUI OCEAN RECREATION MANAGEMENT AREA

§13-256-116 Definition. The "South Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the eastern boundary of La Perouse Bay to McGregor Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea base line as shown on Exhibit "TT", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-117 to 13-256-125 (Reserved)

SUBCHAPTER 9

NORTH MAUI OCEAN RECREATION MANAGEMENT AREA

§13-256-126 Definition. The "North Shore Maui Ocean Recreation Management Area" means all ocean waters and navigable streams from the eastern boundary of Maliko Bay to Waihee Point, Maui, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "VV", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-127 Hookipa [~~Restricted Zones~~]restricted zones. (a) Zones A, B, C and D, Hookipa restricted zones means the areas confined by the boundaries shown for said zones on Exhibit "WW", dated August 20, 1988, located at the end of this subchapter. The boundaries are as follows:

- (b) Zone A, Hookipa restricted Zone.
 - (1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, 075 degrees for a distance of seven hundred fifty feet; 360 degrees to the boundary of Zone D; then along the boundary of Zone D and the low water mark of the shoreline to the point of beginning.
 - (2) Restriction. Zone A is designated for swimming and surfing only. No person shall operate a sailboard or other water craft within this area.
- (c) Zone B, Hookipa restricted Zone.
 - (1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, to a beginning point in the water 075 degrees for

a distance of seven hundred fifty feet; then continuing at 075 degrees for a distance of five hundred fifty feet; 360 degrees to the shoreline; then along the shoreline to Zone D and along the boundary of Zone D to the boundary of Zone A; then by straight line north to the point of beginning.

(2) Restriction. Zone B is designated for surfing when at least five or more persons (5-man rule) are engaged in surfing within this zone. No person shall operate a sailboard within this zone within the surf break area.

(d) Zone C, Hookipa restricted Zone.

(1) Beginning at a point at the low water mark at the northern tip of Hookipa Point; thence measured clockwise from True South, to a beginning point in the water 075 degrees for a distance of thirteen hundred feet; then continuing at 075 degrees for a distance of four hundred seventy-five feet; 360 degrees to the shoreline; then along the shoreline to the boundary of Zone B; then by straight line north to the point of beginning.

(2) Restriction. Zone C is designated for surfing when at least ten or more persons (10-man rule) are engaged in surfing within this zone. No person shall operate a sailboard within this zone within the surf break area. Access for sailboards between the surf break and the shoreline shall be provided at all times.

(e) Zone D, Hookipa restricted Zone

(1) Beginning at a point at the low water mark three hundred ninety feet from the western boundary of Hookipa Beach Park, thence measured clockwise from True South; 180 degrees for a distance of one hundred feet; 270 degrees for a distance of four hundred ten feet; 238 degrees for a distance of five hundred forty feet; then in a straight line to the shoreline; then along the shoreline to the point of beginning.

- (2) Restriction. Zone D is designated for pole and net fishing. No person shall operate a sailboard within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-128 Baldwin Park-Paia Bay [~~Restricted Area~~]restricted area. (a) The Baldwin Park-Paia Bay restricted area means the area confined by the boundaries shown for said zone on Exhibit "XX/YY", dated August 23, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark at the northern tip of Fly Water Point, then by [~~azimuth~~]azimuths measured clockwise from True South, 157 degrees for a distance of five hundred feet; 070 degrees for a distance of six thousand two hundred feet; 344 degrees to the low water mark of the shoreline; then along the low water mark of the shoreline in an easterly direction to the point of beginning.

(b) Restrictions. The Baldwin Park-Paia Bay restricted area is designated for swimming, diving and fishing. No person shall operate a motor vessel at a speed in excess of slow-no-wake, or operate a sailboard within this area. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-129 Papa'ula Point [~~Restricted Zone~~]restricted zone. (a) Papa'ula Point [~~Restricted Zone mean~~]restricted zone means the area confined by the boundaries shown for said zone on Exhibit "ZZ", dated August 22, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark being an extension of the east boundary of

Kahului Airport thence by ~~[azimuth]~~ azimuths measured clockwise from True South; 155 degrees for a distance of one thousand six hundred seventy-five feet, 120 degrees for a distance of four hundred fifty feet; 080 degrees for a distance of nine hundred twenty-five feet; 350 degrees to the low water mark of the shoreline, then along the shoreline in an easterly direction to the point of beginning.

(b) Restriction. Papa'ula Point restricted zone is designated for fishing and diving. No person shall operate a vessel or sailboard within this area. Windsurfing access west of the restricted zone shall be permitted after 11:00 a.m. ~~[]~~ [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-130 Kanaha Beach Park ~~[Restricted Zones.]~~ restricted zones.

(a) Kanaha Beach Park ~~[Swimming Zones]~~ swimming zones A, B, and C mean the areas confined by the boundaries shown for said zones on Exhibit "AAA", dated August 20, 1988, located at the end of this subchapter. The boundaries are as follows:

(b) Swimming Zone A.

(1) Beginning at a point at the low water mark in line and being an extension of the east boundary of Kanaha Beach Park; thence by ~~[azimuth]~~ azimuths measured clockwise from True South, 180 degrees for a distance of three hundred feet; 228 degrees for a distance of seven hundred ten feet; 315 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a westerly direction to the point of beginning.

(c) Swimming Zone B.

(1) Beginning at a point at the low water mark at the tip of the groin located by

~~[azimuth]~~azimuths measured clockwise from True South, 093 degrees for a distance of four hundred seventy feet from the east boundary of Kanaha Beach Park; 135 degrees for a distance of three hundred ten feet; 047 degrees for a distance of six hundred feet; 350 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a easterly direction to the point of beginning.

- (d) Swimming Zone C.
- (1) Beginning at a point at the low water mark at the northeast tip of the groin located by ~~[azimuth]~~azimuths measured from True South, 090 degrees for a distance of one hundred fifty feet from the west boundary of Kanaha Beach Park; 180 degrees for a distance of three hundred feet; 248 degrees for a distance of eight hundred thirty feet; 315 degrees to a point at the low water mark at the shoreline; then along the low water mark of the shoreline of Kanaha Beach Park in a westerly direction to the point of beginning.

(e) Restrictions. The Kanaha Beach Park swim zones A, B, and C are designated for swimming only. No person shall operate a vessel or sailboard within these zones. No person shall launch a sailboard from Kanaha Beach Park prior to 11:00 a.m., except that windsurfing instruction and beginning windsurfing may be conducted within three hundred feet of the shoreline between swimming zones A and B after 9:00 a.m.[-] [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-131 to 13-156-139 (Reserved)

SUBCHAPTER 10

EAST HAWAII ISLAND OCEAN RECREATION MANAGEMENT AREA

§13-256-140 Definition. The "East Hawaii Ocean Recreation Management Area" means all ocean waters and navigable streams from Lelewi Point, South Hilo, to Pepeekeo Point, North Hilo, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "BBB", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-141 Hilo Bay [~~Recreational Thrill Craft Zone.~~]recreational thrill craft zone. (a) Hilo Bay recreational thrill craft zone means the area confined by the boundaries shown on Exhibit "CCC", dated June 30, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark which is three thousand six hundred feet east of the tip of Hilo Breakwater; then by [~~azimuth~~]azimuths measured clockwise from True South, 005 degrees for a distance of one thousand one hundred feet; 095 degrees for a distance of three thousand nine hundred feet; 185 degrees for a distance of two thousand feet; 275 degrees for a distance of one thousand one hundred feet; 005 degrees to the low water mark on the seaward side of the breakwater; then along the low water mark to the point of beginning.

(b) Restrictions: This area is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft in this area. [Eff 2/24/94; am and comp] (Auth: HRS

§§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-142 Waiakea [~~Access Corridor~~] access corridor. (a) The Waiakea [~~Access Corridor~~] access corridor means the area confined by the boundaries shown on Exhibit "DDD", dated August 19, 1988, located at the end of this subchapter. The boundaries of the corridor are as follows:

Beginning at a point at the low water mark at the north tip of the Wailoa River Channel; then by [~~azimuth~~] azimuths measured clockwise from True South, 187 degrees for a distance of four hundred fifty feet; 097 degrees for a distance of one hundred fifty feet; 007 degrees for a point at the low water mark of the shoreline; then along the shoreline to the point of beginning.

(b) Restrictions: The corridor is for access to the beach from Hilo Bay for recreational thrill craft and waterski activities. No person shall operate a commercial thrill craft or waterski activity in this corridor. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-143 Puhi Bay - Leleiwi Point [~~Restricted Zones~~] restricted zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "EEE", dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark which is an extension of the center line of Pua Avenue; then by [~~azimuth~~] azimuths measured clockwise from True South, 220 degrees for a distance of one thousand six hundred feet; 310 degrees

to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zone A is designated as a swimming area. No person shall operate or moor a vessel within this area.
- (b) Zone B.
 - (1) Zone B means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point at the low water mark on the shoreline which is the northeast boundary of Zone A; then by ~~[azimuth]~~azimuths measured clockwise from True South, 130 degrees for a distance of two hundred feet; 245 degrees for a distance of five hundred feet; 214 degrees for a distance of one thousand feet; 283 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.
- (c) Zone C.
 - (1) Zone C means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point at the low water mark on the shoreline of Keokea Point; then by ~~[azimuth]~~azimuths measured clockwise from True South, 245 degrees for a distance of five hundred feet; 270 degrees for a distance of one thousand eight hundred feet; 359 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.
- (d) Zone D.
 - (1) Zone D means the area confined by the boundaries shown on Exhibit "EEE" dated August 19, 1988, located at the end of this

subchapter. The boundaries of Zone D are as follows:

Beginning at a point at the low water mark of Mahikea Island; then by [~~azimuth~~]azimuths measured clockwise from True South, 318 degrees for a distance of four hundred fifty feet; 290 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zones B, C and D are designated as [a] diving, swimming and surfing zones. No person shall operate or moor a vessel, except at a speed of slow-no-wake or when diving with dive flag displayed.

(e) Zone E.

- (1) Zone E means the area confined by the boundaries shown on Exhibit "EEE", dated August 19, 1988, located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point at the low water mark of the shoreline by [~~azimuth~~]azimuths measured clockwise from True South, 054 degrees for a distance of five hundred feet from Richardson's Ocean Center; 045 degrees for a distance of two hundred feet; 074 degrees for a distance of four hundred feet; 177 degrees for a distance of eight hundred feet; 260 degrees to the low water mark on the shoreline; then along the low water mark to the point of beginning.

- (2) Restrictions. Zone E is designated as a surfing, canoeing, kayaking, diving and swimming zone. No person shall operate or moor a vessel within this zone, except at a speed of slow-no-wake or when diving with dive flag displayed.

(f) Zone F.

- (1) Zone F means the area confined by the boundaries shown on Exhibit "EEE", dated

August 19, 1988, located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point at the low water mark of the shoreline which is the southeast boundary of Zone E; then along the low water mark to the southwest boundary of Zone E; then along the southern boundary of Zone E to the point of beginning.

- (2) Restrictions. Zone F is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp]
(Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-256-144 to 13-256-149 (Reserved)

SUBCHAPTER 11

WEST HAWAII ISLAND OCEAN RECREATION MANAGEMENT AREA

§13-256-150 Definition. The "West Hawaii Ocean Recreation Management Area" means all ocean waters and navigable streams from the southernmost boundary of Honaunau Bay, South Kona, to the north west boundary of Honokoa Gulch, North Kohala, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "FFF", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94; comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-151 Honaunau Bay ~~[Swimming Zone]~~ swimming zone. (a) Honaunau Bay ~~[Swimming Zone]~~ swimming zone means the area confined by the boundaries shown on Exhibit "GGG", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark on the shoreline which is four hundred feet east of Mana Point; then by ~~[azimuth]~~ azimuths measured clockwise from True South, 360 degrees for a distance of four hundred feet; 270 degrees for a distance of nine hundred feet; then along the low water mark to the point of beginning.

(b) Restrictions. Honaunau Bay ~~[Swimming Zone]~~ swimming zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-152 Kahaluu Bay ocean waters. (a)

Kahaluu Bay ocean waters means the area confined by the boundaries shown on Exhibit "H-5", dated November 20, 2014, located at the end of this [~~subchapter and incorporated herein.~~]subchapter. The boundaries are as follows: [~~Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.~~]

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.

[~~(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.~~

~~(2)]~~

Kahaluu Bay ocean waters is designated as a swimming, surfing, and diving zone. No commercial water sports instruction or commercial tours [~~may~~]shall be conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay [~~Zone~~]ocean waters zone A is described as follows:

[~~Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.~~]

Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then southeasterly along the shoreline to the north

lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards northeasterly ending at the point of beginning.

- ~~[(1) Restrictions. Zone A is designated as a surfing zone.~~
- ~~(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.~~
- ~~(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one to four instructor to student ratio must be maintained at all times while in the water.~~
- ~~(4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.~~
- ~~(5) The department may designate the site of instruction with Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.]~~

Kahaluu Bay ocean waters zone A is designated as a surfing zone. At all times, no person shall operate or moor any motorized vessel in this zone.

All commercial activities of any type shall be prohibited in this zone, except that the department may issue commercial use permits to authorize commercial surfing instruction within this zone; provided that:

- (1) The total number of permits authorizing commercial surfing instruction issued under this subsection shall not exceed eight at any one time for Kahaluu Bay ocean waters

- zone A;
- (2) Each permit issued by the department pursuant to this subsection shall only authorize surfing instruction within Kahaluu Bay ocean waters zone A;
 - (3) No more than four permits shall authorize commercial surfing instruction from 0800 hours (8:00 a.m.) to 1200 hours (noon 12:00 p.m.), and no more than four permits shall authorize commercial surfing instruction from 1300 hours (1:00 p.m.) to 1700 hours (5:00 p.m.);
 - (4) No permittee may allow more than four students in the water at any one time per surfing instruction permit, regardless of the number of surf instructors of that permittee in the water;
 - (5) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
 - (6) The department may designate the site of surf instruction within Kahaluu Bay ocean waters zone A and hours of operation for each permittee. The department may change a designated site of operation within Kahaluu Bay ocean waters zone A whenever such changes are found by the department to be necessary for reasons of public health, safety, or welfare.

(c) Kahaluu Bay [~~Zone~~] ocean waters zone B is described as follows:

Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards [~~north-westerly~~] northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaau O Kalakani Point at the point of beginning.

~~[(1) Restrictions. Zone B is designated as a swim zone.~~

~~(2) No person shall operate or moor any vessel~~

~~within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.]~~

Kahaluu Bay ocean waters zone B is designated as a swimming and diving zone. No person shall operate or moor any vessel within this zone, including, but not limited to, boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes. [Eff 2/24/94; am 4/22/16; am and comp]
(Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-256-153 Kalaepaakai Point [~~Commercial Thrill Craft Zone~~commercial thrill craft zone. (a) Zone A is the area encompassed by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of Kalaepaaki Point; then by [~~azimuth~~]azimuths measured clockwise from True South, 078 degrees for a distance of seven hundred feet; then on a radius of two hundred feet around that point.

(b) Zone A is designated a commercial thrill craft area. No more than six rental thrill craft shall operate within the area at one time. [Eff 2/24/94; am and comp] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: §§200-22, 200-24, 200-37)

§13-256-154 Oneo Bay [~~Swimming Zone~~swimming zone. (a) Oneo Bay Swimming Zone means the area confined by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of

Kalaepaakai Point; then by [~~azimuth~~]azimuths measured clockwise from True South, 157 degrees to the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. Oneo Bay Swimming Zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-155 Kailua Bay [~~Restricted Zones.~~] restricted zones. (a) Kailua Bay [~~Restricted Zone~~] restricted zone B is the area encompassed by the boundaries shown on Exhibit "HHH", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by [~~azimuth~~]azimuths measured clockwise from True South, 341 degrees for a distance of two thousand one hundred ninety feet from the south tip of Kukailimoku Point; then 330 degrees for a distance of three thousand seven hundred fifty feet; 090 degrees for a distance of three thousand eight hundred forty feet; 210 degrees to the point of beginning.

(b) Kailua Bay [~~Restricted Zone~~] restricted zone B is designated for parasailing and recreational thrill craft. No person shall operate a commercial thrill craft in this zone. No more than two commercial operating area use permits for parasailing shall be issued for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. This zone shall be closed to parasail and all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(c) Kailua Bay [~~Restricted Zone~~] restricted zone C, is designated for parasailing and recreational thrill craft. No permittee shall operate more than

one parasail vessel at any one time in this zone. This inshore operating zone shall be open to parasail and all thrill craft operations during the whale season from December 15 to May 15 of the following year. The inshore operating zone is the area defined on Exhibit "HHH", dated, February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, measured clockwise from True South, 060 degrees at a distance of six hundred sixty feet from Kalaepaakai Point, then 330 degrees for a distance of three thousand five hundred forty feet; 090 degrees for a distance of one thousand seven hundred forty feet; then in a straight line to the point of beginning.

(d) Zone C shall be closed to parasail and all thrill craft operations from May 15 to December 15 of each year. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-22, 200-24, 200-37) (Imp: §§200-22, 200-24, 200-37)

§13-256-156 Kailua Pier [Restricted Zones.] restricted zones. (a) Kailua Pier [~~Restricted Zones~~]restricted zones means the areas defined by the boundary lines as shown on Exhibit "III", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

(b) Zone A.

(1) Beginning at a point at the low water mark on the east side of Kailua Pier; then by [~~azimuth~~]azimuths measured clockwise from True South, 317 degrees for a distance of two hundred twenty feet; 336 degrees for a distance of three hundred twelve feet; 026 degrees 30 minutes for a distance of four hundred sixty-five feet; 158 degrees for a distance of three hundred four feet; 214 degrees for a distance of one hundred eighteen feet to the western seaward edge of

- Kailua Pier.
- (2) Restrictions. This area is designated for boating use only. Swimming is prohibited.
 - (c) Zone B.
 - (1) Beginning at a point at the low water mark on the east side of Kailua Pier; then by [~~azimuth~~]azimuths measured clockwise from True South; 317 degrees for a distance of two hundred twenty feet; 292 degrees for a distance of six hundred eighty-three feet to intersect with the low water mark fronting the western property line of Hulihee Palace; thence along the low water mark to the beginning.
 - (2) Restrictions. This area is designated a swimming zone. No person shall operate or moor a vessel within this zone, except for commercial fishing vessels engaged in baitfishing operations. Vessels operating near the shoreline of Kailua Bay between Hulihee Palace and the Kona Hilton Hotel shall exercise caution due to swimming activity. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-157 Honokohau [~~Swimming Zone~~] swimming zone. (a) Honokohau [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "JJJ", dated August 15, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark located by [~~azimuth~~]azimuths measured from True South from the N. E. Range Marker at Noio Point 160 degrees for a distance of four hundred seventeen feet; then 243 degrees to a point at the low water mark of the shoreline south of Honokohau Harbor entrance; then along the shoreline in a southwesterly direction to the

point of beginning.

(b) Restrictions. Honokohau [~~Swimming Zone~~] swimming zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-158 Kua Bay [~~Swimming Zone~~] swimming zone. (a) Kua Bay [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows: Beginning at the low water mark on the shoreline of Papiha Point; then by straight line to the low water mark at Punalua Point; then along the low water mark to the point of beginning.

(b) Restrictions. Kua Bay [~~Swimming Zone~~] swimming zone is designated as a swimming zone. No person shall operate or moor a vessel, surfboard, sailboard or other watercraft within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-159 Kahuwai Bay [~~Restricted Zone~~] restricted zone. (a) Kahuwai Bay restricted zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark on the shoreline of southern boundary of the bay; then by [~~azimuth~~] azimuths measured clockwise from True South, 225 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. Kahawai Bay is designated a slow-no-wake zone. No person shall operate a vessel at a speed in excess of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-160 Kiholo Bay [~~Speed Zone.~~] speed zone.

(a) Kiholo Bay [~~Speed Zone~~] speed zone means the area confined by the boundaries shown on Exhibit "KKK", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the point on the low water mark of Nawaikulua Point; then by [~~azimuth~~] azimuths measured clockwise from True South, 065 degrees to a point on the low water mark of the shoreline; then along the low water mark to the point of beginning.

(b) Restrictions. No person shall operate a vessel in excess of a speed of slow-no-wake. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-161 Anaehoomalu Bay [~~Restricted Zones.~~] restricted zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline by [~~azimuth~~] azimuths measured clockwise from True South, 256 degrees for a distance of two hundred ninety feet from the westernmost tip of Lae O Hiiaka Point; then 177 degrees for a distance of six hundred feet; 260 degrees for a distance of three hundred feet; 324 degrees to a point on the low water mark on

the shoreline; then along the shoreline in a westerly direction to the point of beginning.

(b) Zone B.

(1) Zone B means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline one hundred feet from the westernmost tip of the Kahapapa weir, then by ~~[azimuth]~~ azimuths measured clockwise from True South, 077 degrees for a distance of five hundred seventy-five feet; 155 degrees to a point on the low water mark on the shoreline; then along the shoreline in a southeasterly direction to the point of beginning.

(c) Restrictions. Anaehoomalu Bay [~~Restricted Zones~~] restricted zones A and B are designated for swimming and diving. No person shall operate or moor a vessel within these zones.

(d) Zone C, Ingress/egress corridor

(1) Zone C means the area confined by the boundaries shown on Exhibit "LLL", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of the shoreline one hundred fifty feet from the westernmost tip of the Kahapapa weir, then by ~~[azimuth]~~ azimuths measured clockwise from True South, 065 degrees for a distance of six hundred fifty feet; 000 degrees for a distance of one hundred fifty feet; 245 degrees to a point on the low water mark on the shoreline; then along the shoreline in a northerly direction to the point of beginning.

(e) Restriction. Zone C is designated an ingress/egress corridor for vessels and sailboards.

[Eff 2/24/94; am and comp] (Auth:
HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

**§13-256-162 Makaiwa Bay [~~Swimming~~
~~Zones.~~] swimming zones.**

Zone A means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northwestern tip to the entrance of the boat ramp; then by [~~azimuth~~] azimuths measured clockwise from True South, 110 degrees for a distance of seven hundred ten feet to a point of low water of the shoreline; then along the shoreline in a south and easterly direction to the point of beginning.

(b) Zone B.

Zone B means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northeastern tip to the entrance of the boat ramp; then by [~~azimuth~~] azimuths measured clockwise from True South, 226 degrees for a distance of five hundred forty feet to a point of low water of the shoreline; then along the shoreline in a south and westerly direction to the point of beginning.

(c) Restrictions. The Makaiwa Bay swimming zones A and B are designated for swimming and diving. No person shall operate or moor a motor vessel within this zone. [Eff 2/24/94; am 12/31/18; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-163 Hapuna Bay [~~Swimming Zone~~] swimming zone. (a) The Hapuna Bay [~~Swimming Zone~~] swimming zone means the area confined by the boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by [~~azimuth~~] azimuths measured clockwise from True South, 311 degrees for a distance of four hundred feet; 268 degrees to a point on the low water mark of the shoreline; then along the low water mark in a southerly direction for a distance of one thousand three hundred feet; 088 degrees for a distance of one hundred feet; then by a straight line to the point of beginning.

(b) Restrictions. The Hapuna Bay [~~Swimming Zone~~] swimming zone is designated for swimming and diving. No person shall operate or moor a motorized vessel, within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§13-256-164 Kaunaoa Bay [~~Restricted Zones~~] restricted zones. (a) Zone A, Kaunaoa Bay Swimming Zone.

(1) Zone A means the area confined by the boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the northern boundary of Kaunaoa Beach five hundred forty feet from Kaaha Point, then in a straight line to the southern boundary of Kaunaoa Beach; then along the low water mark of the shoreline to the point of beginning.

(2) Restrictions. The Kaunaoa Bay [~~Swimming Zone~~] swimming zone is designated as a swimming and diving zone.

No person shall operate or moor a motorized vessel within this zone.

(b) Zone B, Kaunaoa Bay [~~Ingress/Egress Corridor~~]ingress/egress corridor. (1) Zone B means the area confined by the

boundaries shown on Exhibit "NNN", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the water which is measured clockwise by [~~azimuth~~]azimuths from True South, 360 degrees for a distance of five hundred fifty feet from the northern boundary of Kaunaoa Beach; 270 degrees to the low water mark of the shoreline; then along the shoreline in a southerly direction for one hundred fifty feet to the point of the northern boundary of the swimming zone; 090 degrees coincident to the northern swimming zone boundary to its seaward point; then in a straight line to the point of beginning.

(2) Restriction. Zone B is designated an ingress/egress corridor to the beach for commercial motorized vessels. No person shall operate a vessel in excess of slow-no-wake within this zone. [Eff 2/24/94; am and comp] (Auth: HRS §200-4) (Imp: §§200-2, 200-3, 200-4)

§§13-256-165 to 13-256-175 (Reserved) "

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

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

4. The amendments and compilation of chapter 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

III. Old Business – After Public Hearing

C. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by DCCA

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

Department or Agency: Dept. of Commerce & Consumer Affairs, Insurance Division

Administrative Rule Title and Chapter: Title 16, Chapter 171, Subchapter 3

Chapter Name: Miscellaneous Insurance Rules

Contact Person/Title: Eunice Park, Staff Attorney

Phone Number: (808) 586-3041

E-mail Address: epark@dcca.hawaii.gov **Date:** 10/07/2021

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

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

Yes No

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

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

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

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

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

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

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

Yes No

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

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

Yes No

(If “Yes” no need to submit this form.)

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

Presented to the SBRRB Board at a meeting held on July 29, 2021, and held a public hearing via Microsoft Teams on September 30, 2021.

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

No

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.

Presented to the SBRRB Board at a meeting held on July 29, 2021, published Notices in the Honolulu Star Advertiser and on the eHawaii.gov Meeting Calendar of the September 30, 2021 public hearing.

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

No comments were made

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

N/A

4. The number of persons who:

(i) Attended the public hearing: 6

(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 changes were requested

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>

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

Discussion leader and Vice Chair Albitz stated that these after public hearing rules essentially did not have any business impacts nor were there any business-related comments at the public hearing.

Mr. Lum explained that these rules are the state's NPDES (National Pollutant Discharge and Elimination System) permit rules. This permit system is required by the federal Clean Water Act and authorizes certain types of point source discharging and storm water discharges to surface waters; the EPA has authorized DOH to administer this program in Hawaii.

This rule package will relocate some of the NPDES permitting rules into this chapter from Chapter 54, which among other changes, added federal regulations from municipal drainage systems.

Of the 44 attendees at the combined virtual public hearing, one person testified on these rules with five organizations and five individuals submitting comments. Mr. Lum expanded upon the comments made at the public hearing by environmental groups; these were also included in the rules packet provided to this Board. However, any changes DOH made to the rules after the public hearing based on these comments did not have any small business impact.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing July 2021 Meeting Minutes

A. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Second Vice Chair Shick stated that many of the rule changes will help streamline and standardize the rules. Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, explained that this proposal was precipitated by changes to the insurance code chapter during the 2021 legislative session.

These changes create a uniform duration of the license and registrations that the Insurance Division provides to insurance licensees and registrants. In addition to housekeeping measures, the main changes will allow the Insurance Division to utilize an electronic system for processing insurance licensing, registration, renewal, and reinstatement fees. The amendments have an effective date of January 1, 2022.

The proposed changes will apply to small businesses that are currently required to be registered or licensed by DCCA's Insurance Division. Such businesses include insurance agents, agencies, adjusters, service contract providers, vehicle protectors and many others.

Finally, the proposed changes will not require additional costs to small businesses but rather would result in cost savings due to utilizing the electronic process by streamlining the application procedures.

Second Vice Chair Shick motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments to HAR Title 3 Chapter 40 Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data, promulgated by Department of Accounting and General Services (DAGS)

Mr. Ritchie stated that the Board has seen situations like these where a department will propose a fee increase when it has not increased its fees in years. This fee proposal relates to the land court and plan maps which small businesses are required to pay; the average fees will increase by 50 percent and is authorized by the HRS.

Mr. Meyer Cummins, Land Boundary Surveyor at DAGS, confirmed that his office has not updated its fee schedule in several years, despite technological advances, as the existing rules do not address "digital" copies. Many of the existing costs have developed over time. He added that most of the funds received from fees go into DCCA's general fund.

In terms of background information, Mr. Cummins explained that his office at DAGS checks maps that are registered with the land court, and also checks maps and descriptions for subdivisions that will be recorded. In the past, these checks required hundreds of manhours, running calculations, and checking land titles from historic documents. However, most of this information is currently available on line and some of the information is free to the public; so, the time involved in researching the information has significantly dropped.

Despite this, because the fees have not been increased, in some cases, nearly 30 years, there is a large disparity as to what the actual cost is for research versus the fee being charged. Although the cost of checking and processing may cost \$50 to \$60, based on the current fee schedule, only \$10 to \$15 is being charged.

Mr. Cummins also explained that his office has yet to reach out to the public regarding the rule changes. However, on an annual basis, his office does reach out to land surveying companies to educate surveyors, developers, and law firms on how to make changes, etc. Chair Cundiff acknowledged and concurred that it was probably a good time to increase the fees. He also highly recommended that DAGS take the opportunity to reach out to the stakeholders to share the reasons for the proposed changes and for feedback.

Mr. Ritchie motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-171
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-171, Hawaii Administrative Rules, entitled, "Miscellaneous Insurance Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 171

MISCELLANEOUS INSURANCE RULES

Subchapter 1 General Provisions

§16-171-101 Definitions
§16-171-102 Repealed
§16-171-103 Written notice to claimants of payment
of claims in third-party settlements

Subchapter 2 Health Provisions

- §16-171-201 Disclosure to enrollee or authorized representative
- §16-171-202 Accident and health or sickness filing requirement

Subchapter 3 Licensing Requirements

- §16-171-301 Term of license
- §16-171-302 License renewal or extension for a natural person
- §16-171-303 Term of surplus lines broker; license
- §16-171-304 License renewal or extension for a business entity
- §16-171-305 Payment of initial licensing and registration fees, and renewal fees
- §16-171-306 Continuing education course credit
- §16-171-307 Continuing education requirement for resident licensee
- §16-171-308 Continuing education requirement for licensee reactivating a line of authority
- §16-171-309 Continuing education prerequisite for business entity license renewal
- §16-171-310 Application for approval of a continuing education course
- §16-171-311 Passing examination score
- §16-171-312 Term of managing general agent license
- §16-171-313 Repealed
- §16-171-314 Term of reinsurance intermediary broker and reinsurance intermediary manager licenses
- §16-171-315 Repealed
- §16-171-316 Initial term of vehicle protection product warrantor registration
- §16-171-317 Initial term of service contract provider registration
- §16-171-318 Electronic mail address is required of all licensees, registrants, certificate holders, certificate of authority holders
- §16-171-319 Renewal for registration

§16-171-320 Initial term of pharmacy benefit
manager registration
§16-171-321 Initial term of limited lines portable
electronics producer license
§16-171-322 Reinstatement fee
§16-171-323 Reinstatement after license or
registration has been surrendered
voluntarily
§16-171-324 Electronic filings through
nongovernmental entities

Subchapter 4 CSO Mortality Table for Use in
Determining Minimum Reserve
Liabilities and Nonforfeiture
Benefits

§16-171-401 Purpose
§16-171-402 Definitions
§16-171-403 2001 CSO Mortality Table
§16-171-404 Conditions
§16-171-405 Gender-Blended Tables

Subchapter 5 Preferred Mortality Tables for Use
in Determining Minimum Reserve
Liabilities

§16-171-501 Purpose
§16-171-502 Definitions
§16-171-503 2001 CSO Preferred Class Structure
Table
§16-171-504 Conditions

Subchapter 6 Military Sales Practices

§16-171-601 Purpose and authority
§16-171-602 Definitions
§16-171-603 Scope and exemptions

- §16-171-604 Practices declared false, misleading, deceptive, or unfair on a military installation.
- §16-171-605 Practices declared false, misleading, deceptive, or unfair regardless of location
- §16-171-606 Severability

Subchapter 7 (Reserved)

Subchapter 8 Repealed

§§16-171-801 to 16-171-808 Repealed

Subchapter 9 Valuation of Life Insurance Policies

- §16-171-901 Purpose
- §16-171-902 Applicability
- §16-171-903 Definitions
- §16-171-904 General calculation requirements for basic reserves and premium deficiency reserves
- §16-171-905 Calculation of minimum valuation standard for policies, other than universal life policies, with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits
- §16-171-906 Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period

SUBCHAPTER 1

GENERAL PROVISIONS

§16-171-101 Definitions. As used in this chapter:

"Commissioner" means the insurance commissioner.

"Enrollee" means a person covered for health insurance by the insurer.

"Insured" means a person covered for insurance by the insurer.

"Insurer" means a person defined as an insurer pursuant to section 431:1-202, Hawaii Revised Statutes ("HRS").

"Managed care plan" means a health plan defined as a managed care plan pursuant to section 431:14G-102, HRS. [Eff 1/1/05; am and comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:1-202, 431:2-102, 431:2-201, 431:14G-102)

§16-171-102 Repealed. [R 12/26/06]

§16-171-103 Written notice to claimants of payment of claims in third-party settlements. (a) Upon payment in settlement of any third-party liability claim, the insurer shall provide written notice to the claimant where:

- (1) The claimant is a natural person; and
- (2) The payment is delivered to the claimant's lawyer by draft, check, or otherwise.

(b) A written notice shall be required when the insurer or the insurer's representative, including the insurer's lawyer, makes payment to a claimant. [Eff

and comp 12/26/06; comp 03/28/08; comp 1/22/10; comp
12/13/12; comp 02/02/17; comp] (Auth:
HRS §431:2-201) (Imp: HRS §§431:1-202, 431:10-230)

SUBCHAPTER 2

HEALTH PROVISIONS

§16-171-201 Disclosure to enrollee or authorized representative. (a) Upon written request and payment of fifty dollars to a managed care plan by an enrollee or authorized representative, a managed care plan shall deliver, within ten business days of that request, to that enrollee or authorized representative data that forms the basis for the premium rates that the managed care plan seeks to charge the enrollee in the next enrollment period.

(b) Subject to subsection (c), the enrollee or authorized representative may request all pertinent information as to the rate including, but not limited to, the managed care plan's data for the enrollee relating to:

- (1) Loss trend;
- (2) Loss ratio;
- (3) Annual financial statements of the managed care plan; and
- (4) Its rate filing.

(c) A managed care plan shall not be required to disclose supporting information or supplementary rating information that:

- (1) Consists of proprietary information, including trade secrets, commercial information, and business plans that the commissioner deems may result in competitive harm to the managed care plan if disclosed;
- (2) Is confidential in accordance with federal or Hawaii law; or

- (3) Is exempt from disclosure by federal or Hawaii law. [Eff 1/1/05; comp 12/26/06; am and comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §431:2-201) (Imp: HRS §§92F-13, 92F-22, 431:2-209, 431:14G-105, 431:14G-109)

§16-171-202 Accident and health or sickness filing requirement. Notwithstanding the need to have a plan qualified under section 393-7, HRS, a managed care plan shall file accident and health or sickness insurance contract rates with the commissioner that comply with title 24, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 432:1-102, 432D-2) (Imp: HRS §431:14G-105)

SUBCHAPTER 3

LICENSING REQUIREMENTS

§16-171-301 Term of license. The term of the license granted pursuant to articles [~~9 and 9A~~] 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, [~~HRS 7~~] chapter 431C, and article 2 of chapter 432, HRS, shall be not less than one year and not more than three years. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-232, 431:9A-107, 432:2-609)

§16-171-302 License renewal or extension for a natural person. (a) The day for renewal or extension of a license issued to a natural person pursuant to articles ~~[9 and 9A]~~ 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, ~~[HRS,]~~ chapter 431C, and article 2 of chapter 432, HRS, shall be the ~~[sixteenth]~~ last day of the licensee's birth month.

~~{(b) The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in even-numbered months shall be the next succeeding even-numbered year. The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in odd-numbered months shall be the next succeeding odd-numbered year.~~

~~(c) The term of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.~~

~~(d)}~~ (b) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; am and comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 432:2-609)

§16-171-303 Term of surplus lines broker; license. The term of the surplus lines broker license issued pursuant to article 8 of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:8-310, 431:9A-108)

§16-171-304 License renewal or extension for a business entity.

(a) The day for renewal or extension of a license issued to a business entity pursuant to articles ~~[9 and 9A]~~ 8, 9, 9A, 9B, 9C, 9J, and 9N of chapter 431, ~~[HRS,]~~ and chapter 431C, HRS, shall be the ~~[sixteenth]~~ last day of April for a nonresident licensee and the ~~[sixteenth]~~ last day of July for a resident licensee.

~~{(b) The year for renewal or extension for a nonresident business entity licensee shall be the next succeeding even-numbered year.~~

~~(c) The year for renewal or extension for a resident business entity licensee shall be the next succeeding odd-numbered year.~~

~~(d) The term of the license issued to a business entity pursuant to articles 9 and 9A of chapter 431, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.~~

~~(e)}~~ (b) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; am and comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-106, 431:9A-107)

§16-171-305 Payment of initial licensing and registration fees [and penalties], and renewal fees.

Prior to the issuance, renewal, or extension of a license or registration, the licensee or registrant shall pay all applicable fees~~[and penalties]~~. ~~[A service fee, consisting of annual fees for each full year or partial year included in the term, shall be paid by the licensee.]~~ The fees for the initial term of the license or registration shall include an issuance fee pursuant to section 431:7-101(a), HRS, and a two-year service fee pursuant to section 431:7-101(b), HRS. Renewals after the initial term shall

include a renewal fee which includes either a two-year service fee for a license or registration which is renewed biennially, or a one-year service fee for a license or registration which is renewed annually. There shall be no pro rata of the service fee. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 431:9A-107.5, 432:2-609)

§16-171-306 Continuing education course credit.

Credits earned for a continuing education course shall be valid for twenty-four months after the course provider determines that the licensee has successfully completed all course requirements. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-124, 431:9A-155)

§16-171-307 Continuing education requirement for resident licensee ~~[that acquires additional line of authority]~~. ~~[Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer who acquires an additional line of insurance through the examination process within the twenty-three months preceding the producer's renewal or extension date shall complete the continuing education requirement for the additional acquired line by the producer's next succeeding renewal or extension date.]~~ The continuing education compliance period for a resident licensee shall coincide with their license renewal date. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; am and comp] (Auth: HRS §§431:2-201, 431:9A-118)

(Imp: HRS §§431:9A-124, 431:9A-142, 431:9A-155,
432:2-609)

§16-171-308 Continuing education requirement for licensee reactivating a line of authority. Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer who applies to reactivate a line of authority shall fulfill the continuing education requirement for the line of authority prior to its reactivation. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:9A-118)
(Imp: HRS §§431:9A-124, 431:9A-142, 432:2-609)

§16-171-309 Continuing education prerequisite for business entity license renewal. Failure by the designated representative to complete the continuing education requirement on behalf of the business entity shall result in the business entity's and, if applicable, the designated representative's license being automatically placed on "inactive" status. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; am and comp 12/13/12; comp 02/02/17; comp]
(Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-106, 431:9A-124, 431:9A-142, 432:2-609)

§16-171-310 Application for approval of a continuing education course. (a) A continuing education course provider seeking approval of a continuing education course shall submit an application to the commissioner at least sixty days prior to the proposed date the course will be offered.
(b) A continuing education course provider shall obtain the commissioner's prior approval for the course before advertising or soliciting for that

course. [Eff 1/1/05; comp 12/26/06; comp 03/28/08;
comp 1/22/10; comp 12/13/12; comp 02/02/17; comp
] (Auth: HRS §§431:2-201, 431:9A-118)
(Imp: HRS §431:9A-153)

§16-171-311 Passing examination score. An applicant for licensure under article 9 or article 9A of chapter 431, HRS, or article 2 of chapter 432, HRS, shall obtain a score of seventy or higher to pass the examination. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-206, 431:9A-105, 432:2-609)

§16-171-312 Term of managing general agent license. The term of licensure for a managing general agent license issued pursuant to article 9C of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108, 431:9C-102)

§16-171-313 Repealed. [R 12/13/12]

§16-171-314 Term of reinsurance intermediary broker and reinsurance intermediary manager licenses. The term of licensure for reinsurance intermediary broker and reinsurance intermediary manager licenses issued pursuant to article 9B of chapter 431, HRS, shall be the same as the licensee's producer license

issued pursuant to article 9A of chapter 431, HRS.
[Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp
1/22/10; comp 12/13/12; comp 02/02/17; comp
] (Auth: HRS §§431:2-201, 431:9A-118)
(Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108,
431:9B-102)

§16-171-315 Repealed. [R 12/13/12]

§16-171-316 [Term] Initial term of vehicle protection product [warrantors registrations.] warrantor registration. The initial term of vehicle protection product [warrantors' registrations] warrantor registration issued pursuant to chapter 481R, HRS, shall not be for [not more than one year and, unless renewed,] less than one year and not more than three years and shall automatically expire on December 31 of each year[-], unless renewed. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp
] (Auth: HRS §§431:2-201, 481R-3)
(Imp: HRS §§431:7-101, 481R-4)

§16-171-317 [Term] Initial term of service contract provider [registrations.] registration. The initial term of a service contract [providers' registrations] provider registration issued pursuant to chapter 481X, HRS, shall not be for [not more than one year and, unless renewed,] less than one year and not more than three years and shall automatically expire on July [15] 31 of each year[-], unless renewed. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; am and comp
] (Auth: HRS §§431:2-201, 481X-11)
(Imp: HRS §§431:7-101, 481X-3)

§16-171-318 Electronic mail address is required of all licensees, registrants, certificate holders, certificate of authority holders. All licensees, registrants, and certificate holders shall provide the commissioner with an electronic mail address to receive communications from the commissioner. Communications sent to the electronic mail address shall be construed as actual notice to the licensee, registrant, certificate holder, or certificate of authority holder for all purposes, but not as a service of legal process. [Eff 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:19-102, 431K-13, 432:1-102, 432D-2, 481R-3, 481X-11) (Imp: HRS §§431:9-204, 431:9A-106, 431:9A-108, 431:9A-142, 431:9A-151, 431:19-102, 431K-2, 432:1-302, 432:2-609, 432D-2, 481R-4, 481X-3, 488-3)

§16-171-319 Renewal for registration. The day for renewal or extension of a registration issued to a registrant shall be the last day of the designated month. [Eff and comp] (Auth: HRS §§431:2-201, 431S-6, 481R-3, 481X-11) (Imp: HRS §§431S-4, 481R-4, 481X-3)

§16-171-320 Initial term of pharmacy benefit manager registration. The initial term of a pharmacy benefit manager registration issued pursuant to chapter 431S, HRS, shall not be less than one year and not more than three years and shall automatically expire on March 31 of each year, unless renewed. [Eff and comp] (Auth: HRS §§431:2-201, 431S-6) (Imp: HRS §431S-4)

§16-171-321 Initial term of limited lines portable electronics producer license. The initial term of limited lines portable electronics producer license issued pursuant to article 31, chapter 431, HRS, shall not be less than one year and not more than three years. [Eff and comp] (Auth: HRS §§431:2-201) (Imp: HRS §431:31-102)

§16-171-322 Reinstatement fee. If a license or registration was inactivated due to a nonrenewal, an incomplete continuing education, or failure to meet other applicable requirements, the license or registration may be reinstated within one year of inactivation provided the applicable fees and penalties have been paid and any applicable continuing education or other requirements have been met. The fee for reinstatement shall include any unpaid renewal fees and penalty fees. If more than one year has passed since the inactivation, the applicant must apply as a new applicant. [Eff and comp] (Auth: HRS §§431:2-201, 431:9A-118, 431:9B-111, 431:9C-107, 431:9J-114, 431C-53, 431S-6, 481R-3, 481X-11) (Imp: HRS §§431:8-310, 431:9-232, 431:9A-107, 431:9B-102, 431:9C-102, 431:9J-102, 431C-3, 432:2-609, 431S-3, 481R-4, 481X-3)

§16-171-323 Reinstatement after license or registration has been surrendered voluntarily. The license or registration may be reinstated within one year from the date of surrender if a license or registration was voluntarily surrendered, provided a two-year service fee has been paid and any applicable continuing education requirements have been met. If more than one year has passed since the voluntary surrender, the applicant must apply as a new applicant. [Eff and comp] (Auth: HRS §§431:2-201, 431:9A-118, 431:9B-111, 431:9C-107, 431:9J-114, 431C-53, 431S-6, 481R-3, 481X-11) (Imp:

HRS §§431:8-310, 431:9-232, 431:9A-107, 431:9B-102, 431:9C-102, 431:9J-102, 431C-3, 432:2-609, 431S-3, 481R-4, 481X-3)

§16-171-324 Electronic filings through nongovernmental entities. The commissioner may mandate all holders of licenses or registrations to apply for licensure or registration electronically through the nongovernmental entities. [Eff and comp] (Auth: HRS §431:2-201) (Imp: HRS §§431:8-321, 431:9-204, 431:9A-106, 431:9B-102, 431:9C-102, 431:9J-102, 431:31-102, 431C-3, 431S-3, 432:2-609, 481R-4, 481X-3)

SUBCHAPTER 4

CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

§16-171-401 Purpose. The purpose of this subchapter is to authorize the use of the 2001 Commissioners' Standard Ordinary ("CSO") Mortality Table for the computation of the minimum reserve standard for nonforfeiture and valuation of life insurance policies and contracts. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-402 Definitions. As used in this subchapter:

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the valuation basic mortality table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002 (the 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002)). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"2001 CSO Mortality Table (F)" means that portion of the 2001 CSO Mortality Table that consists of the rates of mortality for female lives.

"2001 CSO Mortality Table (M)" means that portion of the 2001 CSO Mortality Table that consists of the rates of mortality for male lives from the 2001 CSO Mortality Table.

"Composite mortality tables" means that portion of the 2001 CSO Mortality Table that consists of rates of mortality that do not distinguish between smokers and nonsmokers.

"Smoker and nonsmoker mortality tables" means that portion of the 2001 CSO Mortality Table that consists of separate rates of mortality for smokers and nonsmokers. [Eff 1/1/05; comp 12/26/06 comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-403 2001 CSO Mortality Table. (a) At the election of the insurer and for any one or more of the insurer's specified plans of insurance and subject

to the conditions stated in section 16-171-404, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and in sections 431:5-307 and 431:10D-104, as applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in section 16-171-404, insurers shall use the 2001 CSO Mortality Table in determining minimum standards for policies issued on and after January 1, 2009, in sections 431:5-307 and 431:10D-104, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c) (2) (A), 431:10D-104(e) (8) (G) (vii))

§16-171-404 Conditions. (a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- (1) Composite mortality tables to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by sections 431:5-307 and 431:10D-104, HRS, and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers, the insurers shall use the composite mortality tables.

(c) For the purpose of determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each plan of insurance, be used in its select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed by the insurer with the commissioner shall be based on an asset adequacy analysis as specified in sections 431:5-307 and 431:10D-104, HRS. Upon application, the commissioner may exempt an insurer from this requirement only if it does business in this State and in no other state. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-405 Gender-blended tables. (a) For any ordinary life insurance policy delivered or issued for delivery in this State on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the subchapter.

(b) The insurer may choose from among the blended tables within the 2001 CSO Mortality Table by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) It shall not, in and of itself, be a violation of article 13 of chapter 431, HRS, for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. [Eff 1/1/05; comp 12/26/06; comp 03/28/08; comp 1/22/10; comp 12/13/12; comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c) (2) (A), 431:10D-104(e) (8) (G) (vii))

SUBCHAPTER 5

PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

§16-171-501 Purpose. The purpose of this subchapter is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with sections 431:5-307 and 431:10D-104, HRS. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-502 Definitions. As used in this subchapter:

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force and adopted by the NAIC in

December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless indicated otherwise, the 2001 CSO Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables and the composite mortality tables;
- (3) Both the age-nearest-birthday and age-last-birthday bases of the mortality tables;
- (4) The "2001 CSO Mortality Table (F)" that consists of the rates of mortality for female lives from the 2001 CSO Mortality Table;
- (5) The "2001 CSO Mortality Table (M)" that consists of the rates of mortality for male lives from the 2001 CSO Mortality Table;
- (6) The "Composite mortality tables" that consist of tables with rates of mortality that do not distinguish between smokers and nonsmokers; and
- (7) The "Smoker and nonsmoker mortality tables" that consist of mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the NAIC Proceedings (3rd Quarter 2006). Unless the context indicates otherwise, the 2001 CSO Preferred Class Structure Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables found in the 2001 CSO Mortality Table;

- (3) Both the male and female mortality tables and the gender composite mortality tables found in the 2001 CSO Mortality Table; and
- (4) Both the age-nearest-birthday and age-last-birthday bases of the mortality table found in the 2001 CSO Mortality Table.

"CSO" means Commissioners' Standard Ordinary.

"NAIC" means the National Association of Insurance Commissioners.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers, and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-503 2001 CSO Preferred Class Structure

Table. (a) At the election of insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this subchapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the smoker and nonsmoker mortality tables, found in the 2001 CSO Mortality Table, as the minimum valuation for policies issued.

(b) No such election shall be made until the insurer demonstrates at least twenty per cent of the business to be valued on this table is in one or more of the preferred classes.

(c) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this section, will be treated as part of the 2001 CSO

Mortality Table only for purposes of reserve valuation pursuant to the requirements of subchapter 4, title 16, chapter 171, HAR. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-504 Conditions. (a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table

to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Mortality Table shall annually file with the commissioner, the NAIC, or a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this section. The form of the reports shall be established by the commissioner, or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp]
(Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

SUBCHAPTER 6

MILITARY SALES PRACTICES

§16-171-601 Purpose and authority. (a) The purpose of this subchapter is to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this subchapter.

(c) This subchapter is adopted under the authority of section 431:2-201.8, HRS. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201, 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-602 Definitions. As used in this subchapter:

"Active duty" means full-time duty in the active military service of the United States Armed Forces, National Guard, and reserves while serving under published orders for active service or full-time training. The term does not include members of the National Guard and reserves who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one calendar days.

"Department of Defense, "DD", or "DoD" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees of that government agency.

"Door to door" means a solicitation or sales method whereby an insurance producer or insurer proceeds randomly or selectively from household to household without prior specific appointment.

"General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

"Insurance producer" means a person required to be licensed under the laws of the State of Hawaii to sell, solicit, or negotiate life insurance, including annuities.

"Insurer" means an insurance company required to be licensed under the laws of the State of Hawaii to provide life insurance products, including annuities.

"IRC" means the Internal Revenue Code.

"Known" or "knowingly", depending on its use herein, means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of, that the person solicited:

- (1) Is a service member; or
- (2) Is a service member with a pay grade of E-4 or below.

"Life insurance" means insurance coverage on human lives, including benefits of endowments and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

"Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" is a Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service member" means any active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.

"SGLI" means a contract offered by Servicemembers' Group Life Insurance, as authorized by 38 U.S.C. section 1965 *et seq.*

"Side fund" means an account or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities by rider, endorsement, or other means. The term "side fund" does not include:

- (1) Accumulated value or cash value or secondary guarantees provided by a universal life policy;
- (2) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (3) A premium deposit fund which:
 - (A) Contains only premiums paid in advance which accumulate at interest;
 - (B) Imposes no penalty for withdrawal;
 - (C) Does not permit funding beyond future required premiums;
 - (D) Is not marketed or intended as an investment; and
 - (E) Does not carry a commission, either paid or calculated.

"Solicitation" means the sale or negotiation of any life insurance or annuity product by an insurer of insurance producer in this State.

"Specific appointment" means a prearranged appointment agreed upon by an insurer or a producer and a service member at a definite place and time.

"United States Armed Forces" means all components of the United States army, navy, air force, marine corps, and coast guard.

"VGLI" means a contract offered by Veterans' Group Life Insurance, as authorized by 38 U.S.C. section 1965 *et seq.* (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-603 Scope and exemptions. (a) This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

(b) This subchapter shall not apply to solicitations or sales involving:

- (1) Credit insurance;
- (2) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or insurer or where the contract or certificate does not include a side fund;
- (3) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;
- (4) Individual stand-alone health policies, including disability income policies;
- (5) Except as provided herein, contract offered by SGLI or VGLI, as authorized by 38 U.S.C. section 1965 *et seq.*;
- (6) Life insurance contracts offered through or by a non-profit military association, qualifying under section 501(c)(23) of the IRC, and which are not underwritten by an insurer; or
- (7) Contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act ("ERISA");
 - (B) A plan described by sections 401(a), 401(k), 403(b), 408(k), and 408 (p) of the IRC, as amended, if established or maintained by an employer;

- (C) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC;
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or a plan sponsor;
 - (E) Settlements or assumptions or liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (F) Prearranged funeral contracts.
- (8) Nothing herein shall be construed to abrogate the ability of nonprofit organizations or other organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07, Personal Commercial Solicitation on DoD Installations, or successor directive.
- (9) For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned involves life insurance or an annuity and makes no statements that preclude a clear and unequivocal understanding that life insurance or any annuity is the only subject matter of the solicitation. Provided, however, that nothing in this subsection shall be construed to relieve an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection. [Eff 03/28/08; comp 1/22/10;

comp 12/13/12; am and comp 02/02/17; comp
] (Auth: HRS §§431:2-201,
431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-604 Practices declared false, misleading, deceptive, or unfair on a military installation. (a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;
- (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;
- (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
- (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation;
- (5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
- (6) Posting unauthorized bulletins, notices, or advertisements;
- (7) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit form DD 2885; or

- (8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the DoD or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive or unfair:

- (1) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or
- (2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program. (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp]
(Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-605 Practices declared false, misleading, deceptive, or unfair regardless of location. (a) The following acts or practices by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Submitting, processing or assisting in the submission or processing of any allotment

form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for that purpose. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

- (2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:
 - (A) Provides the service member with a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. section 4301 *et seq.* and the regulations promulgated thereunder; and
 - (B) Permits the service member to make deposits and withdrawals unrelated to the payment of processing of insurance premiums;
- (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in paragraph (2);
- (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or

- without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;
- (5) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family member of those service members;
 - (6) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;
 - (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or
 - (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the

United States government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor", "Unit Insurance Advisor", "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".

Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. These designations include, but are not limited to, Chartered Life Underwriter ("CLU"), Chartered Financial Consultant ("ChFC"), Certified Financial Planner ("CFP"), Master of Science in Financial Services ("MSFS"), or Masters of Science Financial Planning ("MS"); or

- (2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the United States government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or
- (2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(d) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Making any representation regarding the availability, suitability, amount, cost exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, deceptive, or unfair;
- (2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, deceptive, or unfair; or
- (3) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy, unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be

contacted by an insurer or insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

- (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;
- (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;
- (4) Failing to make, at the time of sale or offer to individual known to be a service member, the written disclosures required by section 10 of the "Military Personnel Financial Services Protection Act", Pub. L. No. 109-290, at 1323-1324; or
- (5) Excluding individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:
 - (A) An explanation of any free-look period with instructions on how to cancel if a policy is issued; and
 - (B) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of chapter 431, article 10D, part IV, HRS, shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be

false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below, unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;
- (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below, who is currently enrolled in SGLI, is presumed unsuitable, unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For the purposes of this paragraph:
 - (A) "Insurable needs" are the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors or dependents; and
 - (B) "Other military survivor benefits" include, but are not limited to: the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits;
- (3) Excluding individually issued annuities, offering for sale or selling any life

insurance contract which includes a side fund:

- (A) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
 - (B) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and
 - (C) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due;
- (4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which, after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance; or
- (5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded. (Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp

] (Auth: HRS §§431:2-201;
431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-606 Severability. If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections, which can be given effect without the invalid provisions or application. To this end, all provisions of these sections are declared to be severable. [Eff 03/28/08; comp 1/22/10; comp 12/13/12; am and comp 02/02/17; comp] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

SUBCHAPTER 7 (Reserved)

SUBCHAPTER 8-REPEALED

§16-171-801 Repealed. [R 12/13/12]

§16-171-802 Repealed. [R 12/13/12]

§16-171-803 Repealed. [R 12/13/12]

§16-171-804 Repealed. [R 12/13/12]

§16-171-805 Repealed. [R 12/13/12]

§16-171-806 Repealed. [R 12/13/12]

§16-171-807 Repealed. [R 12/13/12]

§16-171-808 Repealed. [R 12/13/12]

SUBCHAPTER 9

VALUATION OF LIFE INSURANCE POLICIES

§16-171-901 Purpose. (a) The purpose of this subchapter is to provide:

- (1) Tables of select mortality factors and rules for their use;
- (2) Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and
- (3) Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

(b) The method for calculating basic reserves defined in this subchapter will constitute the commissioner's reserve valuation method for policies to which this subchapter is applicable. [Eff and comp 02/02/17; comp] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

§16-171-902 Applicability. (a) This subchapter shall apply to all life insurance policies, with or without nonforfeiture values, and subject to the exceptions and conditions set forth in subsections (b) and (c).

- (b) Exceptions:
- (1) This subchapter shall not apply to any individual life insurance policy issued on or after the effective date of this regulation if the policy is issued in accordance with, and as a result of, the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this subchapter, that guarantees the premium rates of the new policy. This subchapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy;
 - (2) This subchapter shall not apply to any universal life policy that meets all of the following requirements:
 - (A) The universal life policy has a secondary guarantee period, if any, that is five years or less;
 - (B) The specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in section 16-171-903, and the applicable valuation interest rate; and
 - (C) The initial surrender charge is not less than one hundred per cent of the first year annualized specified premium for the secondary guarantee period.
 - (3) This subchapter shall not apply to any variable life insurance policy or universal life insurance policy that provides for life

insurance and the amount or duration of which varies according to the investment experience of any separate account or accounts;

- (4) This subchapter shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
- (c) Conditions:
 - (1) Calculation of the minimum valuation standard for policies other than universal life policies with guaranteed nonlevel gross premiums, guaranteed nonlevel benefits, or both, shall be in accordance with the provisions of section 16-171-905.
 - (2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, which contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, shall be in accordance with the provisions of section 16-171-906. [Eff and comp 02/02/17; comp] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

§16-171-903 Definitions. For purposes of this subchapter:

"1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table ("1980 CSO Table") without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

"Basic reserves" means reserves calculated in accordance with subsection 431:5-307(h), HRS.

"Contract segmentation method" means the method of dividing the period from issuance to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception for the first segment) to the end of the latest policy year as described in this definition. All calculations are made using the 1980 CSO valuation tables, as defined in this section, or any other valuation mortality table adopted by the NAIC for this purpose and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in section 16-171-904(b).

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t , the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

x = original issue age;

k = the number of years from the date of issue to the beginning of the segment;

t = 1, 2, ...; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ = Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{Q_{x+k+t}}{Q_{x+k+t-1}},$$

However, R_t may be increased or decreased by one per cent in any policy year at the

company's option, but R_t shall not be less than one;

where:

x , k and t are as defined above; and
 $q_{x+k+t-1}$ = valuation mortality rate for deficiency reserves in policy year $k+t$ but using the mortality of paragraph 16-171-904(b)(2), if section 16-171-904(b)(3), is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

"Deficiency reserves" means the excess, if greater than zero, of minimum reserves over basic reserves.

"Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

"Maximum valuation interest rates" means the interest rates defined in subsection 431:5-307(g), HRS, that are to be used in determining the minimum standard for the valuation of life insurance policies.

"Minimum reserves" means reserves calculated in accordance with subsection 431:5-307(e), HRS.

"Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in paragraph 16-171-906(a)(3), if any, or else the minimum premium described in paragraph 16-171-906(a)(4).

"Segmented reserves" means reserves calculated using segments produced by the contract segmentation method equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are

a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that at the beginning of the segment, the present value of the net premiums within the segment equals:

- (1) The present value of the death benefits within the segment, plus;
- (2) The present value of any unusual guaranteed cash value (see subsection 16-171-905(d)) occurring at the end of the segment, less;
- (3) Any unusual guaranteed cash value occurring at the start of the segment, plus;
- (4) For the first segment only, the excess of (A) over (B), as follows:
 - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy;
 - (B) A net one year term premium for the benefits provided for in the first policy year.

The length of each segment is determined by the "contract segmentation method," as defined in this section. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. For both basic reserves and deficiency reserves computed by the segmented method,

present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

"Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

"Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

"Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

- (1) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
- (2) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of (A) over (B), as follows:
 - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. The net level annual premium, however, shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy; and
 - (B) A net one year term premium for the benefits provided for in the first policy year.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

"Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. [Eff and comp 02/02/17; comp] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

§16-171-904 General calculation requirements for basic reserves and premium deficiency reserves. (a)

At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC. If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix A entitled "Select Mortality Factors" dated October 2009, located at the end of this chapter; or
- (3) Any other table of select mortality factors adopted by the NAIC for the purpose of calculating basic reserves.

(b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross

premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC. If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the Appendix A of this regulation;
- (3) For durations in the first segment, X per cent of the select mortality factors in the Appendix A, subject to the following:
 - (A) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
 - (B) X is such that, when using the valuation interest rate used for basic reserves, (i) is greater than or equal to (ii) below:
 - (i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; and
 - (ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
 - (C) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of

- the first five years after the valuation date;
- (D) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of this paragraph;
 - (E) The appointed actuary may decrease X at any valuation date as long as X continues to meet all the requirements of this paragraph;
 - (F) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapse of any anticipated or actual increase in gross premiums;
 - (G) If X is less than one hundred per cent at any duration for any policy, the following requirements shall be met:
 - (i) The appointed actuary shall annually prepare an actuarial opinion and a memorandum for the company in accordance with the requirements of section 16-169-2;
 - (ii) The appointed actuary shall disclose in the Regulatory Asset Adequacy Issues Summary the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and
 - (iii) The appointed actuary shall annually opine for all policies subject to this subchapter as to whether the mortality rates resulting from the application of X meet the requirements of this paragraph. This opinion shall be supported by an actuarial report, subject to

appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, and take into account relevant emerging experience; or

- (4) Any other table of select mortality factors adopted by the NAIC for the purpose of calculating deficiency reserves.

(c) This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. If the first segment is less than ten years, however, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue. In addition, for policies that have reentry provisions, select mortality factors shall not be used in segments beginning after reentry unless a new policy is actually issued.

(d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium, but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

(e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following:

- (1) Reserves calculated ignoring the guarantee;
- (2) Reserves assuming the guarantee was made at issue; or

(3) Reserves assuming that the policy was issued on the date of the guarantee.

(f) The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including, but not limited to, policies issued prior to the effective date of this subchapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of section 16-169-2. [Eff and comp 02/02/17; comp] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

§16-171-905 Calculation of minimum valuation standard for policies, other than universal life policies, with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits. (a) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, the following adjustments may be made:

- (1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment, and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or
- (2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment, and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the

present value of guaranteed life insurance and endowment benefits for each segment.

- (b) Deficiency reserves.
- (1) The deficiency reserve at any duration shall be calculated:
 - (A) On a unitary basis if the corresponding basic reserve determined by subsection (a) is unitary;
 - (B) On a segmented basis if the corresponding basic reserve determined by subsection (a) is segmented; or
 - (C) On a segmented basis if the corresponding basic reserve determined by subsection (a) is equal to both the segmented reserve and the unitary reserve.
- (2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality as specified in section 16-171-904(b), and rate of interest.
- (3) For the current and all remaining periods, deficiency reserves, if any, shall be calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve, where A is obtained as indicated in section 16-171-904(b).
- (4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.
- (c) If mean reserves are used, the minimum value of basic reserves may not be less than the tabular cost of insurance for the balance of the policy year. If mid-terminal reserves are used, basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy

anniversary. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. If select mortality factors are used, however, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves, including basic reserves, deficiency reserves, and any reserves held for supplemental benefits that would expire upon contract termination, exclusive of any deduction for policy loans upon termination of the policy, be less than the amount that the policyowner would receive, including the cash surrender value of the supplemental benefits, if any, referred to in subsection (a) (2).

(d) Unusual pattern of guaranteed cash surrender values. The requirements of this subsection are independent of both the segmentation and the unitary process.

- (1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
- (2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

- (A) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
 - (i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
 - (ii) The mandatory expiration date of the policy;
 - (B) The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and
 - (C) The net to gross ratio is equal to (i) divided by (ii) as follows:
 - (i) The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period;
 - (ii) The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.
- (3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- (A) One hundred ten per cent of the scheduled gross premium for that year;

- (B) One hundred ten per cent of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
 - (C) Five per cent of the first policy year surrender charge, if any.
- (e) Optional exemption for yearly renewable term ("YRT") reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:
- (1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
 - (2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c); or
 - (3) Deficiency reserves.
 - (A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
 - (B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A).
 - (4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted.
 - (5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

- (6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
- (f) Optional exemption for attained-age-based YRT life insurance policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
 - (1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year;
 - (2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c); or
 - (3) Deficiency reserves.
 - (A) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
 - (B) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A).
 - (4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted.
 - (5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:
 - (A) The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are based upon the attained age of the insured, such that the rate for any

given policy at a given attained age of the insured is independent of the year the policy was issued; and

- (B) The premium rates on both the initial current premium scale and the guaranteed maximum premium scale are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance, and attained age.
- (6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
- (A) The initial period is constant for all insureds of the same sex, risk class, and plan of insurance; or
 - (B) The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and
 - (C) After the initial period of coverage, the policy meets the conditions of paragraph (5).
- (7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this regulation.

(g) Exemption from unitary reserves for certain n -year renewable term life insurance policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

- (1) The policy consists of a series of n -year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten years and less than twice the size of

the earlier n -year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

- (2) The guaranteed gross premiums in all n -year periods are not less than the corresponding net premiums based upon the 1980 CSO Table, with or without the ten-year select mortality factors; and
- (3) There are no cash surrender values in any policy year.

(h) Exemption from unitary reserves for certain juvenile policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

- (1) The insured at issue is age twenty-four or younger;
- (2) Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five, the gross premiums and death benefits are level and there are no cash surrender values; and
- (3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period and death benefits are level for the remainder of the life of the policy. [Eff and comp 02/02/17; comp
] (Auth: HRS §§431:5-401,
432:2-201) (Imp: HRS §431:5-307)

§16-171-906 Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period. (a) General.

- (1) Policies with a secondary guarantee include:
 - (A) A policy with a guarantee that the policy will remain in force at the

- original schedule of benefits, subject only to the payment of specified premiums;
- (B) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables, with or without ten-year select mortality factors, or any other table adopted; or
 - (C) A policy with any combination of subparagraphs (A) and (B).
- (2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in subsections (b) and (c) shall be recalculated from issue to reflect these changes.
- (3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.
- (4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy

year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads, and expense charges, and the interest crediting rate, which are all guaranteed at issue.

- (5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in section 16-171-904(b)(2), (3), and (4), HAR, may not be used to calculate the one-year valuation premiums.
- (6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

(b) Basic reserves for the secondary guarantees. Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force. The segments will be determined according to the contract segmentation method as defined in section 16-171-903(b).

(c) Deficiency reserves for the secondary guarantees. Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in section 16-171-905(b), with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) Minimum reserves. The minimum reserves during the secondary guarantee period are the greater of:

- (1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
- (2) The minimum reserves required by other rules or regulations governing universal life plans." [Eff and comp 02/02/17; comp] (Auth: HRS §§431:5-401, 432:2-201) (Imp: HRS §431:5-307)

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

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

4. These amendments to and compilation of chapter 16-171, Hawaii Administrative Rules, shall take effect on January 1, 2022; provided that if the commissioner determines that the insurance division is unable to implement this rule by January 1, 2022, the insurance division may delay implementation, but in no event shall the delay be in force beyond December 31, 2022.

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

CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Deputy Attorney General

APPENDIX A: SELECT MORTALITY FACTORS

This appendix contains tables of select mortality factors that are the bases to which the respective percentage of paragraphs 16-171-904(a)(2), (b)(2) and (b)(3) are applied.

The six tables of select mortality factors contained herein include: Table 1 - male aggregate; Table 2 - male nonsmoker; Table 3 - male smoker; Table 4 - female aggregate; Table 5 - female nonsmoker; and Table 6 - female smoker.

These tables apply to both age last birthday and age nearest birthday mortality tables.

For sex-blended mortality tables, compute select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B Table, the calculated select mortality factors are eighty per cent of the appropriate male table in this appendix, plus twenty per cent of the appropriate female table in this appendix.

Table 1
Male, Aggregate

Issue	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	96	98	98	99	99	100	100	90	92	92	92	92	93	93	96	97	98	98	99	100
19	83	84	84	87	87	87	79	79	79	81	81	82	82	82	85	88	91	94	97	100
20	69	71	71	74	74	69	69	67	69	70	71	71	71	71	74	79	84	90	95	100
21	66	68	69	71	66	66	67	66	67	70	70	70	71	71	71	77	83	88	94	100
22	65	66	66	63	63	64	64	64	65	68	68	68	68	69	71	77	83	88	94	100
23	62	63	59	60	62	62	63	63	64	65	65	67	67	69	70	76	82	88	94	100
24	60	56	56	59	59	60	61	61	61	64	64	64	66	67	70	76	82	88	94	100
25	52	53	55	56	58	58	60	60	60	63	62	63	64	67	69	75	81	88	94	100
26	51	52	55	56	58	58	57	61	61	62	63	64	66	69	66	73	80	86	93	100
27	51	52	55	57	58	60	61	61	60	63	63	64	67	66	67	74	80	87	93	100
28	49	51	56	58	60	60	61	62	62	63	64	66	65	66	68	74	81	87	94	100
29	49	51	56	58	60	61	62	62	62	64	64	62	66	67	70	76	82	88	94	100
30	49	50	56	58	60	60	62	63	63	64	62	63	67	68	71	77	83	88	94	100
31	47	50	56	58	60	62	63	64	64	62	63	66	68	70	72	78	83	89	94	100
32	46	49	56	59	60	62	63	66	62	63	66	67	70	72	73	78	84	89	95	100
33	43	49	56	59	62	63	64	62	65	66	67	70	72	73	75	80	85	90	95	100
34	42	47	56	60	62	63	61	63	66	67	70	71	73	75	76	81	86	90	95	100
35	40	47	56	60	63	61	62	65	67	68	71	73	74	76	76	81	86	90	95	100
36	38	42	56	60	59	61	63	65	67	68	70	72	74	76	77	82	86	91	95	100
37	38	45	56	57	61	62	63	65	67	68	70	72	74	76	76	81	86	90	95	100
38	37	44	53	58	61	62	65	66	67	69	69	73	75	76	77	82	86	91	95	100
39	37	41	53	58	62	63	65	65	66	68	69	72	74	76	76	81	86	90	95	100
40	34	40	53	58	62	63	65	65	66	68	68	71	75	76	77	82	86	91	95	100

Effective: October 2009

Male, Aggregate

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	34	41	53	58	62	63	65	64	64	66	68	70	74	76	77	82	86	91	95	100
42	34	43	53	58	61	62	63	63	63	64	66	69	72	75	77	82	86	91	95	100
43	34	43	54	59	60	61	63	62	62	64	66	67	72	74	77	82	86	91	95	100
44	34	44	54	58	59	60	61	60	61	62	64	67	71	74	77	82	86	91	95	100
45	34	45	53	58	59	60	60	60	59	60	63	66	71	74	77	82	86	91	95	100
46	31	43	52	56	57	58	59	59	59	60	63	67	71	74	75	80	85	90	95	100
47	32	42	50	53	55	56	57	58	59	60	65	68	71	74	75	80	85	90	95	100
48	32	41	47	52	54	56	57	57	57	61	65	68	72	73	74	79	84	90	95	100
49	30	40	46	49	52	54	55	56	57	61	66	69	72	73	74	79	84	90	95	100
50	30	38	44	47	51	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100
51	28	37	42	46	49	53	54	56	57	61	66	71	72	73	75	80	85	90	95	100
52	28	35	41	45	49	51	54	56	57	61	66	71	72	74	75	80	85	90	100	100
53	27	35	39	44	48	51	53	55	57	61	67	71	74	75	76	81	86	100	100	100
54	27	33	38	44	48	50	53	55	57	61	67	72	74	75	76	81	100	100	100	100
55	25	32	37	43	47	50	53	55	57	61	68	72	74	75	78	100	100	100	100	100
56	25	32	37	43	47	49	51	54	56	61	67	70	73	74	100	100	100	100	100	100
57	24	31	38	43	47	49	51	54	56	59	66	69	72	100	100	100	100	100	100	100
58	24	31	38	43	48	48	50	53	56	59	64	67	100	100	100	100	100	100	100	100
59	23	30	39	43	48	48	51	53	55	58	63	100	100	100	100	100	100	100	100	100
60	23	30	39	43	48	47	50	52	53	57	100	100	100	100	100	100	100	100	100	100
61	23	30	39	43	49	49	50	52	53	75	100	100	100	100	100	100	100	100	100	100
62	23	30	39	44	49	49	51	52	75	75	100	100	100	100	100	100	100	100	100	100
63	22	30	39	45	50	50	52	75	75	75	100	100	100	100	100	100	100	100	100	100
64	22	30	39	45	50	51	75	75	75	75	100	100	100	100	100	100	100	100	100	100
65	22	30	39	45	50	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
66	22	30	39	45	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
67	22	30	39	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
68	23	32	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
69	23	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	10

Effective: October 2009

Male, Aggregate

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 2
Male, Non-Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	93	95	96	98	99	100	100	90	92	92	92	92	95	95	96	97	98	98	99	100	100
19	80	81	83	86	87	87	79	79	79	81	81	82	83	83	86	89	92	94	97	100	100
20	65	68	69	72	74	69	69	67	69	70	71	71	72	72	75	80	85	90	95	100	100
21	63	66	68	71	66	66	67	66	67	70	70	70	71	71	73	78	84	89	95	100	100
22	62	65	66	62	63	64	64	64	67	68	68	68	70	70	73	78	84	89	95	100	100
23	60	62	58	60	62	62	63	63	64	67	68	68	67	69	71	77	83	88	94	100	100
24	59	55	56	58	59	60	61	61	63	65	67	66	66	69	71	77	83	88	94	100	100
25	52	53	55	56	58	58	60	60	61	64	64	64	64	67	70	76	82	88	94	100	100
26	51	53	55	56	58	60	61	61	61	63	64	64	66	69	67	74	80	87	93	100	100
27	51	52	55	58	60	60	61	61	62	63	64	66	67	66	67	74	80	87	93	100	100
28	49	52	57	58	60	61	63	62	62	64	66	66	63	66	68	74	81	87	94	100	100
29	49	51	57	60	61	61	62	62	63	64	66	63	65	67	68	74	81	87	94	100	100
30	49	51	57	60	61	62	63	63	63	64	62	63	66	68	70	76	82	88	94	100	100
31	47	50	57	60	60	62	63	64	64	62	63	65	67	70	71	77	83	88	94	100	100
32	46	50	57	60	62	63	64	64	62	63	65	66	68	71	72	78	83	89	94	100	100
33	45	49	56	60	62	63	64	62	63	65	66	68	71	73	74	79	84	90	95	100	100
34	43	48	56	62	63	64	62	62	65	66	67	70	72	74	74	79	84	90	95	100	100
35	41	47	56	62	63	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100	100
36	40	47	56	62	59	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100	100
37	38	45	56	58	59	61	62	63	66	67	67	69	71	73	74	79	84	90	95	100	100
38	38	45	53	58	61	62	63	65	65	67	68	70	72	74	73	78	84	89	95	100	100
39	37	41	53	58	61	62	63	64	65	67	68	70	71	73	73	78	84	89	95	100	100
40	34	41	53	58	61	62	63	64	64	66	67	69	71	73	72	78	83	89	94	100	100

Effective: October 2009

Male, Non-Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	34	41	53	58	61	61	62	62	63	65	65	67	69	71	71	77	83	88	94	100
42	34	43	53	58	60	61	62	61	61	63	64	66	67	69	71	77	83	88	94	100
43	32	43	53	58	60	61	60	60	60	60	62	64	66	68	69	75	81	88	94	100
44	32	44	52	57	59	60	60	59	59	58	60	62	65	67	69	75	81	88	94	100
45	32	44	52	57	59	60	59	57	57	57	59	61	63	66	68	74	81	87	94	100
46	32	42	50	54	56	57	57	56	55	56	59	61	63	65	67	74	80	87	93	100
47	30	40	48	52	54	55	55	54	54	55	59	61	62	63	66	73	80	86	93	100
48	30	40	46	49	51	52	53	53	54	55	57	61	62	63	63	70	78	85	93	100
49	29	39	43	48	50	51	50	51	53	54	57	61	61	62	62	70	77	85	92	100
50	29	37	42	45	47	48	49	50	51	54	57	61	61	61	61	69	77	84	92	100
51	27	35	40	43	45	47	48	50	51	53	57	60	61	61	62	70	77	85	92	100
52	27	34	39	42	44	45	48	49	50	53	56	60	60	62	62	70	77	85	100	100
53	25	31	37	41	44	45	47	49	50	51	56	59	61	61	62	70	77	100	100	100
54	25	30	36	39	43	44	47	48	49	51	55	59	59	61	62	70	100	100	100	100
55	24	29	35	38	42	43	45	48	49	50	56	58	59	61	62	100	100	100	100	100
56	23	29	35	38	42	42	44	47	48	50	55	57	58	59	100	100	100	100	100	100
57	23	28	35	38	42	42	43	45	47	49	53	55	56	100	100	100	100	100	100	100
58	22	28	33	37	41	41	43	45	45	47	51	53	100	100	100	100	100	100	100	100
59	22	26	33	37	41	41	42	44	44	46	50	100	100	100	100	100	100	100	100	100
60	20	26	33	37	41	40	41	42	42	45	100	100	100	100	100	100	100	100	100	100
61	20	26	33	37	41	40	41	42	42	75	100	100	100	100	100	100	100	100	100	100
62	19	25	32	38	40	40	41	42	75	75	100	100	100	100	100	100	100	100	100	100
63	19	25	33	36	40	40	41	75	75	75	100	100	100	100	100	100	100	100	100	100
64	18	24	32	36	39	40	75	75	75	75	100	100	100	100	100	100	100	100	100	100
65	18	24	32	36	39	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
66	18	24	32	36	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
67	18	24	32	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
68	18	24	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
69	18	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Male, Non-Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

**Table 3
Male, Smoker**

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
19	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
20	98	100	100	100	100	100	100	99	99	99	100	99	99	99	100	100	100	100	100	100	100
21	95	98	99	100	95	96	96	95	96	97	97	96	96	96	96	97	98	98	99	99	100
22	92	95	96	90	90	93	93	92	93	95	95	93	93	92	93	94	96	97	99	99	100
23	90	92	85	88	88	89	89	89	90	90	90	90	89	90	92	94	95	97	98	98	100
24	87	81	82	85	84	86	88	86	86	88	88	86	86	88	89	91	93	96	98	98	100
25	77	78	79	82	81	83	83	82	83	85	84	84	84	85	86	89	92	94	97	97	100
26	75	77	79	82	82	83	83	82	83	84	84	84	84	85	81	85	89	92	96	96	100
27	73	75	78	82	82	83	83	82	82	82	82	84	84	80	81	85	89	92	96	96	100
28	71	73	79	82	81	82	83	81	81	82	82	82	80	80	81	85	89	92	96	96	100
29	69	72	78	81	81	82	82	81	81	81	81	77	80	80	81	85	89	92	96	96	100
30	68	71	78	81	81	81	82	81	81	81	76	77	80	80	81	85	89	92	96	96	100
31	65	70	77	81	79	81	82	81	81	76	77	79	81	81	83	86	90	93	97	97	100
32	63	67	77	78	79	81	81	81	76	77	77	80	83	83	85	88	91	94	97	97	100
33	60	65	74	78	79	79	81	76	77	77	79	80	83	85	85	88	91	94	97	97	100
34	57	62	74	77	79	79	75	76	77	79	79	81	83	85	87	90	92	95	97	97	100
35	53	60	73	77	79	75	75	76	77	79	80	82	84	86	88	90	93	95	98	98	100
36	52	59	71	75	74	75	75	76	77	79	79	81	83	85	87	90	92	95	97	97	100
37	49	58	70	71	74	74	75	76	77	78	79	81	84	86	86	89	92	94	97	97	100
38	48	55	66	70	72	74	74	75	76	78	79	81	83	85	87	90	92	95	97	97	100
39	45	50	65	70	72	72	74	74	75	77	79	81	84	86	86	89	92	94	97	97	100
40	41	49	63	68	71	72	73	74	74	76	78	80	83	85	86	89	92	94	97	97	100

Effective: October 2009

Male, Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	40	49	63	68	71	72	72	72	73	75	76	78	81	84	85	88	91	94	97	100
42	40	49	62	68	70	71	71	71	71	73	75	76	81	83	85	88	91	94	97	100
43	39	50	62	67	69	69	70	70	70	71	73	76	79	83	85	88	91	94	97	100
44	39	50	60	66	68	69	68	69	69	69	71	74	79	81	85	88	91	94	97	100
45	37	50	60	66	68	68	68	67	67	67	69	73	78	81	85	88	91	94	97	100
46	37	48	58	63	65	67	66	66	66	67	71	74	78	81	84	87	90	94	97	100
47	36	47	55	61	63	64	64	64	65	67	71	75	79	81	84	87	90	94	97	100
48	35	46	53	58	60	62	63	63	65	67	72	75	79	81	83	86	90	93	97	100
49	34	45	51	56	58	59	61	62	63	67	72	77	80	81	83	86	90	93	97	100
50	34	43	49	53	55	57	60	61	63	67	73	78	80	81	81	85	89	92	96	100
51	32	42	47	52	55	57	60	61	63	67	73	78	80	83	84	87	90	94	97	100
52	32	40	46	50	54	56	60	61	63	67	73	78	81	84	85	88	91	94	100	100
53	30	37	44	49	54	56	59	61	65	67	74	79	83	85	87	90	92	100	100	100
54	30	36	43	48	53	55	59	61	65	67	74	80	84	85	89	91	100	100	100	100
55	29	35	42	47	53	55	59	61	65	67	75	80	84	86	90	100	100	100	100	100
56	28	35	42	47	53	55	57	60	63	68	74	79	83	85	100	100	100	100	100	100
57	28	35	42	47	53	54	57	60	64	67	74	78	81	100	100	100	100	100	100	100
58	26	33	43	48	54	54	56	59	63	67	73	78	100	100	100	100	100	100	100	100
59	26	33	43	48	54	53	57	59	63	66	73	100	100	100	100	100	100	100	100	100
60	25	33	43	48	54	53	56	58	62	66	100	100	100	100	100	100	100	100	100	100
61	25	33	43	49	55	55	57	59	63	75	100	100	100	100	100	100	100	100	100	100
62	25	33	43	50	56	56	58	61	75	75	100	100	100	100	100	100	100	100	100	100
63	24	33	45	51	56	56	59	75	75	75	100	100	100	100	100	100	100	100	100	100
64	24	34	45	51	57	57	75	75	75	75	100	100	100	100	100	100	100	100	100	100
65	24	34	45	52	57	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
66	24	35	45	53	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
67	25	35	45	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
68	25	36	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
69	27	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
70	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Male, Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
72	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
73	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
74	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
75	48	52	55	60	60	65	70	70	70	70	100	100	100	100	100	100	100	100	100	100
76	48	52	55	60	60	65	70	70	70	100	100	100	100	100	100	100	100	100	100	100
77	48	52	55	60	60	65	70	70	100	100	100	100	100	100	100	100	100	100	100	100
78	48	52	55	60	60	65	70	100	100	100	100	100	100	100	100	100	100	100	100	100
79	48	52	55	60	60	65	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	48	52	55	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	48	52	55	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	48	52	55	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	48	52	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	48	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 4

**Female, Aggregate
Duration**

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	99	100	100	100	100	100	100	100	93	95	96	97	97	100	100	100	100	100	100	100
18	83	83	84	84	84	84	86	78	78	79	82	84	85	88	88	90	93	95	98	100
19	65	66	68	68	68	68	63	63	64	66	69	71	72	74	75	80	85	90	95	100
20	48	50	51	51	51	47	48	48	49	51	56	57	58	61	63	70	78	85	93	100
21	47	48	50	51	47	47	48	49	51	53	57	60	61	64	64	71	78	86	93	100
22	44	47	48	45	47	47	48	49	53	54	60	61	63	64	66	73	80	86	93	100
23	42	45	44	45	47	47	49	51	53	54	61	64	64	67	69	75	81	88	94	100
24	39	40	42	44	47	47	50	51	54	56	64	64	66	69	70	76	82	88	94	100
25	34	38	41	44	47	47	50	53	56	57	64	67	69	71	73	78	84	89	95	100
26	34	38	41	45	49	49	51	56	58	59	66	69	70	73	70	76	82	88	94	100
27	34	38	41	47	50	51	54	57	59	60	69	70	73	70	71	77	83	88	94	100
28	34	37	43	47	53	53	56	59	62	63	70	73	70	72	74	79	84	90	95	100
29	34	38	43	49	54	56	58	60	63	64	73	70	72	74	75	80	85	90	95	100
30	35	38	43	50	56	56	59	63	66	67	70	71	74	75	76	81	86	90	95	100
31	35	38	43	51	56	58	60	64	67	65	71	72	74	75	76	81	86	90	95	100
32	35	39	45	51	56	59	63	66	65	66	72	72	75	76	76	81	86	90	95	100
33	36	39	44	52	58	62	64	65	66	67	72	74	75	76	76	81	86	90	95	100
34	36	40	45	52	58	63	63	66	67	68	74	74	76	76	76	81	86	90	95	100
35	36	40	45	53	59	61	65	67	68	70	75	74	75	76	75	80	85	90	95	100
36	36	40	45	53	55	62	65	67	68	70	74	74	74	75	75	80	85	90	95	100
37	36	41	47	52	57	62	65	67	68	69	72	72	73	75	74	79	84	90	95	100
38	34	41	44	52	57	63	66	68	69	70	72	71	72	74	75	80	85	90	95	100
39	34	40	45	53	58	63	66	68	69	69	70	70	70	73	74	79	84	90	95	100
40	32	40	45	53	58	65	65	67	68	69	70	69	70	73	73	78	84	89	95	100

Effective: October 2009

**Female, Aggregate
Duration**

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	32	40	45	53	57	63	64	67	68	68	69	69	69	73	74	79	84	90	95	100
42	32	40	45	52	56	61	63	65	66	68	69	68	70	74	75	80	85	90	95	100
43	31	39	45	51	55	59	61	65	65	66	68	69	69	74	77	82	86	91	95	100
44	31	39	45	50	54	58	61	63	64	66	67	68	71	75	78	82	87	91	96	100
45	31	38	44	49	53	56	59	62	63	65	67	68	71	77	79	83	87	92	96	100
46	29	37	43	48	51	54	59	62	63	65	67	69	71	77	78	82	87	91	96	100
47	28	35	41	46	49	54	57	61	62	66	68	69	71	77	77	82	86	91	95	100
48	28	35	41	44	49	52	57	61	63	66	68	71	72	75	77	82	86	91	95	100
49	26	34	39	43	47	52	55	61	63	67	69	71	72	75	75	80	85	90	95	100
50	25	32	38	41	46	50	55	61	63	67	69	72	72	75	74	79	84	90	95	100
51	25	32	38	41	45	50	55	61	63	66	68	69	71	74	74	79	84	90	95	100
52	23	30	36	41	45	51	56	61	62	65	66	68	68	73	73	78	84	89	100	100
53	23	30	36	41	47	51	56	61	62	63	65	66	68	72	72	78	83	100	100	100
54	22	29	35	41	47	53	57	61	61	62	62	66	66	69	70	76	100	100	100	100
55	22	29	35	41	47	53	57	61	61	61	62	63	64	68	69	100	100	100	100	100
56	22	29	35	41	45	51	56	59	60	61	62	63	64	67	100	100	100	100	100	100
57	22	29	35	41	45	50	54	56	58	59	61	62	63	100	100	100	100	100	100	100
58	22	30	36	41	44	49	53	56	57	57	61	62	100	100	100	100	100	100	100	100
59	22	30	36	41	44	48	51	53	55	56	59	100	100	100	100	100	100	100	100	100
60	22	30	36	41	43	47	50	51	53	55	100	100	100	100	100	100	100	100	100	100
61	22	29	35	39	42	46	49	50	52	80	100	100	100	100	100	100	100	100	100	100
62	20	28	33	39	41	45	47	49	80	80	100	100	100	100	100	100	100	100	100	100
63	20	28	33	38	41	44	46	80	80	80	100	100	100	100	100	100	100	100	100	100
64	19	27	32	36	40	42	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	19	25	30	35	39	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	19	25	30	35	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	19	25	30	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	19	25	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	19	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Female, Aggregate

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 5

Female, Non-Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	96	98	98	98	98	99	99	99	92	92	93	95	95	97	99	99	99	100	100	100
18	78	80	80	80	80	81	81	74	75	75	78	79	82	83	85	88	91	94	97	100
19	60	62	63	63	63	65	59	59	60	60	64	67	67	70	72	78	83	89	94	100
20	42	44	45	45	45	42	42	42	45	45	50	51	53	56	58	66	75	83	92	100
21	41	42	44	45	41	42	42	44	47	47	51	53	54	57	59	67	75	84	92	100
22	39	41	44	41	41	42	44	45	49	49	54	56	57	58	60	68	76	84	92	100
23	38	41	38	40	41	42	44	46	49	50	56	57	58	60	62	70	77	85	92	100
24	36	36	38	40	41	42	46	47	50	51	58	59	60	62	63	70	78	85	93	100
25	32	34	37	40	41	43	46	49	51	53	59	60	62	63	64	71	78	86	93	100
26	32	34	37	41	43	45	47	50	53	53	60	62	63	64	62	70	77	85	92	100
27	32	34	38	43	46	47	49	51	53	55	62	63	64	62	62	70	77	85	92	100
28	30	34	39	43	47	49	51	53	56	58	63	63	61	62	63	70	78	85	93	100
29	30	35	40	45	50	51	52	55	58	59	64	61	62	63	63	70	78	85	93	100
30	31	35	40	46	51	52	53	56	59	60	62	62	63	65	65	72	79	86	93	100
31	31	35	40	46	51	53	55	58	60	58	62	62	63	65	65	72	79	86	93	100
32	32	35	40	45	51	53	56	59	57	58	62	63	63	65	64	71	78	86	93	100
33	32	36	41	47	52	55	58	55	58	59	63	63	65	65	65	72	79	86	93	100
34	33	36	41	47	52	55	55	57	58	59	63	65	64	65	64	71	78	86	93	100
35	33	36	41	47	52	53	57	58	59	61	63	64	64	64	64	71	78	86	93	100
36	33	36	41	47	49	53	57	58	59	61	63	64	63	64	63	70	78	85	93	100
37	32	36	41	44	49	53	57	58	59	60	62	62	61	62	63	70	78	85	93	100
38	32	37	39	45	50	54	57	58	60	60	61	61	61	62	61	69	77	84	92	100
39	30	35	39	45	50	54	57	58	60	59	60	60	59	60	61	69	77	84	92	100
40	28	35	39	45	50	54	56	57	59	59	60	59	59	59	60	68	76	84	92	100

Effective: October 2009

**Female, Non-Smoker
Duration**

Issue

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	28	35	39	45	49	52	55	55	58	57	58	59	58	59	60	68	76	84	92	100
42	27	35	39	44	49	52	54	55	56	57	57	57	58	60	61	69	77	84	92	100
43	27	34	39	44	47	50	53	53	55	55	56	57	56	60	61	69	77	84	92	100
44	26	34	38	42	47	50	52	53	54	55	55	55	56	61	62	70	77	85	92	100
45	26	33	38	42	45	48	51	51	52	53	54	55	56	61	62	70	77	85	92	100
46	24	32	37	40	43	47	49	51	52	53	54	55	56	60	61	69	77	84	92	100
47	24	30	35	39	42	45	47	49	51	53	54	55	56	59	60	68	76	84	92	100
48	23	30	35	37	40	44	47	49	50	53	54	55	55	59	57	66	74	83	91	100
49	23	29	33	35	39	42	45	48	50	53	54	55	55	57	56	65	74	82	91	100
50	21	27	32	34	37	41	44	48	50	53	54	55	55	56	55	64	73	82	91	100
51	21	26	30	34	37	41	44	48	49	51	53	53	54	55	55	64	73	82	91	100
52	20	25	30	33	37	41	44	47	48	50	50	51	51	55	53	62	72	81	100	100
53	19	24	29	32	37	41	43	47	48	48	49	49	51	52	52	62	71	100	100	100
54	18	24	29	32	37	41	43	45	47	47	47	49	49	51	51	61	100	100	100	100
55	18	23	28	32	37	41	43	45	45	45	46	46	47	50	50	100	100	100	100	100
56	18	23	28	32	36	39	42	44	44	45	46	46	46	49	100	100	100	100	100	100
57	18	23	28	31	35	38	41	42	44	44	45	45	46	100	100	100	100	100	100	100
58	17	23	26	31	35	36	38	41	41	42	45	45	100	100	100	100	100	100	100	100
59	17	23	26	30	33	35	38	39	40	41	44	100	100	100	100	100	100	100	100	100
60	17	23	26	30	32	34	36	38	39	40	100	100	100	100	100	100	100	100	100	100
61	17	22	25	29	32	33	35	36	38	80	100	100	100	100	100	100	100	100	100	100
62	16	22	25	28	30	32	34	35	80	80	100	100	100	100	100	100	100	100	100	100
63	16	20	24	28	30	32	34	80	80	80	100	100	100	100	100	100	100	100	100	100
64	14	21	24	27	29	30	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	15	19	23	25	28	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	15	19	23	25	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	15	19	22	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	13	18	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	13	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Female, Non-Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Table 6

Female, Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	99	100	100	100	100	100	100	95	96	97	100	100	100	100	100	100	100	100	100	100
19	87	89	92	92	92	92	84	84	86	86	92	93	95	96	99	99	99	100	100	100
20	74	77	80	80	80	73	73	73	75	77	83	83	86	88	90	92	94	96	98	100
21	71	74	78	78	71	71	73	74	77	79	85	86	88	89	90	92	94	96	98	100
22	68	71	75	70	71	71	73	74	78	79	88	90	89	89	92	94	95	97	98	100
23	65	69	67	70	70	70	73	77	79	81	89	90	90	92	92	94	95	97	98	100
24	62	60	64	69	70	70	74	77	79	81	92	90	92	93	93	94	96	97	99	100
25	53	58	63	67	69	70	74	78	81	82	92	93	93	95	95	96	97	98	99	100
26	53	58	63	69	71	72	75	79	82	82	93	93	95	96	90	92	94	96	98	100
27	52	56	63	70	74	74	78	81	82	84	93	95	95	90	90	92	94	96	98	100
28	52	56	64	71	75	77	79	82	85	86	95	95	90	92	92	94	95	97	98	100
29	51	56	64	71	78	78	81	84	86	88	95	90	90	92	92	94	95	97	98	100
30	51	56	64	72	79	79	82	85	88	89	90	90	92	93	93	94	96	97	99	100
31	51	56	64	72	78	81	84	84	88	84	90	90	92	93	93	94	96	97	99	100
32	51	56	64	71	78	81	85	86	84	85	90	90	92	94	93	94	96	97	99	100
33	51	57	62	71	78	82	85	83	84	85	90	92	93	93	93	94	96	97	99	100
34	51	56	62	71	78	82	81	83	85	86	90	92	92	94	93	94	96	97	99	100
35	51	56	62	71	78	79	83	84	85	86	90	91	91	93	93	94	96	97	99	100
36	49	56	62	71	74	79	83	84	85	86	90	90	91	93	92	94	95	97	98	100
37	48	55	62	67	74	79	83	84	85	86	89	90	89	92	91	93	95	96	98	100
38	47	55	57	66	72	77	81	84	86	86	87	88	88	90	91	93	95	96	98	100
39	45	50	57	66	72	77	81	83	85	86	86	87	86	89	90	92	94	96	98	100
40	41	50	57	66	72	77	81	83	84	85	86	86	86	89	89	91	93	96	98	100

Effective: October 2009

Female, Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
41	40	50	57	65	71	76	79	81	83	84	85	86	85	89	90	92	94	96	98	100
42	40	49	57	65	69	74	77	80	82	83	84	85	86	90	92	94	95	97	98	100
43	39	49	55	63	69	73	76	78	80	82	83	84	85	92	93	94	96	97	99	100
44	39	48	55	62	67	71	75	78	80	80	82	84	86	93	96	97	98	98	99	100
45	37	47	55	61	65	70	73	76	78	80	81	84	86	94	97	98	98	99	99	100
46	36	46	53	59	63	68	71	75	77	79	83	85	86	93	96	97	98	98	99	100
47	34	44	51	57	62	66	70	75	77	80	83	85	86	93	94	95	96	98	99	100
48	34	44	50	54	60	64	69	74	77	80	84	86	87	92	92	94	95	97	98	100
49	33	42	48	53	58	63	68	74	77	81	84	86	87	92	91	93	95	96	98	100
50	31	41	46	51	57	61	67	74	77	81	85	87	87	91	90	92	94	96	98	100
51	30	39	45	51	56	61	67	74	75	80	83	85	85	90	90	92	94	96	98	100
52	29	38	45	50	56	62	68	74	75	79	81	83	84	90	90	92	94	96	100	100
53	28	37	43	49	57	62	68	73	74	77	79	81	83	89	89	91	93	100	100	100
54	28	36	43	49	57	63	69	73	74	75	78	80	81	87	89	91	100	100	100	100
55	26	35	42	49	57	63	69	73	73	74	76	78	79	86	87	100	100	100	100	100
56	26	35	42	49	56	62	67	71	72	74	76	78	79	85	100	100	100	100	100	100
57	26	35	42	49	55	61	66	69	72	73	76	78	79	100	100	100	100	100	100	100
58	28	36	43	49	55	59	63	68	69	72	76	78	100	100	100	100	100	100	100	100
59	28	36	43	49	54	57	63	67	68	70	76	100	100	100	100	100	100	100	100	100
60	28	36	43	49	53	57	61	64	67	69	100	100	100	100	100	100	100	100	100	100
61	26	35	42	48	52	56	59	63	66	80	100	100	100	100	100	100	100	100	100	100
62	26	33	41	47	51	55	58	62	80	80	100	100	100	100	100	100	100	100	100	100
63	25	33	41	46	51	55	57	80	80	80	100	100	100	100	100	100	100	100	100	100
64	25	33	40	45	50	53	80	80	80	80	100	100	100	100	100	100	100	100	100	100
65	24	32	39	44	49	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
66	24	32	39	44	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
67	24	32	39	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
68	24	32	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
69	24	64	68	72	72	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
70	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Female, Smoker

Issue

Duration

Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Effective: October 2009

Appendix

SELECT MORTALITY FACTORS

Male, Aggregate

Issue						Duration															
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+	
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	96	98	98	99	99	100	100	90	92	92	92	92	93	93	96	97	98	98	99	100	100
19	83	84	84	87	87	87	79	79	79	81	81	82	82	82	85	88	91	94	97	100	100
20	69	71	71	74	74	69	69	67	69	70	71	71	71	71	74	79	84	90	95	100	100
21	66	68	69	71	66	66	67	66	67	70	70	70	71	71	71	77	83	88	94	100	100
22	65	66	66	63	63	64	64	64	65	68	68	68	68	69	71	77	83	88	94	100	100
23	62	63	59	60	62	62	63	63	64	65	65	67	67	69	70	76	82	88	94	100	100
24	60	56	56	59	59	60	61	61	61	64	64	64	66	67	70	76	82	88	94	100	100
25	52	53	55	56	58	58	60	60	60	63	62	63	64	67	69	75	81	88	94	100	100
26	51	52	55	56	58	58	57	61	61	62	63	64	66	69	66	73	80	86	93	100	100
27	51	52	55	57	58	60	61	61	60	63	63	64	67	66	67	74	80	87	93	100	100
28	49	51	56	58	60	60	61	62	62	63	64	66	65	66	68	74	81	87	94	100	100
29	49	51	56	58	60	61	62	62	62	64	64	62	66	67	70	76	82	88	94	100	100
30	49	50	56	58	60	60	62	63	63	64	62	63	67	68	71	77	83	88	94	100	100
31	47	50	56	58	60	62	63	64	64	62	63	66	68	70	72	78	83	89	94	100	100
32	46	49	56	59	60	62	63	66	62	63	66	67	70	72	73	78	84	89	95	100	100
33	43	49	56	59	62	63	64	62	65	66	67	70	72	73	75	80	85	90	95	100	100
34	42	47	56	60	62	63	61	63	66	67	70	71	73	75	76	81	86	90	95	100	100
35	40	47	56	60	63	61	62	65	67	68	71	73	74	76	76	81	86	90	95	100	100
36	38	42	56	60	59	61	63	65	67	68	70	72	74	76	77	82	86	91	95	100	100
37	38	45	56	57	61	62	63	65	67	68	70	72	74	76	76	81	86	90	95	100	100
38	37	44	53	58	61	62	65	66	67	69	69	73	75	76	77	82	86	91	95	100	100
39	37	41	53	58	62	63	65	65	66	68	69	72	74	76	76	81	86	90	95	100	100
40	34	40	53	58	62	63	65	65	66	68	68	71	75	76	77	82	86	91	95	100	100

Issue	Male, Non-Smoker																			
	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	93	95	96	98	99	100	100	90	92	92	92	92	95	95	96	97	98	98	99	100
19	80	81	83	86	87	87	79	79	79	81	81	82	83	83	86	89	92	94	97	100
20	65	68	69	72	74	69	69	67	69	70	71	71	72	72	75	80	85	90	95	100
21	63	66	68	71	66	66	67	66	67	70	70	70	71	71	73	78	84	89	95	100
22	62	65	66	62	63	64	64	64	67	68	68	68	70	70	73	78	84	89	95	100
23	60	62	58	60	62	62	63	63	64	67	68	68	67	69	71	77	83	88	94	100
24	59	55	56	58	59	60	61	61	63	65	67	66	66	69	71	77	83	88	94	100
25	52	53	55	56	58	58	60	60	61	64	64	64	64	67	70	76	82	88	94	100
26	51	53	55	56	58	60	61	61	61	63	64	64	66	69	67	74	80	87	93	100
27	51	52	55	58	60	60	61	61	62	63	64	66	67	66	67	74	80	87	93	100
28	49	52	57	58	60	61	63	62	62	64	66	66	63	66	68	74	81	87	94	100
29	49	51	57	60	61	61	62	62	63	64	66	63	65	67	68	74	81	87	94	100
30	49	51	57	60	61	62	63	63	63	64	62	63	66	68	70	76	82	88	94	100
31	47	50	57	60	60	62	63	64	64	62	63	65	67	70	71	77	83	88	94	100
32	46	50	57	60	62	63	64	64	62	63	65	66	68	71	72	78	83	89	94	100
33	45	49	56	60	62	63	64	62	63	65	66	68	71	73	74	79	84	90	95	100
34	43	48	56	62	63	64	62	62	65	66	67	70	72	74	74	79	84	90	95	100
35	41	47	56	62	63	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
36	40	47	56	62	59	61	62	63	66	67	68	70	72	74	75	80	85	90	95	100
37	38	45	56	58	59	61	62	63	66	67	67	69	71	73	74	79	84	90	95	100
38	38	45	53	58	61	62	63	65	65	67	68	70	72	74	73	78	84	89	95	100
39	37	41	53	58	61	62	63	64	65	67	68	70	71	73	73	78	84	89	95	100
40	34	41	53	58	61	62	63	64	64	66	67	69	71	73	72	78	83	89	94	100

Male, Smoker

Issue	Duration																			
Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
19	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
20	98	100	100	100	100	100	100	99	99	99	100	99	99	99	100	100	100	100	100	100
21	95	98	99	100	95	96	96	95	96	97	97	96	96	96	96	97	98	98	99	100
22	92	95	96	90	90	93	93	92	93	95	95	93	93	92	93	94	96	97	99	100
23	90	92	85	88	88	89	89	89	90	90	90	90	89	90	92	94	95	97	98	100
24	87	81	82	85	84	86	88	86	86	88	88	86	86	88	89	91	93	96	98	100
25	77	78	79	82	81	83	83	82	83	85	84	84	84	85	86	89	92	94	97	100
26	75	77	79	82	82	83	83	82	83	84	84	84	84	85	81	85	89	92	96	100
27	73	75	78	82	82	83	83	82	82	82	82	84	84	80	81	85	89	92	96	100
28	71	73	79	82	81	82	83	81	81	82	82	82	80	80	81	85	89	92	96	100
29	69	72	78	81	81	82	82	81	81	81	81	77	80	80	81	85	89	92	96	100
30	68	71	78	81	81	81	82	81	81	81	76	77	80	80	81	85	89	92	96	100
31	65	70	77	81	79	81	82	81	81	76	77	79	81	81	83	86	90	93	97	100
32	63	67	77	78	79	81	81	81	76	77	77	80	83	83	85	88	91	94	97	100
33	60	65	74	78	79	79	81	76	77	77	79	80	83	85	85	88	91	94	97	100
34	57	62	74	77	79	79	75	76	77	79	79	81	83	85	87	90	92	95	97	100
35	53	60	73	77	79	75	75	76	77	79	80	82	84	86	88	90	93	95	98	100
36	52	59	71	75	74	75	75	76	77	79	79	81	83	85	87	90	92	95	97	100
37	49	58	70	71	74	74	75	76	77	78	79	81	84	86	86	89	92	94	97	100
38	48	55	66	70	72	74	74	75	76	78	79	81	83	85	87	90	92	95	97	100
39	45	50	65	70	72	72	74	74	75	77	79	81	84	86	86	89	92	94	97	100
40	41	49	63	68	71	72	73	74	74	76	78	80	83	85	86	89	92	94	97	100

Female, Aggregate

Issue	Duration																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	99	100	100	100	100	100	100	100	93	95	96	97	97	100	100	100	100	100	100	100
18	83	83	84	84	84	84	86	78	78	79	82	84	85	88	88	90	93	95	98	100
19	65	66	68	68	68	68	63	63	64	66	69	71	72	74	75	80	85	90	95	100
20	48	50	51	51	51	47	48	48	49	51	56	57	58	61	63	70	78	85	93	100
21	47	48	50	51	47	47	48	49	51	53	57	60	61	64	64	71	78	86	93	100
22	44	47	48	45	47	47	48	49	53	54	60	61	63	64	66	73	80	86	93	100
23	42	45	44	45	47	47	49	51	53	54	61	64	64	67	69	75	81	88	94	100
24	39	40	42	44	47	47	50	51	54	56	64	64	66	69	70	76	82	88	94	100
25	34	38	41	44	47	47	50	53	56	57	64	67	69	71	73	78	84	89	95	100
26	34	38	41	45	49	49	51	56	58	59	66	69	70	73	70	76	82	88	94	100
27	34	38	41	47	50	51	54	57	59	60	69	70	73	70	71	77	83	88	94	100
28	34	37	43	47	53	53	56	59	62	63	70	73	70	72	74	79	84	90	95	100
29	34	38	43	49	54	56	58	60	63	64	73	70	72	74	75	80	85	90	95	100
30	35	38	43	50	56	56	59	63	66	67	70	71	74	75	76	81	86	90	95	100
31	35	38	43	51	56	58	60	64	67	65	71	72	74	75	76	81	86	90	95	100
32	35	39	45	51	56	59	63	66	65	66	72	72	75	76	76	81	86	90	95	100
33	36	39	44	52	58	62	64	65	66	67	72	74	75	76	76	81	86	90	95	100
34	36	40	45	52	58	63	63	66	67	68	74	74	76	76	76	81	86	90	95	100
35	36	40	45	53	59	61	65	67	68	70	75	74	75	76	75	80	85	90	95	100
36	36	40	45	53	55	62	65	67	68	70	74	74	74	75	75	80	85	90	95	100
37	36	41	47	52	57	62	65	67	68	69	72	72	73	75	74	79	84	90	95	100
38	34	41	44	52	57	63	66	68	69	70	72	71	72	74	75	80	85	90	95	100
39	34	40	45	53	58	63	66	68	69	69	70	70	70	73	74	79	84	90	95	100
40	32	40	45	53	58	65	65	67	68	69	70	69	70	73	73	78	84	89	95	100

Female, Non-Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
71	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
72	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
73	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
74	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
75	60	60	64	68	68	72	75	75	80	80	100	100	100	100	100	100	100	100	100	100	100
76	60	60	64	68	68	72	75	75	80	100	100	100	100	100	100	100	100	100	100	100	100
77	60	60	64	68	68	72	75	75	100	100	100	100	100	100	100	100	100	100	100	100	100
78	60	60	64	68	68	72	75	100	100	100	100	100	100	100	100	100	100	100	100	100	100
79	60	60	64	68	68	72	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
80	60	60	64	68	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
81	60	60	64	68	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
82	60	60	64	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
83	60	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
84	60	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
85+	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Female, Smoker

Issue	Duration																				
	Age	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20+
0-15	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
16	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
17	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
18	99	100	100	100	100	100	100	100	95	96	97	100	100	100	100	100	100	100	100	100	100
19	87	89	92	92	92	92	84	84	86	86	92	93	95	96	99	99	99	100	100	100	100
20	74	77	80	80	80	73	73	73	75	77	83	83	86	88	90	92	94	96	98	100	100
21	71	74	78	78	71	71	73	74	77	79	85	86	88	89	90	92	94	96	98	100	100
22	68	71	75	70	71	71	73	74	78	79	88	90	89	89	92	94	95	97	98	100	100
23	65	69	67	70	70	70	73	77	79	81	89	90	90	92	92	94	95	97	98	100	100
24	62	60	64	69	70	70	74	77	79	81	92	90	92	93	93	94	96	97	99	100	100
25	53	58	63	67	69	70	74	78	81	82	92	93	93	95	95	96	97	98	99	100	100
26	53	58	63	69	71	72	75	79	82	82	93	93	95	96	90	92	94	96	98	100	100
27	52	56	63	70	74	74	78	81	82	84	93	95	95	90	90	92	94	96	98	100	100
28	52	56	64	71	75	77	79	82	85	86	95	95	90	92	92	94	95	97	98	100	100
29	51	56	64	71	78	78	81	84	86	88	95	90	90	92	92	94	95	97	98	100	100
30	51	56	64	72	79	79	82	85	88	89	90	90	92	93	93	94	96	97	99	100	100
31	51	56	64	72	78	81	84	84	88	84	90	90	92	93	93	94	96	97	99	100	100
32	51	56	64	71	78	81	85	86	84	85	90	90	92	94	93	94	96	97	99	100	100
33	51	57	62	71	78	82	85	83	84	85	90	92	93	93	93	94	96	97	99	100	100
34	51	56	62	71	78	82	81	83	85	86	90	92	92	94	93	94	96	97	99	100	100
35	51	56	62	71	78	79	83	84	85	86	90	91	91	93	93	94	96	97	99	100	100
36	49	56	62	71	74	79	83	84	85	86	90	90	91	93	92	94	95	97	98	100	100
37	48	55	62	67	74	79	83	84	85	86	89	90	89	92	91	93	95	96	98	100	100
38	47	55	57	66	72	77	81	84	86	86	87	88	88	90	91	93	95	96	98	100	100
39	45	50	57	66	72	77	81	83	85	86	86	87	86	89	90	92	94	96	98	100	100
40	41	50	57	66	72	77	81	83	84	85	86	86	86	86	89	91	93	96	98	100	100

IV. New Business – Before Public Hearing

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

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

Date: 10/8/2021

Department or Agency: Department of Liquor Control - County of Kauai

Administrative Rule Title and Chapter: Rules and Regulations of the Liquor Control Commiss

Chapter Name: _____

Contact Person/Title: Leo Sandoval / Director

E-mail: lsandoval@kauai.gov Phone: 808-241-4699

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.
See attachment #1

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 attachment #1

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 attachment #1
 - b. Amount of the proposed fee or fine and the percentage increase.
See attachment #1
 - c. Reason for the new or increased fee or fine.
See attachment #1

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
See attachment #1
-
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.
See attachment #1

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.
See attachment #1

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
See attachment #1

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.
See attachment #1

7. How the agency involved small business in the development of the proposed rules.
See attachment #1

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.
See attachment #1

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.
See attachment #1

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.
See attachment #1
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
See attachment #1
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
See attachment #1
- 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.
See attachment #1
- 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.
See attachment #1

* * *

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

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

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ATTACHMENT 1**

1. All liquor licensees will be required to comply with established rules and regulations.
2. The Kauai Department of Liquor Control is proposing a \$10 dollar fee to be implemented to recover increasing costs associated with processing and issuance of required manager training compliance cards. An additional \$10 dollar fee is proposed for the registration of the course to take the exam in written or electronic format to recover of additional costs associated with materials provided to the test taker. At this time Kauai Liquor Department is the only island that has not been recovering the costs associated with the exam and materials required to issue the physical manager identification card. Costs are not incurred by the business owner. The fees imposed on the employee prior to employment. Each card issued is property of the employee and transferable to other employers. This fee is a new fee that has never been implemented in the past.

In addition to the above proposed fee, a \$45 dollar fee is being proposed to cover department processing of trade name changes. Time and research associated with the verification of documentation received on behalf of the applicant. This fee is a new fee that has never been implemented in the past.

An increase from \$48 to \$180 for Direct Shipment of Wine by Wineries is also being proposed to align with neighboring island fees for comparable processing, documenting and issuance of the unique license. These fees are incurred by businesses that ship from out of Hawaii onto the Island of Kauai and not the local business owner. The last time this fee has been increased was in 2006.

3. As a result of the costs associated with the fee for the managers course, exam, and identification the Kauai Liquor Department will collect approximately \$20.00 (\$10.00 for the course/exam and \$10.00 for the physical identification card). Last fiscal year, the Liquor Department provided this service to approximately 421 individuals. During the first quarter of fiscal year 2022 the demand has accommodated 154 individuals within a 3-month period forecasting an increase in costs projected.

4. The Liquor Department has launched a pilot manager program training program online that would accommodate the increase in demand for the required manager training. This increase in fees would also permit the Department to offer to the small business owners the convenience of obtaining the required training program for their employees with less delay. Currently the fees associated with this training program are not assessed by the small business owner, instead they are passed onto the employee.

The fees associated with a trade name is on the conservative side maintaining the fee at a low amount. The fee does not apply regularly to a small business, only if they do the trade name change.

The fees associated with the increase of a Direct Wine Shipper Permit have also been what is the overall industry norm for the State of Hawaii and will not directly impact the local small business owners.

5. The proposed rules do NOT include provisions that are more stringent than those already in place by other neighboring islands in the State of Hawaii. The proposed rules are simply providing opportunity for a digital technology driven platform and equal opportunity to obtain required training as outlined in the Kauai Liquor Commission Rules. Further, the increases in trade name changes and Direct Wine Shipper Permit are also not more stringent than those already in place as well by neighboring islands in the State of Hawaii.

6. N/A

7. N/A

8. None

a. N/A

b. N/A

c. N/A

2021 PROPOSED RULE AMENDMENTS

RULE	DESCRTIPTION	PROGRAM IMPLEMENTATION	IMPACT
1.1	Definitions	Adds, "Suspended Penalty" means a penalty or any part thereof that the Commission has ordered suspended for a period of time under conditions.	Adds in a new definition
2.5.5	License Application (False Statement)	Adds, "If the Department finds that the applicant has made a false statement or misrepresentation as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty."	New rule adds the ability for the Department to take an action if a false application is submitted to the Commission.
2.12(b)(4)	Direct Shipment of Wine by Wineries	Removes "\$48" with "\$180"	Increases the fee associated with the annual license issued to Direct Shippers to align with neighboring island fees for the same license. Initial fee has been in place since 2006 with no increase.
2.20	Notarial act performed using audio-visual communication technology; electronic or digital signatures Notarial act performed using audio-visual communication technology; electronic or digital signatures	Adds, "(a) Documents bearing a notarized signature that was obtained using audio-visual communication technology and performed in compliance with state law may be submitted and accepted for processing. (b) Applications and any related documents may be submitted and accepted for processing with an electronic or digital signature	New Rule adds the ability for the department to extend the option for online notary and the use of verified digital signatures on all documents related to licensing.

		in accordance with procedures established by the department.”	
3.18	Suspended Penalty	Adds,” Whenever the Commission has assessed a penalty against a licensee, any part of which the Commission has ordered suspended under conditions, in the event of the violation of such conditions by the licensee, the Director shall collect from the licensee the amount suspended without further action by the Commission.	New Rule permitting the Department to collect the any amount in abeyance.
4.4 (a)	Percentage Fee	Adds, the option to submit percentage fees electronically Replaces “File” to Submit	New rule added to allow the licensees to submit online payments as an option.
4.7 (b)	Percentage Fee	Removes, “September 30 th ” Adds, “October 30.”	Changes the due date to allow the department to more accurately account for percentage fees calculated by Department of Finance and amounts due by the licensee.
4.7(c)	Gross Liquor Sales Report	Adds, “the option to for the Department to send invoices electronically to the licensees.”	New rule added to allow the Department the option to send invoices electronically to the licensees for gross liquor sales.
4.8	Failure to Submit Accurate Gross Liquor Sales Reports	Adds, “Licensees shall maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant	This rule aligns with HRS 281-91 adding in the ability for the

		to Rule 4.4(a). Failure to submit an accurate gross liquor sales report may subject the licensee to the penalty set forth in Section 281-91, Hawaii Revised Statutes.”	commission to assess a fine to a licensee that does not follow through with reporting requirements.
4.8.5	Trade Name; Change; Fee.	Adds, “Trade Name; Change; Fee. A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of \$45.00 shall be assessed by the Commission for any change of existing trade name.”	New rule that aligns with neighboring islands permitting a fee to be charged for the processing of a tradename change. Currently the department does not charge for this service. This would minimally impact the licensees.
4.9	Payment for Under Reporting Gross Liquor Sales	Adds, “Any licensee who is determined by the Director to have under-reported gross liquor sales may be issued a notice of violation.”	New rule that aligns with neighboring islands giving a deadline to correct any under-reported gross sales. Currently no rule exists.
4.10	Fines Collected from Penalties Assessed	Adds, “The Director, with the Commission approval, shall be authorized to designate a portion of the fines collected for use in programs to promote compliance with liquor laws, business development, and improvement of interagency and interoffice functions. Such programs may include, but are not limited to, grant assistance	New rule that is aligning with the neighboring island rules clarifying the purpose and permitted use of the funds collected through fines.

		programs, enforcement, public service announcements promoting responsible drinking and driving, youth programs, education, and liquor control administrative meetings.”	
6.2	Sales, Service or consumption before or after hours of business, exception	Removes,” except that employees who were on duty at the legal closing time in on premises establishments may consume liquor immediately after closing with the permission of the licensee, and at no cost, if no other person is in the liquor service area of the premises.”	Amendment to the existing rule. New rule would align with neighboring islands prohibiting consumption of alcohol after legal closing hours.
7.8 (a)	Manager on duty, qualifications	Removes,” at all times when there is anyone who is not an employee in the premises” Adds, “during the time the establishment is open for business and licensed to sell or serve liquor.”	Amendment to the existing rule aligning with Rule 10.2
7.8(b)	Manager on duty, qualifications	Removes “written or oral” Removes”eighty-five percent (85%), replaces with “eighty-six percent (86%)” Removes”,” replaces with “and” Removes”,” replaces with “,” Removes “Five”, Replaced with “Four” years. Removes “manager” Removes, “and commission review of eligibility and approval;”	Amendment replaces the validity of the manager card from 5 years to 4 years to align with neighboring islands. Removes the need for commission review of applicant prior to issuing the manager card.
7.8 (c)	Manager on duty, qualifications	Adds, “A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager’s test.”	New rule permitting the Department to collect a small fee for the class and exam being taught by the Department same.

7.8 (d)	Manager on duty, qualifications	Adds," An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test."	New rule permitting the Department to collect a small fee for issuance of a physical card. This fee would help the Department recover costs of card producing equipment and supplies that are absorbed by the Department currently.
7.8 (e)	Manager on duty, qualifications	Adds," A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.	New rule permitting the Department to collect a small fee for issuance of a replacement card. This fee would help the Department recover costs of card producing equipment and supplies that are absorbed by the Department currently.
7.8 (f)	Manager on duty, qualifications	Adds," A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule."	New rule permitting the Department to collect a small fee for issuance of a temporary card. This fee would help the Department recover costs of card producing equipment and supplies that are absorbed by

			the Department currently.
7.13	Fight and Disturbance Reports	<p>Removes” quarrelsome behavior that causes the licensee, his employees, or police officers to evict a person from the premises or to request a person to leave the premises.”</p> <p>Adds, “whenever law enforcement or emergency medical services personnel are called to the licensed premises, or when a breach of the peace is created at the premises by a person.</p> <p>Adds, “For the purpose of this rule, “breach of the peace” shall mean any action in violation of HRS 711-1101 DISORDERLY CONDUCT”</p>	Amendment is updated to clarify the licensees responsibilities regarding fight and disturbance reporting.
7.15(a)	Practices that promote excessive consumption of liquor prohibited.	<p>Removes,” Licensees shall use good judgment in serving liquor to patrons to prevent excessive consumption of liquor by patrons”</p> <p>Adds, “No licensee shall promote the excessing consumption of liquor, sell, or offer to sell any liquor to any person who appears to be intoxicated.”</p>	Amendment to existing rule that would add a clear expectation of the licensees responsibilities encouraging responsible service of alcohol
7.15(c)	Practices that promote excessive consumption of liquor prohibited.	Removes, “This paragraph shall not apply to private functions for which a hosted bar is utilized such as a wedding reception, or public functions such as luaus and brunches where liquor is inclusive, or other similar events where liquor service is incidental to food service.”	Amendment to existing rule removing existing exemptions to the promotion of excessive consumption of liquor.

7.15(e)	Practices that promote excessive consumption of liquor prohibited.	Adds," No licensee shall encourage or permit any game or contest that involves the consumption of liquor or the awarding of liquor as a prize.	Amendment to rule adding games and contest winnings as an additional inducement to consume alcohol.
7.16 (a)	Drugs and Other Illegal Activities	Adds," The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises of any on-premises establishment by any person is prohibited."	New rule adding possession of narcotics as prohibited specifically for on-premises locations
7.16(b)	Drugs and Other Illegal Activities	Adds," No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs."	New rule adding the involvement of the licensee to any narcotic transaction/involvement to the list of prohibited activities.
7.17 (a)	Improper Influence	Adds," Any licensee, employee of a licensee or its agent who shall give, pay, or offer, directly or indirectly, any pecuniary benefit to any Liquor Department investigator or staff member, with intent to influence the investigator or staff member in the discharge of any duty herein provided for, shall be guilty of a violation."	New rule to prevent any unethical offers between licensees and any member of the Liquor Department.
10.2(b)	Manager on Duty, Qualifications	Referring to the manager card. Removes "written or oral" Removes "eighty-five percent (85%), replaces with "eighty-six percent (86%)" Removes "five" years and replaces with "four" years. Removes "while on duty", replaces with "when the employee is on duty"	Amends the rule to align with rule 7.8(b) amendment.

10.2(c)	Manager on Duty, Qualifications	Adds, "A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager's test."	New rule permitting the Department to collect a small fee for the class and exam being taught by the Department.
10.2(d)	Manager on Duty, Qualifications	Adds," An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test."	New rule permitting the Department to collect a small fee for issuance of a physical card. This fee would help the Department recover costs of processing.
10.2(e)	Manager on Duty, Qualifications	Adds," A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.	New rule permitting the Department to collect a small fee for issuance of a replacement card. This fee would help the Department recover costs of card producing equipment and supplies that are absorbed by the Department currently.
10.2(f)	Manager on Duty, Qualifications	Adds," A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule."	New rule permitting the Department to collect a small fee for issuance of a temporary card. This fee would help the Department recover costs of card producing equipment and supplies

			that are absorbed by the Department currently.
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*2021 PROPOSED RULE AMENDMENTS
DRAFT*

**RULES & REGULATIONS
OF THE
LIQUOR CONTROL COMMISSION
OF THE
COUNTY OF KAUAI**

EFFECTIVE:

RULES & REGULATIONS

KAUAI LIQUOR CONTROL COMMISSION

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RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION
COUNTY OF KAUAI

RULE 1
DEFINITIONS

Rule 1.1. Definitions. Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license, renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least ~~[85%]~~86% on a written exam administered by the department for an on-premises establishment.

"Bona fide" means made in good faith without fraud or deceit.

"Catering" means a privilege extended to a restaurant (class 2), hotel (class 12), caterer (class 13), brewpub (class 14), or condominium hotel (class 15) licensee to provide liquor service off of its license premises in conjunction with its food service.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill, which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Complimentary liquor" means packaged or individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium Hotel Guest Room" means (1) a condominium hotel guest room that is a unit, as defined in Section 514B-3, HRS, which is used to provide transient lodging for periods less than thirty days under a written contract with the owner of a unit

in a condominium hotel operation; or (b) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for period less than 30 days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Dancing" means "to move your body in a way that goes with the rhythm and style of music that is being played."

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Decibels" means the unit for measuring the volume of sound equal to 20 times the logarithm to the base 10 of the ratio of the pressure to the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Guest Room" means a room for the lodging of transient guests which is offered for adequate pay for period less than 30 days.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another simulating sexual contact.

"Legal age" means someone over the age of 21 years of age.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least ~~85%~~86% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes their clothing piece by piece.

"Suspended Penalty" means a penalty or any part thereof that the Commission has ordered suspended for a period of time under conditions.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

RULE 2 **RULES OF PRACTICE AND PROCEDURE**

Rule 2.1. Methods whereby public may obtain information. The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the department.

Rule 2.2. Petition for adoption, amendment, or repeal of rules. (a) Any interested persons may petition the commission requesting the adoption, amendment, or repeal of any rule of the commission.

(b) The petition shall be typewritten and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the Hawaii Administrative Procedure Act for the adoption, amendment, or repeal of the rule, as the case may be.

Rule 2.3. Declaratory ruling by the commission. (a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule or order of the commission.

(b) The petition shall be typewritten and shall contain:

- (1) The name, address, and telephone number of the petitioner;
- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A complete statement of facts;
- (5) A statement of the position or contention of the petitioner; and
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

(c) Any petition which does not conform to the foregoing requirements may be rejected.

(d) The commission may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future; or
- (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief; or

(3) The issuance of the declaratory ruling may adversely affect the interests of the County of Kauai or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or

(4) The matter is not within the jurisdiction of the commission.

(e) Where any question of law is involved, the commission may refer the matter to the county attorney. The commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) Upon the disposition of his petition, the petitioner shall be informed in writing thereof by the commission.

(g) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to a different fact situation or where additional facts not considered in the order exist.

Rule 2.4. Rules of practice. (a) Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, or the revocation or suspension of a license, or other disciplinary action by the commission, which by law is required to be determined after an opportunity for a hearing, the following shall apply:

(1) The applicant or licensee shall be notified in writing of the hearing and of his opportunity to be heard. Such notice shall conform to the requirements of the Hawaii Administrative Procedure Act, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice required by law to be published in a newspaper.

(2) The hearing shall be conducted in conformity with the applicable provisions of the Hawaii Administrative Procedure Act.

(3) The determination shall be subject to such limitations or standards as may be prescribed by law.

(4) If the commission decides in favor of the applicant or licensee, the commission shall promptly notify the applicant or licensee.

(5) If the commission decides against the applicant or licensee, it shall issue an appropriate decision and order. Such decision and order shall be accompanied by separate findings of fact and conclusions of law. The commission shall within a reasonable time send a certified copy of the

findings of fact, conclusions of law, decision and order to the applicant or licensee.

(b) Any of the foregoing procedures 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.

(c) The department shall adopt rules by which contested case hearings will be conducted. Parties to a contested case hearing shall be provided with such rules ten (10) days prior to the date of the contested case hearing.

(d) Judicial review shall be as provided by law.

Rule 2.5. License application; notice of hearing; affidavits. (a) All applications for new licenses and all notices of public hearing sent and affidavits filed by applicants in connection with such applications, shall be in respective forms prescribed therefore from time to time by the department.

(b) An applicant for a new license or a transfer of license other than a special or temporary license shall file as part of its application:

- (1) Tax clearance from the state department of taxation
- (2) Personal history of all persons named in the application in the form prescribed by the department;
- (3) If the applicant is a partnership, a partnership agreement;
- (4) If the applicant is a corporation, the articles of incorporation which has been filed and accepted by the state department of commerce and consumer affairs;
- (5) If the applicant is a limited liability company, its articles of organization which has been filed and accepted by the state department of commerce and consumer affairs;
- (6) A floor plan which shall be drawn to scale and showing the detailed description of the proposed premises; and
- (7) Lease or rental agreement, if applicable.

(c) An applicant for a new license other than a transient vessel, tour or cruise vessel, or special license shall also file as part of its application,

- (1) A map drawn to scale showing all properties within five hundred (500) feet of the proposed premises; which shall also designate all properties within one hundred (100) feet of the proposed premises; and

- (2) A list of names and mailing addresses of property owners and lessees of record of the properties within five hundred (500) feet of the proposed premises; which list shall also designate all property owners and lessees of record within one hundred (100) feet of the proposed premises.
 - (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 as prescribed for by HRS Section 281-31(s) except for Manufacture, Wholesale, Tour or Cruise, and Transient Vessel licenses prior to the issuance of a new license.
- (d) An application for transfer of license shall also file as part of its application:
- (1) A statement of the price to be paid for the purchase of the licensed business; and
 - (2) Tax clearances for the transferor from the state department of taxation
 - (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 for both the transferor and transferee as prescribed for by HRS Section 281-31 (s) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses.
- (e) An applicant for a transfer of a class 5 and class 11 licenses shall also comply with requirements of Section 281-57 of the Hawaii Revised Statutes.
- (f) A temporary license of any class and kind may be granted under the following conditions:
- (1) The premises shall have been operated under a license of the same class, kind and category issued by the commission at least one year immediately prior to the date of filing of the application for a temporary license; the application must be filed within 90 days of the surrender of the previous license or the closing of business.
 - (2) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises.
 - (3) If the issuance of a temporary license is based upon a transfer or new license application, the temporary license shall terminate upon the issuance or denial of the transfer or new license application.
 - (4) Where a temporary license is issued and the application for an original license is denied or withdrawn, or the temporary license is canceled, the

temporary licensee shall be responsible for filing a gross sales report together with percentage fee due for the duration that the temporary license was in effect.

(g) Applicant for a special license shall file as part of its application:

- (1) A floor plan which shall be drawn with measurements and showing the detailed description of the proposed premises;
- (2) A roster of all persons selling liquor, including their ages, and the name and age of the person in charge of those selling liquor;
- (3) The name of the person in charge of security;
- (4) The property owner's permission to sell liquor for consumption on its property.
- (5) Method of disposal for the remaining liquor inventory.

(h) An applicant for a transient vessel license shall file as part of its application:

- (1) A list of dates, ports of call, times of arrival and departure.

(i) An applicant for a transient vessel, per day, license shall file:

- (1) One application for each vessel, and the application may be filed annually;
- (2) Tax clearances shall be applicable to all applications for the Transient Vessel licenses that are filed by the agent or owner during that fiscal year; and.
- (3) The application shall include a list of dates, ports of call, times of arrival and departure and payment of fee per port of call.

When inclement weather forces a vessel to shift its port of call to the island of Kauai, and the vessel has a valid transient vessel license issued by another jurisdiction within the State of Hawaii, said license shall be valid in the County of Kauai, provided that notification of such change of port is sent to the Department prior to arrival.

(j) An applicant for a tour or cruise vessel license shall file as part of its application:

- (1) Commercial permit;
- (2) Mooring permit; and

(3) Coast Guard certification.

Tour or cruise vessel license, exception. A tour or cruise vessel licensee may, with the approval of the commission, sell and serve liquor to ticketed passengers while on board the vessel during the loading of passengers for a period of time as determined by the commission.

(k) All applicants shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

Rule 2.5.5 License Application; False Statement: If the Department finds that the applicant has made a false statement or misrepresentation as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

Rule 2.6. Renewal of license. Applications for renewal of licenses, except temporary licenses, shall be submitted no earlier than June 1 and no later than June 30 of each year. Current tax clearances from the state department of taxation, a deposit to cover the basic fee as prescribed by Rule 4.1 and proof of liquor liability insurance coverage in the amount of \$1,000,000 except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses as prescribed for by HRS, Section 281-31 (s) shall be submitted as part of the application.

An application for renewal of a temporary license shall be submitted prior to the expiration date of the license. A deposit to cover the temporary license fee as prescribed by Rule 4.1 shall be deposited as part of the application.

Rule 2.7. Deposit with application. A deposit to cover the cost of publishing the notice of public hearing must accompany all applications for a license.

Rule 2.8. Filing fee with application. A filing fee in the sum of one hundred dollars (\$100.00) shall be paid with any application for an initial issuance of a license or for a transfer of a license, except for Transient Vessel, per day and Special license applications the filing fee shall be the cost of the basic license fee as prescribed for in rule 4.1.

The filing fee shall become a realization of the county where the application is denied or withdrawn.

Rule 2.9. Knowledge of liquor laws, rules and regulations. (a) No license shall be issued or renewed until the commission is satisfied that the applicant is familiar with the liquor laws of Hawaii and with the rules and regulations of the commission.

(b) Every licensee shall ensure that its employees involved with the sale of liquor are familiar with the rules of the commission and liquor laws of Hawaii.

Rule 2.10. Rehearing on application. An applicant desiring a rehearing after his application has been refused must file a petition with the commission within fifteen days from the date of such refusal.

Rule 2.11. Application for individual permits to receive shipments of liquor.

(a) Any unlicensed person who is of legal age to purchase liquor may apply at the department on the form prescribed by the department and with the payment of a permit fee of ten dollars (\$10.00) or as required by Section 281-33.1(d) of the Hawaii Revised Statutes, whichever is greater, for a permit to receive a shipment of liquor from outside the state, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

(b) The application form shall include the following information:

- (1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity; and
- (2) Whether the liquor is an unsolicited gift, unavailable in the state, or part of the applicant's household goods.

Rule 2.12. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Kauai shall obtain a Direct Wine Shipper Permit from the Department of Liquor Control, County of Kauai. The permit may be granted by the Director to any person holding:

1. A general excise tax license from the State of Hawaii department of taxation; and
2. Either:
 - A. A class 1 license to manufacture wine under section 281-31; or
 - B. A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:

- (1) An application form;
- (2) Copy of the State of Hawaii Department of Taxation general excise tax license;
- (3) Copy of the class 1 license to manufacture wine under section 281-31 or the license to manufacture wine issued by another state; and
- (4) Payment of an annual permit fee of ~~[\$48.00]~~\$180. For purposes of this rule, permit fees shall be prorated.

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale and shall:

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY".
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment.
3. Report no later than January 31 of each year to the Department the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and;
5. Be subject to audit by the liquor commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a direct wine shipper permit by providing the liquor commission with a renewal application, a copy of the current license to manufacture wine and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

Rule 2.13. Application for a permit for trade shows, tasting event or other exhibitions. (a) Any trade exhibitor or trade organization, may apply for a permit to have liquor for display and sampling on a not-for-sale basis at trade exhibitions. The director may permit the exhibitor or organization to receive liquor that is not available in the state from outside the state.

(b) The application for the permit shall include the following information:

- (1) The name and address of the applicant;
- (2) The location of the trade show;
- (3) The dates and hours of the trade show;
- (4) An inventory list of the liquors to be displayed and sampled, its value and the procedure to be used to dispose of any liquor remaining at the end of the function; and
- (5) Property owner's permission and floor plan detailing where the trade

show, tasting event or exhibition will be taking place.

(c) The dispensing of liquors for consumption is permitted between the hours of 8:00 a.m. to 11:00 p.m. on any day of the week.

(d) Liquor shall be consumed within the approved area that the holder of the permit has exclusive control and clear view of, and any liquor being consumed shall not be removed from the area.

(e) Guidelines for sample servings are four ounces of beer per customer, two ounces of wine per customer, and one-half ounce of distilled spirit per customer, except as otherwise approved by the director.

(f) An industry member may assist a licensee who conducts a product tasting event provided that in no case shall the industry member assume duties normally conducted by an employee of the licensee.

Rule 2.14. Applications for warehousing liquor off the licensed premises.

Liquor may be warehoused off the licensed premises within an appropriately zoned area in the county with the written approval of the commission. An application for warehousing off the licensed premises shall include as part of the application:

- (1) Floor plan drawn to scale;
- (2) Lease agreement, if applicable;
- (3) List of all licensed premises which will be using the warehouse, if the applicant holds more than one liquor license; and
- (4) Street address and tax map key of warehouse location.

Rule 2.15. Application and cost for a duplicate license. (a) A license that has been lost, destroyed, or mutilated will be replaced upon application from the licensee. A licensee shall submit a letter stating the cause of the loss, destruction, or mutilation of the license when applying for a duplicate license.

(b) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to replace a license that was lost, destroyed, or mutilated because of negligence on the part of the licensee.

Rule 2.16. Authority vested to the director. (a) In the event that any licensee or any person submits a written application for a permit or renewal of an existing license or permit and the application cannot be brought before the commission at a regular meeting prior to the date of the event or function, the director may approve the application provided that all other applicable requirements of the liquor laws and the commission's rules and regulations have been met.

(b) The director may issue a notice of violation hearing to any licensee for any violation of the commission's rules and regulations or the liquor laws.

(c) When all applicable requirements of the liquor laws and the commission's rules and regulations have been met, the director shall have the authority to issue, suspend or revoke the following permits and issue the following licenses:

Permits for: All games, game machines; karaoke machines; temporary increase or decrease of premises; alteration of premises. Karaoke permit shall be limited to licensees whose category of license provides for live entertainment with applicable conditions, as it may exist.

Licenses: Special license, Transient Vessel, per day license.

Rule 2.17. Emergency rules and regulations. In the event of a national, statewide, or local emergency, the commission may adopt emergency rules and regulations, with the approval of the Mayor, for the protection of life and/or property. All emergency rules and regulations shall be scheduled for public hearing at the earliest possible date.

If the commission is unable to hold a meeting to meet the emergency, the Mayor may authorize the director to act for the commission.

Rule 2.18. Free one-day special license. (a) Notwithstanding any other rule to the contrary, the director may issue a free one-day special license of any class and kind at no cost to any nonprofit organization for a fundraising event from which no member is entitled to or takes, directly or indirectly, any share of the profits there from. Issuance of such license shall not exempt the licensee from any other provision of the liquor laws.

(b) An applicant for this free one-day special license shall file an application on the form prescribed by the department.

(c) The applicant shall obtain the property owner's permission to dispense and/or retail liquor on its property.

(d) The director may issue a free one-day special license to any applicant if the event for the license is to occur prior to a commission meeting.

Rule 2.19. Notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license.

Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or

director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, within 30 days of any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, must request a Criminal History Clearance from the Hawai'i Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (i.e. Articles of Incorporation or Organization, or Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners holding twenty-five percent or more interest or members and submit a personal history of the new limited partner holding twenty-five percent or more interest or member, on the forms prescribed by the Commission.

Rule 2.20. Notarial act performed using audio-visual communication technology; electronic or digital signatures. (a) Documents bearing a notarized signature obtained using audio-visual communication technology and performed in compliance with state law may be submitted and accepted for processing.

(b) Applications and any related documents may be submitted and accepted for processing with an electronic or digital signature in accordance with procedures established by the department.

RULE 3 **RULES OF GENERAL APPLICATIONS**

Rule 3.1. Posting of license and availability of rules and regulations and Liquor Laws of the State of Hawaii. (a) The original liquor license shall be conspicuously posted on the licensed premises.

(b) Every licensee shall have a current copy of the rules and regulations of the commission and a copy of the liquor laws of the State of Hawaii available at all times on the licensed premises for examination by employees and customers. A copy viewed on a computer is not acceptable unless the computer is located in a general sales area accessible to all employees and customers.

(c) Licensees and employees shall familiarize themselves with said rules and laws.

Rule 3.2. Alteration of premises. A licensee shall obtain a permit from the commission prior to making any substantial physical alteration, such as adding or

removing walls, changes in entrances and/or exits, relocating wet bars, changing floor levels, etc., to its licensed premises.

Rule 3.3. Unauthorized liquor. The possession of any liquor by a licensee on any licensed premises, other than that authorized by the license, is prohibited. The finding of such unauthorized liquor on the licensed premises will be considered prima facie evidence of illegal possession thereof by the licensee.

Rule 3.4. Surrender of license. The holder of any license must immediately surrender its license to the commission upon suspension or revocation thereof, or within five days after closing his business if it be otherwise discontinued.

Rule 3.5. Free goods prohibited, exception. No licensee shall directly or indirectly offer, furnish, deliver, or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer which is tied in to the sale of liquor, except "pupus" (appetizers) offered in on premises establishments and advertising specialties which are available to all consumers are exempt from this provision.

Rule 3.6. Advertisements, posters, and signs. (a) No licensee shall, directly or indirectly, cause obscene, lewd, or immoral matter to be shown, displayed or distributed either on or from the premises.

(b) Any exterior poster or sign advertising liquor by brand name either in whole or part and maintained on the exterior of a licensed premises shall conform to the sign ordinances of the County government.

Rule 3.7. Attire and conduct of persons within a licensed premises, exception. No licensee shall at any time:

- (1) Employ or use any person or permit any person to remain in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areole or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, except as provided by Rule 8.5;
- (2) Permit any person to perform or simulate sexual acts in its licensed premises.
- (3) Permit the showing of film, still pictures, or electronic reproductions depicting:

(a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(b) Nudity or scenes wherein a person displays the anus, genitalia or female breast below the top of the areole;

(c) Any person being touched, caressed or fondled on the anus or genitalia; and

(d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawing are employed to portray, any of the prohibited activities described above.

Rule 3.8. Sales to persons below the legal age to purchase liquor prohibited. No licensee shall sell or furnish any liquor to any person who is below the legal age to neither purchase liquor nor accept any payment, including the signing of any charge slip, from any person who is below the legal age to purchase liquor for any liquor sold.

Rule 3.9. Warehousing of liquor off the licensed premises. (a) Any licensee with warehousing off his licensed premises shall keep within the warehouse invoices for all liquor received at the warehouse, and a record of all liquor distributed from the warehouse. All records shall be kept for no less than three years.

(b) Any liquor distributed from the warehouse must be delivered directly to the licensed premises of the licensee.

(c) If a warehouse building is used by more than one licensee, each licensee's space shall be separated with permanent partitions.

Rule 3.10. Pool buying. The agent of a pool buying agreement shall file a copy of the agreement with the department and receive its approval prior to exercising the agreement. The agreement shall name the licensee who is to be the agent, the address of the delivery location, and a list of participants, their license number and street addresses.

A pool buying agreement shall expire on June 30 of each year or upon the addition of a new party to the agreement, whichever occurs first.

The agent shall inform the department of the date of transaction made under the pool buying agreement prior to the transaction date. Each pool buying transaction shall be completed on the day transacted which means that all members of the pool must take possession and pay for their merchandise on the day that the agent receives the liquor at his premises.

Where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensee.

The agent shall provide a list to the wholesaler and/or manufacturer of all members of the pool buying agreement and a list of purchases to be made by each member.

The wholesaler and/or manufacturer shall prepare separate invoices for each member of the pool buying agreement.

Participants of the pool buying agreement shall maintain records of its liquor purchases pursuant to the pool buying agreement within the licensed premises for a period of three years and the records shall be made available forthwith for inspection by the department or its authorized personnel.

Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws, liquor laws, or rules of the commission.

Rule 3.11. Waiving of rights to a violation hearing. A licensee who is cited by the commission as having violated any one of the following rules:

- (1) Rule 3.1. Posting of license and availability of rules and regulations;
- (2) Rule 3.2. Alteration of premises;
- (3) Rule 3.6. Advertisements, posters, and signs;
- (4) Rule 7.9 Manager registration;
- (5) Rule 7.10. Bar employee records;
- (6) Rule 7.13. Fight and disturbance reports;
- (7) Rule 8.4. Minimum requirements of a hotel condominium licensee
- (8) Rule 9.1. Membership list of club; and
- (9) Rule 10.3. Manager registration

may waive its right to a hearing and admit to the charge prior to the hearing without appearing before the commission.

For the first violation of any one of the above-mentioned rules, the licensee shall pay a penalty of one hundred fifty dollars (\$150.00) to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period, whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of three hundred dollars (\$300.00) to the department at the time that the licensee admits to the charge.

The licensee may not waive its right to a hearing pursuant to this rule and shall

be required to appear before the commission where the licensee has committed more than two rule violations of the commission's rules within the previous twelve-month period.

Rule 3.12. Commission orders. All licensees shall comply with all lawful orders of the commission.

Rule 3.13. Contests and prizes, prohibitions. (a) No licensee shall promote or permit any contests which involve the consumption of liquor.

(b) No licensee shall at any time give any liquor as a prize for any contest.

Rule 3.14. Suspension or revocation of blue card or red card. The Commission may at any time for good cause suspend or revoke a blue card or red card.

Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises. The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

Rule 3.16. Legal age to sell liquor. The legal age for an employee to begin selling liquor is 18_years old.

Rule 3.17 Restrictions or Conditions on Licenses. Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time. Licensees shall comply with any restrictions or conditions placed on the license by the Commission.

Rule 3.18 Suspended Penalty. Whenever the Commission has assessed a penalty against a licensee, any part of which the Commission has ordered suspended under conditions, in the event of the violation of such conditions by the licensee, the Director shall collect from the licensee the amount suspended without further action by the Commission.

RULE 4

LICENSE FEES, GROSS SALES REPORTS

Rule 4.1. License fees. The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

<u>Class</u>	<u>Kind</u>	<u>Basic Fees</u>
1. Manufacturer (including	(a) Beer	\$ 408

rectifiers)		
	(b) Wine	\$ 408
	(c) Wine manufactured from agricultural products grown in the State	\$ 120
	(d) Alcohol	\$ 204
	(e) Other Liquors	\$ 648
	(f) Distilled spirits manufactured from agricultural products grown in the State	\$ 180
2. Restaurant	(a) General	\$ 480
	(b) Beer & Wine	\$ 180
	(c) Beer	\$ 120
3. Wholesale Dealer	(a) General	\$ 1,200
	(b) Beer & Wine	\$ 324
	(c) Alcohol	\$ 18
4. Retail Dealer	(a) General	\$ 480
	(b) Beer & Wine	\$ 180
	(c) Alcohol	\$ 18
5. Dispenser	(a) General	\$ 480
	(b) Beer & Wine	\$ 180
	(c) Beer	\$ 120
6. Club		\$ 240
7. Transient Vessel, per day		\$ 33
Transient Vessel, per year		\$ 900
8. Tour or Cruise Vessel		\$ 240
9. Special, per day	(a) General	\$ 33
	(b) Beer & Wine	\$ 24
	(c) Beer	\$ 16
10. Cabaret		\$ 600
11. Hotel		\$ 900
12. Caterer		\$ 120
13. Brewpub		\$ 900
14. Condominium Hotel		\$ 900
15. Winery		\$ 900
16. Small Craft Producer Pub		\$ 900

The fee for a temporary license of any class and kind shall be sixty dollars (\$60.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional sixty dollars (\$60.00) for a renewal of not more than sixty days of the license.

Rule 4.2. Fees for solicitors' and representatives' permits. The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

Rule 4.3. Special license sales report. Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the license.

Rule 4.4. Percentage Fee. Licensees in Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Fee}$$

EE = Estimated Expenditures (current fiscal year)
BF = Basic Fees (current fiscal year)
C = Carryover (excess fees from prior fiscal year)
TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall ~~file~~submit with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed and/or electronically delivered to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

Rule 4.5. License Fees; When Due; How Received. (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term shall be forfeited.

Rule 4.6. Payment of fees upon transfer of license. (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales and payment of its percentage fees due. The past fiscal year's percentage figure shall be used to calculate the percentage fee owed by the transferor. The transferor shall be notified of the percentage fee due and the transfer shall not be completed until the percentage fee is paid.

(b) Final report and percentage by transferee; when. If the transferor fails to submit a final report of gross liquor sales and/or fails to pay the percentage fees upon transfer of such a license, the transferee shall be responsible for any percentage fee based on the total gross liquor sales for the entire term for which the license was exercised by the transferor.

Rule 4.7. Gross liquor sales report, percentage fee, and records. (a) Filing. Licensees holding Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall file, on a form provided by the Department, a report showing the true and accurate gross sales of liquor including complimentary liquor as defined in Rule 1 for the license year.

Gross sales of liquor under a temporary license shall be included as part of the transferee's or new licensee's gross sales report for the fiscal year.

Reports shall be completed and filed with the department as follows:

(1) On or before July 31, a final gross sales report for that license year.

(2) Within 30 days of the closing of business or cancellation or revocation of the license, a final gross sales report.

(3) At such other time as the Commission or Director may direct.

For purposes of this rule, reports postmarked on the due date shall be acceptable. Where the due date falls on a holiday or weekend, the report shall be delivered to the office of the Department on the first working day thereafter.

(b) Percentage fee due; when. The percentage fee based on gross sales of liquor shall be due and payable in full on ~~September 30~~ October 30.

In case of revocation or cancellation of such license, the percentage fee chargeable against such license shall be the past fiscal year's percentage figure and the percentage fee due shall become due and payable within 30 days from the date of the Notice of Percentage Fee Due.

Any licensee who fails to pay its percentage fee on the due date may be issued a notice of violation for every day payment has not been made and be subject to penalties as stated in Section 281-91, Hawaii Revised Statutes.

(c) Percentage fee amount due; when. All licensees required to pay an annual percentage fee as prescribed in rule 4.4 shall be mailed and/or electronically submitted when a Notice of Percentage Fee Due stating the amount due to the department by the due date.

Any licensee whose annual percentage fee exceeds \$5,000 may pay to the department either in full or in two equal payments with the first payment being due no later than September 30 and the final payment being due no later than January 31 of the same fiscal year.

(d) Records and accounts. All licensees shall keep, within the State of Hawaii, a set of books or records, which show all income, purchases and expenses of the liquor licensed business for a period of three years. These books and records, including but not limited to daily sales records, employee time sheets, and invoices, shall be made available for inspection and/or auditing by the department within forty-eight (48) hours from the time the licensee is notified by the department.

Rule 4.8 Failure to Submit Accurate Gross Liquor Sales Reports:

Licensees shall maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to Rule 4.4(a). Failure to submit an accurate gross liquor sales report may subject the licensee to the penalty set forth in Section 281-91, Hawaii Revised Statutes.

Rule 4.8.5 Trade Name; Change; Fee: A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of \$45.00 shall be assessed by the Commission for any change of existing trade name.

Rule 4.9 Payment for Under Reporting Gross Liquor Sales. Any licensee who is determined by the Director to have under-reported gross liquor sales may be issued a notice of violation.

Rule 4.10 Fines Collected From Penalties Assessed. The Director, with the Commission approval, shall be authorized to designate a portion of the fines collected for use in programs to promote compliance with liquor laws, business development, and improvement of interagency and interoffice functions. Such programs may include, but are not limited to, grant assistance programs, enforcement, public service announcements promoting responsible drinking and driving, youth programs, education, and liquor control administrative meetings.

RULE 5 **TERM OF LICENSE AND PERMIT**

Rule 5.1. Terms of licenses and permits. (a) Every license issued, except classes 8 and 10 and temporary licenses, shall expire at 12:00 midnight on June 30 next succeeding its issue.

(b) Transient vessel, special, temporary licenses, and solicitors' and representatives' permits shall expire at 12:00 midnight on the expiration day of the licenses.

(c) All liquor licenses not exercised within one hundred eighty (180) days of approval by the commission shall, become void. Applications approved prior to January 1, 2020 will be exempt from this rule.

(d) A licensee who applies for a license to change its class or category of license shall exercise the new license within seven (7) days of approval by the commission or it will become void.

RULE 6
HOURS OF BUSINESS

Rule 6.1. Hours during which licensed premises may be open for transaction of business are as follows:

(a) Dispenser, restaurant, club, tour or cruise vessel: Every day from 6:00 a.m. to 2:00 a.m. the following day. For Restaurant class from 6:00 a.m. to 11:00 p.m. for retailing of "growlers".

(b) Cabaret, hotel, transient vessel, and condominium hotel: Every day from 6:00 a.m. to 4:00 a.m. the following day. Exception: Cabaret in a location zoned other than resort shall be from 6:00 a.m. to 2:00 a.m. the following day.

(c) Retail dealers: Every day from 6:00 a.m. to 11:00 p.m.

(d) Wholesale dealers and manufacturers: Every day from 6:00 a.m. to 11:00 p.m.

(e) Caterer: Every day from 6:00 a.m. to 12:00 midnight.

(f) Special Dispenser: From 6:00 a.m. to 12:00 midnight.

(g) Free One-Day Special Retail Dealer: From 6:00 a.m. to 11:00 p.m.

(h) Free One-Day Special Dispenser: From 6:00 a.m. to 12:00 midnight.

(i) Brewpub: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

(j) Winery: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

(k) Small Craft: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

Rule 6.2. Sales, service, or consumption before or after hours of business, exception. There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after hours established by the commission, ~~except that employees who were on duty at the legal closing time in on premises establishments may consume liquor immediately after closing with the permission of the licensee, and at no cost, if no other person is in the liquor service area of the premises.~~

RULE 7
RELATING TO ON PREMISES ESTABLISHMENTS

Rule 7.1. Number of drinks per person and liquor content of drinks, exception.

a. Distilled spirits containing no mixes shall be limited to not more than two ounces per person at one time.

A pitcher of beer or mixed drink containing distilled spirit, not to exceed 64 ounces, may be served to no less than two or more persons when seated together.

Distilled spirits may be served from its original package of up to 1 liter in capacity for any special occasion upon obtaining a permit from the director.

A bottle of wine, not to exceed 750 milliliters, may be served to one person at one time with a meal as it applies to a hotel, restaurant, club, cabaret, condominium hotel, brewpub, and dispenser class licensee engaged in meal service as provided for in section 281-31 (u) of the Hawaii Revised Statutes. The law allows for a patron to remove from the licensed premises any portion of wine, liquor, or beer that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. A licensee wishing to exercise this privilege shall inform the customer of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes.

(b) A drink consisting of one or more kinds of liquor and water or any other mix which is served, sold, or offered for sale by any on premises licensee, or prepared for such purpose, shall contain not less than one fluid ounce of liquor; except when selling a specialty drink which requires less than one ounce of liquor; in which case the licensee shall present to the patron a recipe or have in plain view of the patron ordering the drink a menu which specifies the amount of liquor in the drink.

When liquor is poured into a service glass by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mix or water has not been added.

(c) A straight drink shall have not less than one fluid ounce of liquor.

Rule 7.2. Sanitary conditions. (a) All licensed premises, including all furnishings, equipment, and paraphernalia within the premises, shall be kept in a strictly clean and sanitary condition, and all drinking glasses must be un-cracked and effectively sterilized.

(b) All on premises establishments shall have access to adequate toilet facilities, which have been approved by the Department of Public Works-Building Division. Special license establishments shall have toilet facilities as may be required by the commission.

Rule 7.3. Draught beer. Draught beer sold or served shall be freshly drawn. The selling and serving of stale or slop beer is prohibited.

Rule 7.4. Condition of premises. (a) The main entrance of an on premises establishment must be kept unlocked whenever there is any non-employee or any employee who was not on duty at the closing time in the premises.

(b) Entrance to booths must be open and unobstructed.

(c) Lighting in all parts of the licensed premises shall be sufficient to make easily discernible the appearance and conduct of all persons in the premises and the main entrance of licensed premises shall be well and properly lighted.

(d) All interior rooms or enclosed areas in a Restaurant, Dispenser, Brewpub, Winery, Small Craft Producer Pub or Cabaret licensed premises where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. Tinted windows are prohibited.

(e) No licensee that is authorized for on-premise consumption shall have an opening, transparent window or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.

(f) An on premises establishment shall be constructed in such a way that the sound from the licensed premises shall not disturb the nearby residents with unreasonable noise in excess of the following noise levels in decibels (dBA) for more than ten percent of the time within any 20-minute period at the boundary line of the complainant's property which is closest to the licensed premises. For this purpose, any sound having duration of less than one second shall be deemed to last one second.

<u>Zoning Districts</u>	<u>7 a.m. to 10 p.m.</u>	<u>10 p.m. to 7 a.m. the following day</u>
Residential (R-1 to R-6)	55 dBA	45 dBA
Open (O)	55 dBA	45 dBA
Residential (R10 & R20)	60 dBA	50 dBA
Resort (RR10 & RR20)	60 dBA	50 dBA
Commercial (Neighborhood and General)	60 dBA	50 dBA

Agricultural	70 dBA	70 dBA
Industrial (Limited and General)	70 dBA	70 dBA

Where the allowable noise level between two adjacent zoning districts differ, the lower allowable noise level shall be used. This rule shall be enforced if a complaint of noise from the premises is received by the department from any resident or property owner with rental units within the area.

Rule 7.5. Music, dancing, and entertainment, exception. (a) In any on premises establishment, radios, television sets, jukeboxes, and any other system of providing recorded background music in the premises may be installed and operated without commission approval, provided that the sound does not disturb the neighborhood. Programs that are not offensive to common propriety and programs that are rated G or PG may be shown within the premises.

(b) Impromptu entertainment which is unpaid and unscheduled entertainment by a person who is not less than eighteen years of age is permitted without commission approval if said entertainment is not offensive to common propriety and the sound does not disturb the neighborhood.

(c) Any and all games and other forms of entertainment provided by management, such as music, shows, and game machines are prohibited except where and when specifically permitted by the commission in writing.

(d) A standard bar or a dispenser, category (C) or a restaurant, category (2) without dancing premises that wishes to have dancing in its premises as part of its normal operations shall be subject to Section 281-51 to 281-60 of the Hawaii Revised Statutes.

(e) In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than one hundred fifty (150) square feet suitable for ballroom dancing. The designated area may be utilized for other purposes when not used for dancing. However, when used for dancing, the designated area must be totally cleared of all obstructions and utilized only for dancing.

(f) Dancing by customers is permitted only on a designated dance floor approved by the Commission. Licensees shall not allow any form of lap dancing by customers or its employees.

(g) Paragraph (c) above to the contrary notwithstanding, no permit shall be required by a hotel or condominium hotel licensee for live entertainment, games, movies, etc., if the entertainment, games, movies, etc., are not offensive to common propriety.

Rule 7.6. Repealed.

Rule 7.7. Clearing of tables at closing time. Any and all vessels containing liquor shall be removed from all areas of the licensed premises which is open to the public no later than the legal closing time for liquor sales, except as permitted by Rule 6.2.

Rule 7.8. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age must be in active charge of any on premises establishment ~~[at all times when there is anyone who is not an employee in the premises]~~ during the time the establishment is open for business and licensed to sell or serve liquor.

(b) To become eligible for approval as a manager, the applicant shall take a ~~written or oral~~ test covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of ~~eighty-five percent (85%)~~ eighty-six percent (86%) or more correct. Upon successful completion of the test~~;~~ and presentation of proper identification showing the applicant's date of birth[;], [and commission review of eligibility and approval;] the applicant shall be issued a manager blue card. Any blue card issued shall be valid for a period of ~~[five]~~ four years from the date of issuance. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

(c) A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager's test.

(d) An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test.

(e) A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.

(f) A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule.

Rule 7.9. Manager registration. (a) The manager on duty is strictly accountable for the conduct of all employees, including other management personnel, and for the sales of liquor in the licensed premises.

(b) An on premises licensee shall notify the commission of the employment of a manager prior to his employment by submitting a notice of employment of such person to the department. A manager must have a valid blue card prior to his employment as manager.

(c) The commission may require the licensee to suspend or terminate the employment of any employee for good and sufficient reason. Good and sufficient reason shall include but not be limited to conviction for an offense against the public health and morals as set out in the Hawaii Penal Code.

Rule 7.10. Bar employee records. An on premises licensee shall have available at all times in the licensed premises a current record showing all bar employees, including management personnel, who are on duty.

Rule 7.11. Employees drinking on duty and entertaining patrons prohibited. In an on premises establishment, no employee, while on duty and within the premises, shall consume liquor or sit or dance with or play games with patrons. This restriction shall not apply to the overall manager who is in active charge of the premises if he does not work at selling or serving liquor.

For the purpose of this rule, "while on duty" shall mean from the time an employee starts work on any day until the employee is through for that day. It shall include any time during a split shift, a meal break and a rest break.

Rule 7.12. A person below the age of eighteen years in an on premises establishment prohibited, exceptions. (a) A person below the age of eighteen years is not permitted in an on premises establishment where liquor sales account for seventy-five percent (75%) or more of the total revenues of the establishment, excluding revenues from coin operated machines and logo items or when there is a show or televised program that exposes to view the female breast below the top of the areole, or a strip tease show, or a show that is offensive to common propriety.

The revenue figures for the immediate past calendar month shall be used to determine if a licensed premises is qualified to have persons below the age of eighteen years in its premises. A new licensee or a licensee who changes its operation to include sales of other merchandise shall be automatically qualified to permit persons below the age of eighteen years in its premises during its first month of operation.

(b) A minor below the age of 18 years shall not be permitted in any area of any licensed premises where liquor is served after 12 o'clock midnight. This paragraph shall not apply to such minor who is attending a private party with a parent or a guardian.

(c) The commission may exempt any licensee from this rule upon application and review of a proposed special event.

Rule 7.13. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in their licensed premises. The report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.

The report shall include the name of the licensee and business, the date and time of the incident, the location of the incident, the name(s) of person(s) involved, the condition of those involved, the details of the incident and action taken by the licensee

to prevent or suppress the occurrence. The report shall be signed by the licensee or its authorized agent.

For the purpose of this rule, the word "disturbance" shall mean any incident of ~~[quarrelsome behavior that causes the licensee, his employees, or police officers to evict a person from the premises or to request a person to leave the premises.]~~ whenever law enforcement or emergency medical services personnel are called to the licensed premises, or when a breach of the peace is created at the premises by a person. Also for the purpose of this rule, the word "fight" shall mean a physical confrontation.

For the purpose of this rule, "breach of the peace" shall means any act in violation of HRS 711-1101 DISORDERLY CONDUCT.

Rule 7.14. Review by patron of charge slip for liquor purchased. Any on premises licensee who does not collect payment for each drink as it is served shall upon request, inform the patron the amount owing each time liquor is served.

Rule 7.15. Practices that promote excessive consumption of liquor prohibited. (a) ~~[Licensees shall use good judgment in serving liquor to patrons to prevent excessive consumption of liquor by patrons.]~~ No licensee shall promote the excessing consumption of liquor, sell, or offer to sell any liquor to any person who appears to be intoxicated.

(b) No alcoholic beverage shall be sold unless the consuming patron consents to accept said beverage prior to service.

(c) No licensee shall sell to any person an unlimited quantity of liquor during any set period of time for a fixed price. ~~[This paragraph shall not apply to private functions for which a hosted bar is utilized such as a wedding receptions, or public functions such as luaus and brunches where liquor is inclusive, or other similar events where liquor service is incidental to food service.]~~

(d) Before serving liquor in an on-premises establishment the licensee shall have received a bona fide and specific order before preparing and serving the order from its service bar.

(e) No licensee shall encourage or permit any game or contest that involves the consumption of liquor or the awarding of liquor as a prize.

Rule 7.16 Drugs and Other Illegal Activities. (a) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises of any on-premises establishment by any person is prohibited.

(b) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 7.17 Improper Influence. (a) Any licensee, employee of a licensee or its agent who shall give, pay, or offer, directly or indirectly, any pecuniary benefit to any Liquor Department investigator or staff member, with intent to influence the investigator or staff member in the discharge of any duty herein provided for, shall be guilty of a violation.

RULE 8 **RELATING TO CABARET, HOTEL AND CONDOMINIUM HOTEL LICENSEES**

Rule 8.1. Minimum requirements of cabaret license. (a) A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. A cabaret establishment shall have an adequate kitchen facility where hot meals are prepared and available to patrons from the time the premises is open for business to midnight unless the premises closes before midnight. A dance floor of not less than one hundred fifty (150) square feet suitable for dancing and clearly designated for such purpose or professional entertainment shall be provided for the benefit of the patrons.

(b) No cabaret licensed premises shall remain open after 2:00 a.m. without dancing or professional entertainment being provided. The commission reserves the right to regulate and control professional entertainment in cabarets. The licensee will be strictly accountable for the conduct of all entertainers in the licensed premises.

Rule 8.2. Cabaret license not issued, when. No application for a new cabaret license which is to be located in an area which is not a resort zoned area shall be approved if there is any residential property located within 500 feet of the proposed premises.

Rule 8.3. Minimum requirements of hotel license. (a) Minimum requirements for hotel license shall be an establishment consisting of one or more buildings which contain (1) at least forty rooms in which sleeping accommodations are provided and offered for adequate pay to transients or timeshare ownerships.

(b) A hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.4. Minimum requirements of condominium hotel license. (a)

Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS Sec. 281-1, containing: at least forty condominium hotel guest rooms. Room service, self-service, and service at private parties within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee shall notify the Liquor Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

(e) A condominium hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.5. Strip shows, exotic dancers. Rule 3.7 to the contrary notwithstanding, cabaret and hotel licensed premises may allow scheduled entertainers whose breasts and/or buttocks are exposed to view to perform, if they perform on a stage that is not less than twelve inches above the immediate floor level and not less than six feet from the nearest patron, but at no time under any circumstances shall an entertainer expose their genitals, pubic hair, or anus, or perform or simulate sexual acts in the licensed premises. A tip of money or other gifts on the performer's person during the performance while in such attire that exposes to view the female breast below the top of the areole and/or performer's buttocks is prohibited. The licensee shall submit the names of all entertainers who are to perform to the department not less than twenty-four hours prior to their performance and the performers shall be 18 years of age or older. The licensee shall not permit any nude impromptu entertainment under this rule.

Rule 8.6. Mini bars in guest rooms and room service. A hotel or a condominium hotel licensed premises shall be restricted from selling liquor in its original

package except via mini bars installed in guest rooms and room service. Said service shall be initiated at the request of an occupant twenty-one years of age or older.

Rule 8.7. Recognizable security person. (a) Every cabaret and hotel licensee shall have recognizable security personnel within the premises to prevent anyone from selling, distributing, or using illegal drugs within the premises where liquor is being sold during the time the premises is open for business after 2:00 a.m.

(b) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(c) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 8.8. Change of Hotel or Cabaret license. Any hotel class or cabaret class license failing to meet the minimum requirements of a hotel class or cabaret class license, respectively, may be reclassified by the commission to a dispenser or restaurant class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 9 **RELATING TO THE CLUB LICENSE**

Rule 9.1. Membership list of club. Each licensed club shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.

Rule 9.2. Guest-card privileges of club. Any individual enjoying guest-card privileges of a club and to whom liquors may be sold must be a bona fide guest of the club. Each club shall keep records as to registration of all such bona fide guests, which records shall be produced whenever required by the commission, or by any member thereof, or by any investigator. Guest-card privileges extended to such guest shall be limited, in each case, to not more than four weeks within any twelve consecutive months.

RULE 10 **RELATING TO MANUFACTURERS, WHOLESALERS, AND RETAILERS**

Rule 10.1. Retail dealer licensed premises. (a) If the retail dealer licensed premises remains open to the public during the hours when the sale of liquor is prohibited, the licensee shall post conspicuous signs about all areas displaying liquor giving notice that the sale of liquor is prohibited.

(b) An off premises licensee shall have available at all times in the licensed premises a current record showing all employees, including management personnel, who are on duty.

(c) Drive-in retail sale is prohibited. Customers making a purchase at a retail dealer's premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift or carry purchases of liquor because of a disability.

(d) A Retail Dealer licensee may make deliveries of liquor to private residences or businesses with a bona fide order from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point.

Rule 10.2. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age must be in active charge of any off premise establishment at all times that liquor can be legally sold.

(b) To become eligible for approval as a manager, the applicant shall take a [~~written or oral~~] test covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of ~~eighty-five percent (85%)~~ eighty-six percent (86%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a red card. Any red card issued shall be valid for a period of [~~five years~~] four years from the date of issuance and shall be in the employee's possession or be readily available on the premises for inspection at all times, [~~while on duty~~] when the employee is on duty. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

(c) A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager's test.

(d) An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test.

(e) A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.

(f) A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule.

Rule 10.3. Manager registration. (a) An off premises licensee shall notify the commission of the employment of a manager prior to employing the individual by submitting a notice of employment of such person to the department. A manager must

have a valid red card prior to employment as a manager

Rule 10.4. Prohibition against peddling, exception. Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing liquor from licensed premises for delivery to a customer under a manufacturer's or wholesale or retail dealer's license, the licensee must have received a bona fide and specific order therefore. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefore, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquor at retail in their original package or dispense liquor for consumption on the premises.

Rule 10.5. Record keeping by wholesalers. All wholesale dealers shall keep a separate and distinct book account, wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made and the quantity of liquor sold to each licensee, and shall, upon the specific request therefore, submit to the commission a list of such sales data as may be required from time to time.

Rule 10.6 Manufacture, Wholesale or Retail Dealer licensee; Free One-Day Special license, exception. (a) The rules of the commission do not prohibit a manufacturer, wholesaler or retail dealer licensee from giving financial or other forms of event sponsorship assistance to any bona fide nonprofit organization owning and exercising a Free One-Day Special license issued by this department for purposes of charitable fundraising.

(b) An industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the site of the special licensed premises, and may assist in the connection and maintenance of the draft kegs and its tapping accessories, but may not assist the licensee in the selling, serving, or furnishing of liquor to patrons.

RULE 11 **RELATING TO RESTAURANT LICENSE**

Rule 11.1. Minimum requirements for a restaurant license. A restaurant license may be issued to an establishment which is regularly used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenues must derive from the sale of foods.

Rule 11.2. Catering privilege. A restaurant licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor authorized by its license while performing food catering functions, subject to Rules 12.2. to 12.4.

Rule 11.3. Categories of license. A restaurant license shall be either category A or category B, a premises in which live entertainment or recorded music is provided. A category B premises shall be further described as a premises with dancing or a premises without dancing. A licensee who wishes to change from one category to a different category will be required to apply for a new license.

Rule 11.4. Change to a restaurant license. (a) A license of a different class, which qualifies for a restaurant class license, may be issued a restaurant, category A or B license by the commission. The category assigned will be according to the permitted activities of the license to be changed.

(b) Any restaurant class license failing to meet the minimum requirements of a restaurant class license may be reclassified by the commission to a dispenser class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 12 **RELATING TO CATERER LICENSE**

Rule 12.1. Minimum requirements for a caterer license. A general license may be issued to any applicant operating a kitchen facility where food is prepared for the sale of liquor while performing food catering functions off of the licensed premises subject to rule 12.2 to 12.4.

Rule 12.2. Notification of catering function. The licensee shall notify the department of all catering functions that will be held away from the licensee's premises at least five days prior to the function on the form provided by the department. The notification shall include a written statement from the owner or representative of the property giving the applicant permission to sell liquor for consumption on its property.

Rule 12.3. Location of catering function, restrictions. (a) The commission may deny the use of any specific location for catering functions for good cause as stated in paragraph (c) below.

(b) The licensee may provide catering service to any location if the property owner is not compensated for the use of the property and there is no charge to anyone to attend the function.

(c) If the property owner of the location for the catering event is compensated for the use of the property or if the caterer is the property owner, the property owner shall acknowledge that the property is properly zoned or be a government facility where liquor may be sold. The property may be used for catering functions provided the department does not receive any complaints, such as noise, dust, traffic, parking, etc., as the result of the catered function.

Rule 12.4. No host bar prohibited. The caterer shall not at any catered function which is held away from its licensed premises open or operate a no host bar. A no host bar means a bar where each person who orders a drink is charged for the drink.

RULE 13
SEVERABILITY

Rule 13.1. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.

IV. New Business – Before Public Hearing

B. Discussion and Action on Proposed Amendments to the Board of Water Supply Rules and Regulations Chapter I, Water and Water System Requirements for Developments, Section 1-102 Water System Facilities Charges; and Chapter II, Water Service to Consumers, Section 2-202 Installation of Water Service, promulgated by the Board of Water Supply, City and County of Honolulu

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

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: Water System Facilities Charges, Chapter 1; Installation of Water Service, Chapter 2.

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.

The Board of Water Supply is considering adopting updates to its Water Systems Facilities Charges.

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: Proceeding with seeking public input on proposed changes was authorized by BWS Board on June 28, 2021 and HRS 46-141 -- Impact Fees.. Notice and meeting minutes available at: https://www.boardofwatersupply.com/getattachment/52eb0c60-eadd-4228-8a3e-734e899d8c39/board-meeting-minutes-2021-06-28.pdf.aspx

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.)

* * *

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

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

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



October 7, 2021

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
KAPUA SPROAT, Vice Chair
RAY C. SOON
MAX J. SWORN
NA'ALEHU ANTHONY

JADE T. BUTAY, Ex-Officio
ROGER BABCOCK, Jr., Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer

Mr. Robert Cundiff, Chair
Small Business Regulatory Review Board
No. 1 Capitol District Building
Honolulu, Hawaii 96813

Dear Mr. Cundiff:

Subject: Request for Pre-Public Hearing before the Small Business
Regulatory Review Board

The Board of Water Supply (BWS) is requesting a pre-public hearing to present a small business impact statement to the Small Business Regulatory Review Board (SBRRB) at the next meeting scheduled for Thursday, October 21, 2021, at 10:00 a.m. Enclosed is the small business impact statement with relevant materials for your prior review.

The BWS is a semi-autonomous and self-supporting agency authorized by the City Charter, section 46-141, Hawaii Revised Statutes (HRS) and chapter 54, HRS, respectively. The BWS is administratively attached to the City and County of Honolulu and does not receive funds from property taxes, so the cost of water service and supplies are recovered through water rates and impact fees. The BWS is statutorily authorized to fix and adjust rates and charges for the furnishing of water and for water service. Currently, the BWS is undergoing a process to update and adopt new water system facility charges (WSFC) or otherwise known as "impact fees". This is a one-time charge that is imposed upon a developer to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected and paid prior to issuance of a building permit. The WSFC has not been changed since 1993.

The BWS has engaged a Stakeholder Advisory Group comprised of local residents, civic organization leaders and small business professionals to provide input to the BWS Water Master Plan development and all rate issues since 2015. The most recent meetings with these groups occurred on September 1, 8, 9, 2021. All input is being provided to the BWS Board for their consideration during a public hearing prior to adoption of any changes. The BWS will post a public notice before holding a public hearing to address the proposed rates and charges to be considered.

Mr. Robert Cundiff, Chair
Small Business Regulatory Review Board
October 7, 2021
Page 2

If you have any questions, please contact Kathy Mitchell, Administrative Services Officer at 748-5321.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ernest Y. W. Lau', with a stylized flourish at the end.

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

Attachments

~~Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service~~

City and County of Honolulu, Board of Water Supply

~~Water System Facilities Charges per Fixture Unit (F.U.)~~

Residential Minimum 20 F.U.	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>Single Family Residential</u>						
Resource Development	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84
Transmission	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87
Daily Storage	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42
Total	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33
<u>Multi-Family – Low-Rise</u>						
Resource Development	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14
Transmission	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46
Daily Storage	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67
Total	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27
<u>Multi-Family – High-Rise</u>						
Resource Development	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14
Transmission	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73
Daily Storage	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25
Total	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12
<u>Non-Residential (Commercial, Industrial, Hotel, Parks and Schools) Minimum 20 F.U.</u>						
<u><50 F.U.</u>						
Resource Development	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74
Transmission	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65
Daily Storage	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46
Total	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85
<u>>50 F.U.</u>						
Resource Development	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15
Transmission	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04
Daily Storage	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10
Total	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29

Agricultural (By Meter Size)	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>5/8 " Meter</u>						
Resource	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08
Development						
Transmission	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64
Daily Storage	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86
Total	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58
<u>3/4 " Meter</u>						
Resource	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05
Development						
Transmission	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35
Daily Storage	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04
Total	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44
<u>1 " Meter</u>						
Resource	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68
Development						
Transmission	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38
Daily Storage	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65
Total	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71
<u>1-1/2 " Meter</u>						
Resource	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55
Development						
Transmission	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34
Daily Storage	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86
Total	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26
<u>2 " Meter</u>						
Resource	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53
Development						
Transmission	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81
Daily Storage	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26
Total	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60

Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service

Proposed effective date: July 1, 2022-June 30, 2027

City and County of Honolulu, Board of Water Supply Water System Facilities Charges per Fixture Unit (F.U.)

<u>Residential</u> <u>Minimum 20 F.U.</u>	<u>July 1,</u> <u>2022</u>	<u>July 1,</u> <u>2023</u>	<u>July 1,</u> <u>2024</u>	<u>July 1,</u> <u>2025</u>	<u>July 1,</u> <u>2026</u>
<u>Single Family Residential</u>					
<u>Resource Development</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>
<u>Transmission</u>	<u>71.17</u>	<u>80.90</u>	<u>91.11</u>	<u>96.02</u>	<u>96.02</u>
<u>Daily Storage</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>
<u>Total</u>	<u>194.60</u>	<u>204.33</u>	<u>214.54</u>	<u>219.45</u>	<u>219.45</u>
<u>Multi-Family – Low-Rise</u>					
<u>Resource Development</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>
<u>Transmission</u>	<u>114.04</u>	<u>118.17</u>	<u>118.17</u>	<u>118.17</u>	<u>118.17</u>
<u>Daily Storage</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>
<u>Total</u>	<u>284.83</u>	<u>288.96</u>	<u>288.96</u>	<u>288.96</u>	<u>288.96</u>
<u>Multi-Family – High-Rise</u>					
<u>Resource Development</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>
<u>Transmission</u>	<u>84.32</u>	<u>89.96</u>	<u>89.96</u>	<u>89.96</u>	<u>89.96</u>
<u>Daily Storage</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>
<u>Total</u>	<u>214.33</u>	<u>219.97</u>	<u>219.97</u>	<u>219.97</u>	<u>219.97</u>

<u>Non-Residential</u> <u>(Commercial, Industrial,</u> <u>Hotel, Parks and</u> <u>Schools)</u> <u>Minimum 20 F.U.</u>	<u>July 1,</u> <u>2022</u>	<u>July 1,</u> <u>2023</u>	<u>July 1,</u> <u>2024</u>	<u>July 1,</u> <u>2025</u>	<u>July 1,</u> <u>2026</u>
<u>Resource Development</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>
<u>Transmission</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>
<u>Daily Storage</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>
<u>Total</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>
<u>Increase Limit Factor*</u>	<u>1.0500</u>	<u>1.1025</u>	<u>1.1576</u>	<u>1.2155</u>	<u>1.2763</u>

* If the number of Fixture Units is greater than 133, the increase in the product of Fixture Units x Total shall not exceed the product of Increase Limit Factor x (\$31,042.50 + ((Fixture Units – 50) x \$220.29)).

Example for 50 Fixture Units: WSFC = 50 x \$370.74 = \$18,537.00

Example for 200 Fixture Units, July 1, 2022: WSFC = 200 x \$370.74 = \$74,148.00. Increase Limit = 1.0500 x (\$31,042.50 + ((200-50) x \$220.29)) = \$67,290.30. Amount due = \$67,290.30

Agricultural (By Meter Size)	July 1, 2022	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026
3/4 " Meter					
<u>Resource Development</u>	<u>3,169.16</u>	<u>3,486.07</u>	<u>3,834.68</u>	<u>4,218.15</u>	<u>4,639.96</u>
<u>Transmission</u>	<u>1,499.69</u>	<u>1,649.65</u>	<u>1,814.62</u>	<u>1,996.08</u>	<u>2,195.69</u>
<u>Daily Storage</u>	<u>2,669.74</u>	<u>2,936.72</u>	<u>3,230.39</u>	<u>3,553.43</u>	<u>3,908.77</u>
<u>Total</u>	<u>7,338.58</u>	<u>8,072.44</u>	<u>8,879.69</u>	<u>9,767.66</u>	<u>10,744.42</u>
1 " Meter					
<u>Resource Development</u>	<u>5,193.85</u>	<u>5,713.23</u>	<u>6,284.56</u>	<u>6,913.01</u>	<u>7,604.31</u>
<u>Transmission</u>	<u>2,457.82</u>	<u>2,703.60</u>	<u>2,973.96</u>	<u>3,271.36</u>	<u>3,598.49</u>
<u>Daily Storage</u>	<u>4,375.42</u>	<u>4,812.96</u>	<u>5,294.25</u>	<u>5,823.68</u>	<u>6,406.05</u>
<u>Total</u>	<u>12,027.08</u>	<u>13,229.79</u>	<u>14,552.77</u>	<u>16,008.04</u>	<u>17,608.85</u>
1-1/2 " Meter					
<u>Resource Development</u>	<u>14,085.01</u>	<u>15,493.51</u>	<u>16,251.00</u>	<u>16,251.00</u>	<u>16,251.00</u>
<u>Transmission</u>	<u>6,665.27</u>	<u>7,331.80</u>	<u>9,475.00</u>	<u>13,420.00</u>	<u>17,761.00</u>
<u>Daily Storage</u>	<u>11,865.55</u>	<u>13,052.10</u>	<u>13,739.00</u>	<u>13,739.00</u>	<u>13,739.00</u>
<u>Total</u>	<u>32,615.83</u>	<u>35,877.41</u>	<u>39,465.00</u>	<u>43,410.00</u>	<u>47,751.00</u>
2 " Meter					
<u>Resource Development</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>
<u>Transmission</u>	<u>23,185.00</u>	<u>30,320.00</u>	<u>35,905.20</u>	<u>35,905.20</u>	<u>35,905.20</u>
<u>Daily Storage</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>
<u>Total</u>	<u>71,352.40</u>	<u>78,487.40</u>	<u>84,072.60</u>	<u>84,072.60</u>	<u>84,072.60</u>

Board of Water Supply
City and County of Honolulu
REVISION TO THE SCHEDULE OF RATES AND CHARGES
FOR THE FURNISHING OF WATER AND WATER SERVICE
Amended by Resolution No. 719, 2001, effective July 1, 2007
Proposed effective date July 1, 2022 – June 30, 2027

WATER SYSTEM FACILITIES CHARGES

Water system facilities charges shall be levied against all new developments requiring water supplies from the Board of Water Supply's system or additional water supplies from existing water services excepting those where the developer installs at their cost, a complete water system including source and transmission, and daily storage facilities. Developers shall pay the water system facilities charges before water services are made available to the developments.

A one-time charge will be assessed for each application for new service, based on the size of the fire meter.

Water system facilities charges shall be levied for:

- a. All additional fixture units. Credit will be given for the fixture units removed based upon applicable use categories.
- b. Additional buildings and/or units to be connected to existing services where additional demands or supplies are indicated. The charges will be based upon all additional fixture units required and upon the established schedule of charges for the respective categories.
- c. Changes in service categories such as from residential to commercial or industrial activities. Water system facilities charge credits may be given to new applicants for installation of ordered-off meters based on categories for which these meters were formerly used, provided that the water services were ordered-off less than five years previously.
- d. All services ordered-off for more than five years.
- e. All irrigation services.

Water system facilities charges will not be levied for the following:

- a. Temporary construction meter services for contractors.
- b. Services used exclusively for fire protection purposes.
- c. Transfer of services.
- d. Order-ons of services where use categories and water demands remain the same, provided that the water services were ordered-off less than five years previously.
- e. Segregation of services. Segregation means the installation of separate meters with no increase in water demand.

The Board of Water Supply may negotiate water system facilities charge agreements other than those established here, if the Board determines that the schedule of charges is inappropriate.

INSTALLATION CHARGE

Installation charges will be levied for the installation of service and/or meter connections. The charges based on the costs of installing service and meter connections shall be determined annually by the Board of Water Supply and shall be available for inspection at its offices. Applicants shall pay the charges before service and/or meter connections are installed.

FIRE PROTECTION RATES

These rates apply to services used exclusively for fire protection purposes, including automatic fire sprinkler services connected to the alarm systems, fire hydrants, and wet standpipes, which

METER SIZE (INCHES)	APPLICATION FOR NEW SERVICE ONE-TIME CHARGE
5/8	\$500
3/4	\$600
1	\$700
1-1/2	\$1,100
2	\$1,700
4	\$5,600
6	\$12,100
8	\$21,100

No charge will be made for water used through these services for fire protection purposes. Water lost through leakage or used for other purposes shall be charged at the Non-Residential Quantity Charge.

DEFINITIONS OF SERVICE CATEGORIES

RESIDENTIAL

SINGLE FAMILY RESIDENTIAL refers to single family and duplex residence with no commercial, agricultural or industrial activity.

MULTI-FAMILY LOW-RISE refers to multi-family residences including apartments, condominiums and townhouses, up to three living stories in height.

MULTI-FAMILY HIGH-RISE refers to multi-family residences including apartments, condominiums and townhouses higher than three living stories.

AGRICULTURE

AGRICULTURE refers to a parcel predominantly devoted to agricultural activities with only one home per parcel.

NON-RESIDENTIAL

COMMERCIAL refers to facilities used primarily for nonresidential or business purposes such as convalescent homes, sanitariums, religious institutions, hospitals, clinics, professional offices, business offices, storage, retail outlets, restaurants, etc.

INDUSTRIAL refers to facilities used in producing, manufacturing and processing of goods and services, etc.

HOTELS: Self-explanatory.

PARKS: Self-explanatory.

SCHOOLS: Self-explanatory.

MIXED is any combination of the above (subject to negotiation).

DRAFT - Option 1

~~Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service~~

City and County of Honolulu, Board of Water Supply

~~Water System Facilities Charges per Fixture Unit (F.U.)~~

Residential Minimum 20 F.U.	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>Single Family Residential</u>						
Resource Development	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84
Transmission	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87
Daily Storage	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42
Total	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33
<u>Multi-Family – Low-Rise</u>						
Resource Development	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14
Transmission	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46
Daily Storage	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67
Total	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27
<u>Multi-Family – High-Rise</u>						
Resource Development	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14
Transmission	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73
Daily Storage	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25
Total	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12
Non-Residential (Commercial, Industrial, Hotel, Parks and Schools) Minimum 20 F.U.	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u><50 F.U.</u>						
Resource Development	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74
Transmission	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65
Daily Storage	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46
Total	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85
<u>>50 F.U.</u>						
Resource Development	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15
Transmission	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04
Daily Storage	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10
Total	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29

Agricultural (By-Meter Size)	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>5/8 " Meter</u>						
Resource	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08
Development						
Transmission	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64
Daily Storage	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86
Total	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58
<u>3/4 " Meter</u>						
Resource	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05
Development						
Transmission	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35
Daily Storage	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04
Total	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44
<u>1 " Meter</u>						
Resource	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68
Development						
Transmission	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38
Daily Storage	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65
Total	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71
<u>1-1/2 " Meter</u>						
Resource	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55
Development						
Transmission	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34
Daily Storage	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86
Total	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26
<u>2 " Meter</u>						
Resource	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53
Development						
Transmission	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81
Daily Storage	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26
Total	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60

Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service

Proposed effective date: July 1, 2022-June 30, 2027

City and County of Honolulu, Board of Water Supply Water System Facilities Charges per Fixture Unit (F.U.)

<u>Residential</u> <u>Minimum 20 F.U.</u>	<u>July 1,</u> <u>2022</u>	<u>July 1,</u> <u>2023</u>	<u>July 1,</u> <u>2024</u>	<u>July 1,</u> <u>2025</u>	<u>July 1,</u> <u>2026</u>
<u>Single Family Residential</u>					
<u>Resource Development</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>
<u>Transmission</u>	<u>68.26</u>	<u>74.83</u>	<u>81.63</u>	<u>88.67</u>	<u>96.02</u>
<u>Daily Storage</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>
<u>Total</u>	<u>191.69</u>	<u>198.26</u>	<u>205.06</u>	<u>212.10</u>	<u>219.45</u>
<u>Multi-Family – Low-Rise</u>					
<u>Resource Development</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>
<u>Transmission</u>	<u>103.93</u>	<u>107.41</u>	<u>110.95</u>	<u>114.53</u>	<u>118.17</u>
<u>Daily Storage</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>
<u>Total</u>	<u>274.72</u>	<u>278.20</u>	<u>281.74</u>	<u>285.32</u>	<u>288.96</u>
<u>Multi-Family – High-Rise</u>					
<u>Resource Development</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>
<u>Transmission</u>	<u>77.17</u>	<u>80.28</u>	<u>83.43</u>	<u>86.64</u>	<u>89.96</u>
<u>Daily Storage</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>
<u>Total</u>	<u>207.18</u>	<u>210.29</u>	<u>213.44</u>	<u>216.65</u>	<u>219.97</u>

<u>Non-Residential</u> <u>(Commercial, Industrial, Hotel,</u> <u>Parks and Schools)</u> <u>Minimum 20 F.U.</u>	<u>July 1,</u> <u>2022</u>	<u>July 1,</u> <u>2023</u>	<u>July 1,</u> <u>2024</u>	<u>July 1,</u> <u>2025</u>	<u>July 1,</u> <u>2026</u>
<u>Resource Development</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>
<u>Transmission</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>
<u>Daily Storage</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>
<u>Total</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>
<u>Increase Limit Factor*</u>	<u>1.1097</u>	<u>1.2314</u>	<u>1.3665</u>	<u>1.5164</u>	<u>none</u>

* If the number of Fixture Units is greater than 133, the increase in the product of Fixture Units x Total shall not exceed the product of Increase Limit Factor x (\$31,042.50 + ((Fixture Units – 50) x \$220.29)).

Example for 50 Fixture Units: WSFC = 50 x \$370.74 = \$18,537.00

Example for 200 Fixture Units, July 1, 2022: WSFC = 200 x \$370.74 = \$74,148.00. Increase Limit = 1.1097 x (\$31,042.50 + ((200-50) x \$220.29)) = \$71,116.23. Amount due = \$71,116.23

Agricultural (By Meter Size)	July 1, 2022	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026
3/4 " Meter					
<u>Resource Development</u>	<u>3053.91</u>	<u>3,237.15</u>	<u>3,431.38</u>	<u>3,637.26</u>	<u>3,855.49</u>
<u>Transmission</u>	<u>1,445.15</u>	<u>1,531.86</u>	<u>1,623.77</u>	<u>1,721.20</u>	<u>1,824.47</u>
<u>Daily Storage</u>	<u>2,572.66</u>	<u>2,727.02</u>	<u>2,890.64</u>	<u>3,064.08</u>	<u>3,247.93</u>
<u>Total</u>	<u>7,071.73</u>	<u>7,496.03</u>	<u>7,945.79</u>	<u>8,422.54</u>	<u>8,927.89</u>
1 " Meter					
<u>Resource Development</u>	<u>5,004.98</u>	<u>5,305.28</u>	<u>5,623.60</u>	<u>5,961.01</u>	<u>6,318.67</u>
<u>Transmission</u>	<u>2,368.44</u>	<u>2,510.55</u>	<u>2,661.18</u>	<u>2,820.85</u>	<u>2,990.10</u>
<u>Daily Storage</u>	<u>4,216.61</u>	<u>4,469.29</u>	<u>4,737.44</u>	<u>5,021.69</u>	<u>5,322.99</u>
<u>Total</u>	<u>11,589.73</u>	<u>12,285.12</u>	<u>13,022.22</u>	<u>13,803.56</u>	<u>14,631.77</u>
1-1/2 " Meter					
<u>Resource Development</u>	<u>13,572.82</u>	<u>14,387.19</u>	<u>15,250.42</u>	<u>16,165.45</u>	<u>17,135.38</u>
<u>Transmission</u>	<u>6,422.90</u>	<u>6,808.27</u>	<u>7,216.77</u>	<u>7,649.78</u>	<u>8,108.76</u>
<u>Daily Storage</u>	<u>11,437.07</u>	<u>12,120.12</u>	<u>12,847.32</u>	<u>13,618.16</u>	<u>14,435.25</u>
<u>Total</u>	<u>31,429.80</u>	<u>33,315.58</u>	<u>35,314.52</u>	<u>37,433.39</u>	<u>39,679.39</u>
2 " Meter					
<u>Resource Development</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>
<u>Transmission</u>	<u>20,590.14</u>	<u>24,715.59</u>	<u>29,088.57</u>	<u>33,273.93</u>	<u>35,905.20</u>
<u>Daily Storage</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>
<u>Total</u>	<u>68,757.54</u>	<u>72,882.99</u>	<u>77,255.97</u>	<u>81,891.33</u>	<u>84,072.60</u>

**Board of Water Supply
City and County of Honolulu
REVISION TO THE SCHEDULE OF RATES AND CHARGES
FOR THE FURNISHING OF WATER AND WATER SERVICE
Amended by Resolution No. 719, 2001, effective July 1, 2007
Proposed effective date July 1, 2022 – June 30, 2027**

WATER SYSTEM FACILITIES CHARGES

Water system facilities charges shall be levied against all new developments requiring water supplies from the Board of Water Supply's system or additional water supplies from existing water services excepting those where the developer installs at their cost, a complete water system including source and transmission, and daily storage facilities. Developers shall pay the water system facilities charges before water services are made available to the developments.

Water system facilities charges shall be levied for:

- a. All additional fixture units. Credit will be given for the fixture units removed based upon applicable use categories.
- b. Additional buildings and/or units to be connected to existing services where additional demands or supplies are indicated. The charges will be based upon all additional fixture units required and upon the established schedule of charges for the respective categories.
- c. Changes in service categories such as from residential to commercial or industrial activities. Water system facilities charge credits may be given to new applicants for installation of ordered-off meters based on categories for which these meters were formerly used, provided that the water services were ordered-off less than five years previously.
- d. All services ordered-off for more than five years.
- e. All irrigation services.

Water system facilities charges will not be levied for the following:

- a. Temporary construction meter services for contractors.
- b. Services used exclusively for fire protection purposes.
- c. Transfer of services.
- d. Order-ons of services where use categories and water demands remain the same, provided that the water services were ordered-off less than five years previously.
- e. Segregation of services. Segregation means the installation of separate meters with no increase in water demand.

The Board of Water Supply may negotiate water system facilities charge agreements other than those established here, if the Board determines that the schedule of charges is inappropriate.

INSTALLATION CHARGE

Installation charges will be levied for the installation of service and/or meter connections. The charges based on the costs of installing service and meter connections shall be determined annually by the Board of Water Supply and shall be available for inspection at its offices. Applicants shall pay the charges before service and/or meter connections are installed.

FIRE PROTECTION RATES

These rates apply to services used exclusively for fire protection purposes, including automatic fire sprinkler services connected to the alarm systems, fire hydrants, and wet standpipes, which

A one-time charge will be assessed for each application for new service, based on the size of the fire meter.

METER SIZE (INCHES)	APPLICATION FOR NEW SERVICE ONE-TIME CHARGE
5/8	\$500
3/4	\$600
1	\$700
1-1/2	\$1,100
2	\$1,700
4	\$5,600
6	\$12,100
8	\$21,100

No charge will be made for water used through these services for fire protection purposes. Water lost through leakage or used for other purposes shall be charged at the Non-Residential Quantity Charge.

DEFINITIONS OF SERVICE CATEGORIES

RESIDENTIAL

SINGLE FAMILY RESIDENTIAL refers to single family and duplex residence with no commercial, agricultural or industrial activity.

MULTI-FAMILY LOW-RISE refers to multi-family residences including apartments, condominiums and townhouses, up to three living stories in height.

MULTI-FAMILY HIGH-RISE refers to multi-family residences including apartments, condominiums and townhouses higher than three living stories.

AGRICULTURE

AGRICULTURE refers to a parcel predominantly devoted to agricultural activities with only one home per parcel.

NON-RESIDENTIAL

COMMERCIAL refers to facilities used primarily for nonresidential or business purposes such as convalescent homes, sanitariums, religious institutions, hospitals, clinics, professional offices, business offices, storage, retail outlets, restaurants, etc.

INDUSTRIAL refers to facilities used in producing, manufacturing and processing of goods and services, etc.

HOTELS: Self-explanatory.

PARKS: Self-explanatory.

SCHOOLS: Self-explanatory.

MIXED is any combination of the above (subject to negotiation).

DRAFT - Option 2

~~Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service~~

City and County of Honolulu, Board of Water Supply

~~Water System Facilities Charges per Fixture Unit (F.U.)~~

Residential Minimum 20 F.U.	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>Single Family Residential</u>						
Resource Development	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84	\$80.84
Transmission	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87	\$37.87
Daily Storage	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42	\$67.42
Total	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33	\$185.33
<u>Multi-Family – Low-Rise</u>						
Resource Development	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14	\$117.14
Transmission	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46	\$55.46
Daily Storage	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67	\$98.67
Total	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27	\$271.27
<u>Multi-Family – High Rise</u>						
Resource Development	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14	\$88.14
Transmission	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73	\$41.73
Daily Storage	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25	\$74.25
Total	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12	\$204.12
<u>Non-Residential (Commercial, Industrial, Hotel, Parks and Schools) Minimum 20 F.U.</u>						
<u><50 F.U.</u>						
Resource Development	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74	\$257.74
Transmission	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65	\$130.65
Daily Storage	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46	\$232.46
Total	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85	\$620.85
<u>≥50 F.U.</u>						
Resource Development	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15	\$95.15
Transmission	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04	\$45.04
Daily Storage	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10	\$80.10
Total	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29	\$220.29

Agricultural (By-Meter Size)	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017
<u>5/8 " Meter</u>						
Resource	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08	\$2,081.08
Development						
Transmission	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64	\$9,84.64
Daily Storage	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86	\$1,752.86
Total	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58	\$4,818.58
<u>3/4 " Meter</u>						
Resource	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05	\$2,881.05
Development						
Transmission	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35	\$1,363.35
Daily Storage	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04	\$2,427.04
Total	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44	\$6,671.44
<u>1 " Meter</u>						
Resource	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68	\$4,721.68
Development						
Transmission	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38	\$2,234.38
Daily Storage	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65	\$3,977.65
Total	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71	\$10,933.71
<u>1-1/2 " Meter</u>						
Resource	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55	\$12,804.55
Development						
Transmission	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34	\$6,059.34
Daily Storage	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86	\$10,786.86
Total	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26	\$29,596.26
<u>2 " Meter</u>						
Resource	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53	\$28,014.53
Development						
Transmission	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81	\$13,254.81
Daily Storage	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26	\$23,596.26
Total	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60	\$64,865.60

Revision to the Schedule of Rates and Charges for the Furnishing of Water and Water Service

Proposed effective date: July 1, 2022-June 30, 2027

City and County of Honolulu, Board of Water Supply Water System Facilities Charges per Fixture Unit (F.U.)

<u>Residential</u> <u>Minimum 20 F.U.</u>	<u>July 1,</u> <u>2022</u>	<u>July 1,</u> <u>2023</u>	<u>July 1,</u> <u>2024</u>	<u>July 1,</u> <u>2025</u>	<u>July 1,</u> <u>2026</u>
<u>Single Family Residential</u>					
<u>Resource Development</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>	<u>64.43</u>
<u>Transmission</u>	<u>72.62</u>	<u>84.02</u>	<u>96.02</u>	<u>96.02</u>	<u>96.02</u>
<u>Daily Storage</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>	<u>59.00</u>
<u>Total</u>	<u>196.08</u>	<u>207.45</u>	<u>219.45</u>	<u>219.45</u>	<u>219.45</u>
<u>Multi-Family – Low-Rise</u>					
<u>Resource Development</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>	<u>98.17</u>
<u>Transmission</u>	<u>118.17</u>	<u>118.17</u>	<u>118.17</u>	<u>118.17</u>	<u>118.17</u>
<u>Daily Storage</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>	<u>72.62</u>
<u>Total</u>	<u>288.96</u>	<u>288.96</u>	<u>288.96</u>	<u>288.96</u>	<u>288.96</u>
<u>Multi-Family – High-Rise</u>					
<u>Resource Development</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>	<u>74.73</u>
<u>Transmission</u>	<u>89.96</u>	<u>89.96</u>	<u>89.96</u>	<u>89.96</u>	<u>89.96</u>
<u>Daily Storage</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>	<u>55.28</u>
<u>Total</u>	<u>219.97</u>	<u>219.97</u>	<u>219.97</u>	<u>219.97</u>	<u>219.97</u>
<u>Non-Residential</u> <u>(Commercial, Industrial, Hotel,</u> <u>Parks and Schools)</u> <u>Minimum 20 F.U.</u>					
<u>Resource Development</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>	<u>111.88</u>
<u>Transmission</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>	<u>160.33</u>
<u>Daily Storage</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>	<u>98.53</u>
<u>Total</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>	<u>370.74</u>

Agricultural (By Meter Size)	July 1, 2022	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026
3/4 " Meter					
<u>Resource Development</u>	<u>3,169.16</u>	<u>3,486.07</u>	<u>3,834.68</u>	<u>4,218.15</u>	<u>4,639.96</u>
<u>Transmission</u>	<u>1,499.69</u>	<u>1,649.65</u>	<u>1,814.62</u>	<u>1,996.08</u>	<u>2,195.69</u>
<u>Daily Storage</u>	<u>2,669.74</u>	<u>2,936.72</u>	<u>3,230.39</u>	<u>3,553.43</u>	<u>3,908.77</u>
<u>Total</u>	<u>7,338.58</u>	<u>8,072.44</u>	<u>8,879.69</u>	<u>9,767.66</u>	<u>10,744.42</u>
1 " Meter					
<u>Resource Development</u>	<u>5,193.85</u>	<u>5,713.23</u>	<u>6,284.56</u>	<u>6,913.01</u>	<u>7,604.31</u>
<u>Transmission</u>	<u>2,457.82</u>	<u>2,703.60</u>	<u>2,973.96</u>	<u>3,271.36</u>	<u>3,598.49</u>
<u>Daily Storage</u>	<u>4,375.42</u>	<u>4,812.96</u>	<u>5,294.25</u>	<u>5,823.68</u>	<u>6,406.05</u>
<u>Total</u>	<u>12,027.08</u>	<u>13,229.79</u>	<u>14,552.77</u>	<u>16,008.04</u>	<u>17,608.85</u>
1-1/2 " Meter					
<u>Resource Development</u>	<u>14,085.01</u>	<u>15,493.51</u>	<u>16,251.00</u>	<u>16,251.00</u>	<u>16,251.00</u>
<u>Transmission</u>	<u>6,665.27</u>	<u>7,331.80</u>	<u>9,475.00</u>	<u>13,420.00</u>	<u>17,761.00</u>
<u>Daily Storage</u>	<u>11,865.55</u>	<u>13,052.10</u>	<u>13,739.00</u>	<u>13,739.00</u>	<u>13,739.00</u>
<u>Total</u>	<u>32,615.83</u>	<u>35,877.41</u>	<u>39,465.00</u>	<u>43,410.00</u>	<u>47,751.00</u>
2 " Meter					
<u>Resource Development</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>	<u>26,101.20</u>
<u>Transmission</u>	<u>23,185.00</u>	<u>30,320.00</u>	<u>35,905.20</u>	<u>35,905.20</u>	<u>35,905.20</u>
<u>Daily Storage</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>	<u>22,066.20</u>
<u>Total</u>	<u>71,352.40</u>	<u>78,487.40</u>	<u>84,072.60</u>	<u>84,072.60</u>	<u>84,072.60</u>

**Board of Water Supply
City and County of Honolulu
REVISION TO THE SCHEDULE OF RATES AND CHARGES
FOR THE FURNISHING OF WATER AND WATER SERVICE
Amended by Resolution No. 719, 2001, effective July 1, 2007
Proposed Effective Date July 1, 2022 – June 30, 2027**

WATER SYSTEM FACILITIES CHARGES

Water system facilities charges shall be levied against all new developments requiring water supplies from the Board of Water Supply's system or additional water supplies from existing water services excepting those where the developer installs at their cost, a complete water system including source and transmission, and daily storage facilities. Developers shall pay the water system facilities charges before water services are made available to the developments.

Water system facilities charges shall be levied for:

- a. All additional fixture units. Credit will be given for the fixture units removed based upon applicable use categories.
- b. Additional buildings and/or units to be connected to existing services where additional demands or supplies are indicated. The charges will be based upon all additional fixture units required and upon the established schedule of charges for the respective categories.
- c. Changes in service categories such as from residential to commercial or industrial activities. Water system facilities charge credits may be given to new applicants for installation of ordered-off meters based on categories for which these meters were formerly used, provided that the water services were ordered-off less than five years previously.
- d. All services ordered-off for more than five years.
- e. All irrigation services.

Water system facilities charges will not be levied for the following:

- a. Temporary construction meter services for contractors.
- b. Services used exclusively for fire protection purposes.
- c. Transfer of services.
- d. Order-ons of services where use categories and water demands remain the same, provided that the water services were ordered-off less than five years previously.
- e. Segregation of services. Segregation means the installation of separate meters with no increase in water demand.

The Board of Water Supply may negotiate water system facilities charge agreements other than those established here, if the Board determines that the schedule of charges is inappropriate.

INSTALLATION CHARGE

Installation charges will be levied for the installation of service and/or meter connections. The charges based on the costs of installing service and meter connections shall be determined annually by the Board of Water Supply and shall be available for inspection at its offices. Applicants shall pay the charges before service and/or meter connections are installed.

FIRE PROTECTION RATES

These rates apply to services used exclusively for fire protection purposes, including automatic fire sprinkler services connected to the alarm systems, fire hydrants, and wet standpipes, which

A one-time charge will be assessed for each application for new service, based on the size of the fire meter.

METER SIZE (INCHES)	APPLICATION FOR NEW SERVICE ONE-TIME CHARGE
5/8	\$500
3/4	\$600
1	\$700
1-1/2	\$1,100
2	\$1,700
4	\$5,600
6	\$12,100
8	\$21,100

No charge will be made for water used through these services for fire protection purposes. Water lost through leakage or used for other purposes shall be charged at the Non-Residential Quantity Charge.

DEFINITIONS OF SERVICE CATEGORIES

RESIDENTIAL

SINGLE FAMILY RESIDENTIAL refers to single family and duplex residence with no commercial, agricultural or industrial activity.

MULTI-FAMILY LOW-RISE refers to multi-family residences including apartments, condominiums and townhouses, up to three living stories in height.

MULTI-FAMILY HIGH-RISE refers to multi-family residences including apartments, condominiums and townhouses higher than three living stories.

AGRICULTURE

AGRICULTURE refers to a parcel predominantly devoted to agricultural activities with only one home per parcel.

NON-RESIDENTIAL

COMMERCIAL refers to facilities used primarily for nonresidential or business purposes such as convalescent homes, sanitariums, religious institutions, hospitals, clinics, professional offices, business offices, storage, retail outlets, restaurants, etc.

INDUSTRIAL refers to facilities used in producing, manufacturing and processing of goods and services, etc.

HOTELS: Self-explanatory.

PARKS: Self-explanatory.

SCHOOLS: Self-explanatory.

MIXED is any combination of the above (subject to negotiation).

DRAFT - Option 3



RULES AND REGULATIONS

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BWS Rules and Regulations

These Rules and Regulations have been adopted pursuant to the authority expressed in Section 7-105(j) of the Revised Charter of the City and County of Honolulu; and, in accordance with procedures established and prescribed in Hawaii Revised Statutes, Chapter 91.

These Rules and Regulations represent a compilation, recodification and general amendment to those previously existing rules and regulations governing the Board of Water Supply.

(Reprinted 2010 with amendments)

To view the BWS Rules and Regulations (2010 with Amendments) online, see the Table of Contents that follows. Or, download a version of the BWS Rules and Regulations (2010 with Amendments) in PDF format.

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Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

"APPROVED RECYCLED WATER USE SITE" refers to an area approved by the Department on which recycled water is applied.

"BOARD" shall mean the policy-making body, consisting of seven members, of the Board of Water Supply.

"MANAGER" shall mean the Manager and Chief Engineer of the Board of Water Supply or his authorized representative.

"BOARD OF LAND AND NATURAL RESOURCES" shall mean the policy-making body, consisting of six members, of the State Department of Land and Natural Resources.

"CESSPOOL" refers to an excavation in the ground which receives domestic sewage and/or discharges of a drainage system or part thereof, so designed as to retain the organic matter and solids discharging therein, but permit the liquids to seep through the bottom or sides.

"CHIEF ENGINEER" shall mean the Director and Chief Engineer of the Department of Public Works, City and County of Honolulu.

"CITY" shall mean the City and County of Honolulu.

"CONSERVATION DISTRICT" refers to those lands within the City and County of Honolulu bounded by the Conservation District line as established under the provisions of Act 187, S.L.H. 1961, and Act 205, S.L.H. 1963 and subsequent amendments thereto.

"CONSUMER" shall mean the person, firm, corporation, association, governmental department, or other legal entity whose name appears on the records of the Board of Water Supply as the party responsible and liable for receiving water service.

"CROSS-CONNECTION" shall mean any actual or potential connection or structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. By-pass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices, through which or because of which "backflow" can or may occur, are considered to be cross-connections.

"DAILY RECORDS" means information and data collected during a defined and consistently observed 24-hour time period such as 6:00 am to 5:59 am.

"DEPARTMENT" shall mean the governmental unit known as the "Board of Water Supply."

"DESIGNATED GROUNDWATER CONTROL AREA" means an area in which the State's Board of Land and Natural Resources finds that the groundwater must be regulated and protected for its best utilization, conservation, and protection in order to prevent threat of exhaustion, depletion, waste, pollution, or deterioration by salt encroachment or an area in which the Board of Land and Natural Resources finds that the groundwater must be regulated and protected in order to protect the groundwater resources from exhaustion, depletion, waste, pollution, or deterioration by salt encroachment.

"DEVELOPER" shall mean an owner or other person or legal entity with written authorization from the owner who intends to improve or to construct improvements upon his property. The term shall also mean a subdivider.

"DEVELOPMENT" shall mean the improvement of, or construction of improvements on, a lot. The term shall include subdivisions, planned development projects, cluster developments, site development plans and condominium projects.

Planned development projects, cluster developments and site development plans shall be as defined under the Comprehensive Zoning Code (CZC) of the City and County of Honolulu.

"DIRECTOR" shall mean the Director of Land Utilization of the Land Utilization Department, City and County of Honolulu.

"DISPOSAL WELL" refers to any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed into the ground for the diversion, injection, or disposal of wastewaters or other liquid wastes into any underground formation, except for shallow excavations in soil formations used for the disposal of irrigation tail water.

"DOH GUIDELINES" refers to Hawaii Department of Health's *Guidelines for the Treatment and Use of Recycled Water*.

"DOMESTIC USE" or "DOMESTIC WATER" refers to water meeting the requirements of P.L. 93-523 the "Safe Drinking Water Act" and all amendments thereto.

"HEAD LEVEL" means the groundwater elevation in feet at designated monitoring points in relation to sea level or as calculated by reference to bulkhead pressure measurements.

"INDIVIDUAL HOUSEHOLD AEROBIC TREATMENT UNIT" refers to a watertight receptacle which receives the discharge of domestic sewage, and is constructed so as to retain solids, digest organic matter through a period of detention and aeration, and allows the aerated effluent to discharge outside the tank into a subsurface disposal field or seepage pit.

"IRRIGATION TAIL WATER" refers to water remaining after irrigation of agricultural lands which the user intends to dispose of.

"MAIN" or "MAIN PIPE" shall mean the supply or distribution pipe to which service laterals are connected.

"NO PASS ZONE" means areas in which the installation of waste disposal facilities, which may contaminate groundwater resources used or expected to be used for domestic water supplies, shall be prohibited.

"NONPOTABLE WATER" shall mean water that does not meet State Department of Health drinking water standards.

"OWNER" imports the plural as well as the singular, and includes both the person, permittee operator, firm, partnership, association, estate, corporation or other legal entity that:

- a. Owns the land on which the well is or will be located.
- b. Operates the well under a lease, license or other similar form of agreement.

"PERMITTED USE" refers to the use or uses of land as permitted and defined under Regulation No. 4, Department of Land and Natural Resources, State of Hawaii.

"PESTICIDES" refer to toxic chemicals used to control insects, other pests and unwanted vegetation.

"PONDING" means retention of piped recycled water on the surface of ground or man-made surface for a period of 2 hours following the cessation of an approved recycled water use activity.

"PREVIOUS 12-MONTH MONTHLY AVERAGE" means the recorded consumption for billing during the last complete 12-month billing period prior to the declaration of a low water condition by the Board divided by twelve (12). Once the previous 12-month monthly average has been established for each consumer, it shall remain in effect, unchanged, for the duration of the declared low water condition or conditions.

"PRIVATE WATER SYSTEM" shall mean mains, valves, hydrants, pumps, tanks, and all appurtenances beyond the master meter which are necessary to provide water and fire

protection, and which shall be owned, operated, and maintained by the Association or other legal entity.

"PRIVATE WELL" means any well that is not owned by the Department.

"PROJECT WATER SYSTEM" shall mean the water system, to and within any development, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water and fire protection for such development and, where necessary, sources of supply.

"PUBLIC WATER SYSTEM" shall mean the water system owned and operated by the Department.

"RECYCLED WATER" refers to oxidized wastewater that is filtered and disinfected to achieve bacterial concentrations consistent with DOH Guidelines for R-1 Water.

"REFUSE DISPOSAL DUMPS" refer to any specific land site where solid wastes or refuse of any type, except rocks, soil and agricultural leaf trash, are deposited, and where the site is not thereafter managed as a sanitary landfill.

"RESTRICTED WATERSHED" ("RW") shall refer to those areas defined by the State of Hawaii Department of Land and Natural Resources Regulation No. 4, dated October 2, 1964, and any subsequent legal revisions of said definition; such areas being delineated on maps on file at the Office of the Department of Land and Natural Resources and the Office of the Lieutenant Governor, State of Hawaii.

"SANITARY LANDFILL" refers to a method of disposing of refuse on land by confining the refuse to the smallest practical area, reducing the refuse to the smallest practical volume, and covering the refuse with a layer of earth at the conclusion of each day's operation.

"SEPTIC TANK" refers to a water-tight receptacle which receives the discharge of domestic sewage, designed and constructed so as to retain solids, digest organic matter through a period of detention, and allow the liquids to discharge outside the tank into a subsurface disposal field or one or more seepage pits.

"SERVICE LATERAL" shall mean the main tap, pipes, fittings, valves and appurtenances from the main to, and including, the meter box and consumer's shut-off valve.

"SERVICE LIMIT" shall mean the maximum elevation to which adequate water service is available. The service limit shall be that elevation which is 100 feet below the spillway elevation of the supplying reservoir for the area.

"SEWAGE DISPOSAL SYSTEM" refers to an individual household treatment unit such as a cesspool, septic tank, or individual household aerobic treatment unit, with the effluent discharging into subsurface disposal fields or into one or more seepage pits.

"SEWAGE TREATMENT PLANTS" refer to man-made structures which subject wastewater to treatment by physical, chemical, or biological processes, or to a combination of such processes, for the purpose of removing or altering objectionable constituents, rendering it less offensive or dangerous to humans or other forms of life, and includes the reclamation of such wastewater at a level of quality suitable for reuse in some beneficial way.

"STABILIZATION POND" refers to a pond designed for the treatment of sewage by natural biological processes, with or without the addition of supplemental aeration or chemicals.

"STATE" shall mean the State of Hawaii, except where reference is clearly to another State, Territory, or possession of the United States.

"SUBDIVIDER" shall mean a person, firm, corporation, partnership, association, trust or other entity, or any combination thereof, who is the owner of the land to be subdivided or consolidated, or the duly authorized agent or lessee of the owner.

"SUBDIVISION" shall mean the division of land into two or more lots, parcels, sites, or other divisions of land, including designation of easements, for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all of such lots, parcels, sites, easements or other division. The term shall include resubdivision, and, when appropriate to the context, shall relate to the land subdivided.

"TEST BORINGS" refer to holes drilled for geologic-hydrologic exploration and not originally intended as water producing wells.

"USER" means any person, firm, corporation, association or agency receiving recycled water service.

"USER SUPERVISOR" refers to a person who is responsible for the day-to-day management and operations and maintenance of recycled water on the approved use site.

"WASTAGE OF WATER" is defined as causing, or permitting, the water in any well to reach any porous substratum, or to flow from the well upon any land, or directly into any stream, or other natural water course or channel, or into the sea or any bay, lake or pond, or into any street, road, or highway, unless to be used for beneficial purposes; provided, that this section shall not be so construed as to prevent the beneficial use of water by direct flow, or from storage reservoirs served by wells for irrigation, domestic and other useful purposes, except for driving machinery; provided, that water may be used for driving machinery, in case it is utilized afterwards for irrigation or other useful purposes.

"WASTEWATER" refers to water discharged after it has been used in some beneficial way, and which the user intends to dispose of in some manner. This definition excludes irrigation tail water to be disposed of as provided under the definition of "Disposal Well."

"WATER SYSTEM FACILITIES CHARGE" shall mean the fee to be paid by developers and consumers as their share of the cost of developing water system facilities.

"WATER RESOURCES" refer to all waters on or below the ground surface, regardless of quality.

"WELL" is defined to be, but not limited to, any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed into the ground for the location, exploration, diversion, or acquisition of any groundwater by natural pressure or artificial means; provided, that if and whenever groundwater is encountered in an excavation, for whatever purposes made, such excavation shall be considered a well and subject to these Rules and Regulations.

"WATER SERVICE" shall mean the complete installation of pipes, fittings, appurtenances and meter necessary to provide service to a consumer. This term also refers to the delivery of water to consumers.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. 475, 1980; am BWS Res. No. 502, 1982; am BWS Res. No. 528, 1985; am BWS Res. No. 598, 1991; am BWS Res. No. 610, 1992; am BWS Res. No. 722, 2001]

CHAPTER I: WATER AND WATER SYSTEM REQUIREMENTS FOR DEVELOPMENTS

Sec. 1-101 Availability of Water

1. General Requirements

a. Extensions from and connections to the public water system will be approved by the Department where pressure conditions permit; provided, that the water meters are within the service limit except as provided for in Sec. 2-217, Elevation Agreement, and the Department has sufficient pressure and water supply available for domestic use and fire protection and can assume new or additional service without detriment to those presently being served.

b. The developer will be required to pay for and install, in accordance with these Rules and Regulations and the Standards of the Department, adequate water system facilities for the development.

2. **Main Extension.** If the Department's facilities in the area are inadequate, or where facilities are not readily available to serve a development, the developer must extend a water main from the nearest adequate facility. The water main so constructed, connecting the project water system to the nearest adequate public water system, is termed a main extension.

3. **Water Supply to Areas Where No Public Water Supply Exists.** In areas where there is no public water supply available to serve the development, plans and specifications for providing water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenant structures and devices, shall be in conformance with the Standards of the Department, and shall be approved by the Manager in their entirety prior to construction.

4. **Availability of Water for Subdivision Applications.** The Department will inform the Director as to the availability of water for subdivision applications referred to the Department.

5. **Availability of Water for Proposed Developments.** The Department may issue water commitments to proposed developments as follows:

a. **Areas with Adequate Water Supply.** The Department may issue advance water commitments to proposed developments in areas where the water system has adequate supplies to assume new or additional services.

b. **Areas with Limited Additional Water Supply.** The Department may restrict the issuance of advance water commitments to proposed developments in areas where the water system has limited additional supplies to assume new or additional services.

c. Areas with No Additional Water Supply. The Department shall not issue water commitments to proposed developments in areas where the water system has no additional supplies to assume new or additional services. The only exception shall be the issuance of a single 5/8-inch meter to proposed developments on existing single vacant lots.

The Department may establish guidelines for issuance of water commitments as indicated in Section 1-101, 5. a. and b.

6. Availability of water for large landscaped areas such as golf courses, parks, schools, cemeteries, and highways. If a suitable nonpotable water supply is available, the Department shall require the use of nonpotable water for irrigation of large landscaped areas.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 468, 1979; am BWS Res. No. 472, 1979; am BWS Res. No. 485, 1981; am BWS Res. No. 530, 1985; am BWS Res. No. 598, 1991; am BWS Res. No. 610, 1992]

Sec. 1-102 Water System Facilities Charges

Water system facilities charges shall be levied against all new developments requiring water supplies from the Department's system or additional water supplies from the existing services. Developers shall pay the water system facilities charges before water services are made available to the developments. A schedule of such charges is included in the Department's Schedule of Rates and Charges for the Furnishing of Water and Water Service.

The Department may negotiate water system facilities charges other than those in the schedule when it is determined that the schedule is inappropriate. The Department may also negotiate agreements with developers for payment of the actual costs of the installation of the necessary water system facilities or require the installation of the facilities by the developer in lieu of payment of water system facilities charges.

Water system facilities charges will not be levied on developments where the developer installs at his cost, a complete water system including source and transmission and daily storage facilities.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 468, 1979; am BWS Res. No. 472, 1979; am BWS Res. No. 528, 1985]

Sec. 1-103 Increase in Size of Water Mains

1. Increase in Size of Water Main Extensions for Service to Other Areas. Whenever the Department finds it is necessary that the water mains proposed to deliver water to a development should be of a greater capacity, in order to supply water and fire protection to other property, the Department will require the installation of a larger size main.

2. Increase in Size of Water Mains Within Developments for Benefit of Other Areas. Whenever, in order to provide for existing or future services beyond the boundaries of a development, the Department finds that the mains to be installed within the

development should be of greater capacity than would otherwise be required, the Department will require the installations of larger size mains.

3. Reimbursement of Additional Costs of Mains. When the developer is required to install a larger size main, for the reasons set forth in the preceding paragraphs, the department will reimburse the developer as soon as practicable after acceptance by the Department of the completed work for the additional cost of the installation over and above the cost of the mains that would have been required; provided, however, that in no case shall reimbursement be made of any portion of the cost of an 8-inch or lesser size main; provided that reimbursement will not be made where such larger main or mains will serve only those areas under the same ownership as the development under consideration.

After the installation has been completed and accepted by the Department, the developer shall furnish the Department with itemized costs incurred by him in the installation of the said larger mains. The eligibility for reimbursement of each item shall be left to the discretion of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-104 Sizes of Mains, Hydrant Spacing, Fire Protection

1. Sizes of Mains. Any development within the City and County of Honolulu shall provide water mains designed to deliver water in adequate quantities and pressures for domestic use and fire fighting.
2. Hydrant Spacing. The Department will determine the spacing and location of all hydrants. All fire hydrants required for adequate fire protection will normally be located within the development.
3. Fire Protection. The standards for fire protection, insofar as water supply is concerned, will be determined by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-105 Laterals, Dead-Ends, Alterations to Public Water System Contours

1. Laterals. Where water main construction is necessary, the developer shall provide each lot in a subdivision with a service lateral. As an alternate, one service lateral may be installed for each two lots.
2. Dead-Ends. Where water mains would result in dead-ends, interconnections may be required by the Department.
3. Alterations to Public Water System. All work and materials in connection with the change in location or grade of any part of the existing public water system made necessary by the development shall be at the expense of the developer.

4. Contours. When required by the Department, contours or elevations shall be furnished by the developer, based upon City and County datum.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-106 Construction Plans

1. Preparation of Plans. All construction plans shall be prepared by a registered engineer. Preliminary and final maps of developments to be reviewed by the Department shall fully conform to the definitions and requirements of the Rules and Regulations of the Planning Commission of the City.

2. Information to be shown on Construction Plans. The construction plans, insofar as the water system is concerned, shall show the following on standard size sheets measuring 22" x 36":

- a. Name of development, name of developer, name of engineer, and location of development.
- b. Date, North arrow, scale, tax key.
- c. The proposed water system, complete in both plan and profile, reflecting the inter-relationship with street lines, lot lines, curb grades, sewers and drains, both existing and proposed, as well as any other features, natural or artificial.
- d. Plan views drawn to a scale of one inch equals 40 feet or one inch equals 20 feet. Profile views drawn to a vertical scale of one inch equals 4 feet or larger. Manhole, fire hydrant, lateral and other details drawn to a scale of one half inch equals one foot or larger.
- e. The designation, including alignment and width, of all easements for parts of the water system which will not be in street areas to be dedicated to the public.
- f. A general layout map showing the entire development on one sheet with locations of lots and streets within the development and its vicinity, together with existing and proposed water systems.
- g. A small key location inset or vicinity map showing the proposed development in relationship to streets and water mains in the area.
- h. In cases in which the owner or developer also owns areas contiguous to the proposed development, or separated therefrom by a street, a sketch of the future street and lot pattern and the water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.
- i. All plans shall have the approval block at the lower right hand corner of the drawings except when the approval signature is on the title sheet.

3. Service Limit. Whenever a lot or lots within a development are at or near the service limit, the contour line of the service limit shall be shown on the construction drawings and subdivision map. A reasonable buildable area below the service limit shall be provided for the lot or lots in the development.

4. Approval of Plans. No construction of a water system, or any portions thereof, shall be undertaken prior to approval of the final construction plans by the Manager, the Director,

the Chief Engineer, and the State Department of Health. After said approval, the developer shall transmit three sets of all final construction plans to the Department.

5. Delays in Construction. If any period exceeding two years, or such extension as may be granted, passes without substantial progress in the construction of the water facilities, after approval of plans by the Department, the plans thereof shall be resubmitted to the Department for review and for making such changes as of Standards or amendments to these Rules and Regulations.

6. Filing of Tracings. Upon completion of the construction of a development, the developer must submit to the Department for filing, as-built construction plan tracings of the water system.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 562, 1988]

Sec. 1-107 Materials and Construction Standards, Installation of Water Service, Inspection of Work

1. Materials and Construction Standards. All materials, design and construction procedures, and workmanship, with respect to any project water system, or any portion thereof, shall be in accordance with the requirements and standards of the department and with the requirements of the State Department of Health and all other applicable legal authority. The Manager shall determine the capacity and location of any of the component parts of the water system.

2. Installation of Water Service. No water service will be approved, except a service for construction purposes, until the project water system has been completed and accepted by the Department. Private water systems installed above the service limit will not be accepted by the Department.

3. Inspection of Work. The Manager, or any employee representing him, shall have free access at all times to all installations made for the development and shall be given any assistance requested as well as every facility, information, and means of thoroughly inspecting the work to be done and the materials used or to be used.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-108 Ownership of Installed Water System

As a condition precedent to connecting the project water system to the public water system, the developer shall convey the water system, except when a private water system is proposed, to the Department and said system thereafter will be maintained and operated as a part of the public water system; provided, however, that the Department may refuse to operate and maintain facilities installed without the Department's prior approval. Prior to the commencement of water service, and as a prerequisite to such service, the developer shall deliver to the Department perpetual easements for all portions of the water system installed in other than publicly owned property. The developer shall also convey, without cost to the Department, fee simple title to all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the developer and

connected to the public water system together with easements for access, water pipeline, and other necessary utility purposes.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 610, 1992]

Sec. 1-109 Modification of Requirements

When conditions pertaining to any development are such that the public may be properly served with water and fire protection without full and strict compliance with these Rules and Regulations, or where the development site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purpose of these Rules and Regulations, may be made by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-110 Construction Agreement and Bond

To secure approval prior to construction of the required improvements, insofar as the construction of the project water system is concerned, and excepting private water systems, the developer shall enter into an agreement with the City and the Department to make, install and complete all of the required improvements within a specified time and file with the Director a surety bond or other security, as hereinafter specified, to assure the City and the Department the actual construction and installation of the improvements and utilities shown on the approved construction plans.

The agreement shall specify, insofar as the project water system is concerned, and excepting private water systems, that the developer will complete the same to the satisfaction of the Manager, and shall provide that if the developer shall fail to so complete such work within the time specified, or such extension as may be mutually agreed upon, the Department may complete the same and recover the full cost and expense thereof from the developer.

The bond or other security to be filed with the Director with the aforesaid agreement shall be one of the following (provided, that in all instances where a surety bond is filed, it shall be executed by the developer, as principal, and by a surety company authorized to transact a surety business in the State, as surety):

1. A surety bond in a sum equal to the cost of the work required to be done as estimated by the Manager; payable to the City and the Department, and conditioned upon the faithful performance of all work required to be done by the developer, and upon the further condition that should the developer fail to complete all work required to be done within a specified time, the Department may cause all work which is not finished to be completed, and the parties executing the bond shall be firmly bound for the payment of all costs therefor; or
2. Where the developer has entered into a contract with a reputable contractor, and has filed with the Director all three of the following: (a) a certified copy of his said contract and specifications, (b) a certified copy of the performance bond of his contractor, and (c) a surety bond in a sum equal to at least 50 percent of the cost of all work required to be done by the developer as estimated by the Manager and payable and conditioned as above set forth; or
3. The developer shall make a deposit of money with the Director, or a responsible escrow agent designated by the Director as agent of the city and the Department, in an amount equal to the cost of the construction of said improvements as estimated by the Manager. Under this arrangement, the agreement may provide for approved progress payments to be made to the contractor for materials used and services and labor performed out of said deposit as the work progresses; provided, that said progress payments shall at no time exceed the value of the completed portion of said improvements; or
4. In lieu of said surety bond or deposit in escrow mentioned in paragraphs numbered 1, 2 and 3 above, the developer may deposit with the Director bonds or other negotiable

securities acceptable to the Manager in the amount provided by paragraphs numbered 1, 2 or 3 respectively, of this Section.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-111 Repair and Replacement of Improvements

The developer shall enter into an agreement with the City and the Department and shall file with the Director, a surety bond to insure the repair and replacement of subdivision improvements excluding private water systems, for a period of one year from the date of acceptance by the City of the dedication. The amount of the surety bond shall be ten percent of the cost of construction as estimated by the Chief Engineer, Director of Recreation and Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-112 Use of Nonpotable Water Required for Large Landscaped Areas

1. If the Department determines that a suitable nonpotable water supply is available, the Department shall require existing services to use nonpotable water for irrigation of large landscaped areas such as golf courses, parks, schools, cemeteries, and highways.
2. Upon such notification by the Department, the existing service holder(s) has no more than five (5) years to complete the conversion to nonpotable irrigation as may be required by the Department unless otherwise approved by the Manager. Failure to comply with these requirements may result in discontinuation of water service and/or penalties as authorized in section 2-205, 2b, and Section 5-501 of these Rules and Regulations.

[Eff 12/1/1991; BWS Res. No. 598, 1991]

Sec. 1-113 Review of Construction Plans and Building Permit Applications

1. General Requirements. The applicant, the Owner¹ (in situations where the applicant is not the owner), and the architect and/or engineer shall ultimately be responsible for producing complete plans and specifications which comply with the following requirements as applicable: Section 1-106, Construction Plans of the Department's Rules & Regulations, Water System Standards; the latest checklist for construction plans and building permit application submittals to meet fire protection requirements and water service for domestic use; water allocation requirements; and approved master plans.

If plans are determined to be incomplete, they will be returned without further review.

¹ Owner is defined as: 1) the fee simple owner; or (2) buyer of a property if a letter of authorization from the seller is submitted; or (3) lessee/tenant if a letter of authorization from the fee owner is submitted.

Notwithstanding approval, the applicant or the Owner (in situations where the applicant is not the owner) is responsible for all costs incurred during the construction of the project to comply with current Water System Standards or costs caused by a defect of reason, error, omission or negligence on part of the architect/engineer.

2. Maximum Time Limits. First reviews of building permit applications and plans and plan review of construction drawings and specifications for non-City projects submitted to the Department for approval shall be completed within the maximum time limits specified below.

PERMITS *Maximum Time Limit

Category I

Excavation Clearance	1 full working day
Test Boring	
Driveway construction	
Swimming pool/spas	

Category II

One (1) single-family dwelling on a vacant lot	2 full working days
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Category III

Non-residential development	6 full working days
Second single-family dwelling	
Ohana dwelling	
Multi-family high/low-rise development	
Addition/renovation to all existing residential development	
Variance for surface encroachment	

* All projects shall be evaluated for complexity upon submission of the building permit applications and plans and maximum time limits may not apply under conditions noted below.

PLANS REVIEW FOR NON-CITY PROJECTS Maximum Time Limit

Category I

On-Site Fire Hydrants, Offsite Utility and Water System Improvements for One-Lot Developments	8 working days*
New 3" and Larger Meters for One-Lot Developments	
Projects under Ordinance 2412 requirements	

Category II

New Utility Lines or other improvements that require water system adjustments	10 working days
Subdivision Water System Improvements for two to 50-lot developments, including On-site and Off-site fire hydrants	

Any other projects with valuation for water system improvements below \$49,999

Category III

Water System Improvements for 51 to 500 lots

16 working days

Transmission Mains (up to one mile/5,280 linear feet)

Exploratory Wells

And any projects with valuation for water system improvements between \$50,000 to \$999,999

Category IV

Water System Improvements for more than 500 lots

20 working days

Reservoirs and other Infrastructure improvements

Booster & Pump Stations

New Wells

Transmission Mains (more than one mile long)

And any other projects with valuation for water system improvements between \$1,000,000 to \$9,999,999

* Applications affecting property that is subject to a zoning variance, or that fall within a potential slide area, special district or shoreline setback area shall be evaluated for complexity upon submission of construction plans and may be placed within a higher category. The applicant shall verify with the Department of Planning and Permitting if the project is subject to these requirements.

The maximum time limits shall begin upon receipt of the application and shall stop when the applicant is called for pick-up except under the following conditions:

Additional Plans. The Department may request the submission of additional sets of plans in order to accommodate the maximum time limit requirements. The Maximum Time Limit requirement starts on the day when the Department receives the required number of plans for review. Maximum time limits shall be extended by one day for each day the additional sets are due for up to three (3) working days.

If additional plan sets are not received within this period, all plan submittals then in receipt by the Department shall be returned without review.

Extensions. Extensions from the maximum time limit may be granted in the event of a national disaster, state emergency, or union strike, which would prevent the Department from reviewing permits or plans, or when adequately justified by the Department and mutually acceptable to the Department, the applicant, and/or owner.

Inapplicability. Maximum time limits shall not apply:

Where submittals fail to meet basic adequacy requirements noted in Section 1-113.1 above; or

Where the project is required to install/improve off-site facilities that are determined to be non-existent/inadequate, respectively, to accommodate the project; or

Where plans need to be coordinated with other City agencies; or

Where submittals are withdrawn by the applicant prior to completion of the review; or

Where the scope of work on subsequent submittals differs from the first submittal of plans; or

Where the area of the development is under moratorium by the Board; or

Where the applicant failed to obtain necessary discretionary permits or approvals (water allocations, and approved water master plans.

Second Review. Maximum time limits for a second review shall be one-half of the maximum time limits specified above. Plans that are not approved after the second submittal shall be subject to the provisions of Section 1-113.4.

3. Automatic Approval. Failure to complete review within the maximum time limits and applicable conditions as specified above shall result in automatic approval in accordance with the requirements of Chapter 91, Hawaii Revised Statutes. Automatic approval shall not be construed to be an approval of any violation of applicable codes, regulations, ordinances, standards, or waiver/inapplicability of any applicable charges.

4. Resubmittal of Plans. For plans that require more than one review, subsequent plan reviews shall be limited to revisions unless the scope of work is revised in which case plans will be subject to first plan review.

Applicants with plans not approved after a second plan review, may either:

Submit an Automatic Approval Form. A licensed architect or engineer may, on behalf of the applicant, submit an Automatic Approval form (provided by the Department) attesting that the remaining revisions have been addressed along with revised plans (not applicable only to Category IV, Plan Review projects). If it is found that plans are given the automatic approval without the necessary corrections in compliance with comments on second plan review, the Department will notify the applicant to take appropriate corrective measures at no cost to the Department. The Department may restrict the type of projects eligible for Automatic Approval based on the complexity of the scope of work; or

Request a Plan Approval by Appointment. The applicant may schedule an appointment with the plan reviewer(s) to discuss remaining comments. The applicant, the Owner (in situations where the applicant is not the owner), and the architect and/or engineer (for stamped plans) shall attend the appointment to discuss comments and resolve issues on the plans. Subsequent to the appointment, revised plans may be submitted and will be subject to the maximum time limits established for the first plan review, as established in Section 1-113.2.

[Eff 1/1/2000; BWS Res. No. 699, 2000]

CHAPTER II: WATER SERVICE TO CONSUMERS

Sec. 2-201 Application for Water Service

1. Any prospective consumer adjacent to a distributing main, where pressure conditions permit except as provided for in Sec. 2-217, Elevation Agreement may obtain water service; provided, that the Department has a sufficient water supply developed and available for domestic use and fire protection to take on new or additional service without detriment to those already served.
2. Each prospective consumer may be required to sign an application form for water service.
3. The consumer shall be responsible for payment of all charges for water service at the designated location. Charges will begin when the water service is established, and will continue until due notification from the consumer, or until discontinued by the Department for failure of the consumer to comply with these Rules and Regulations.
4. When an application for water service is made by a consumer who was responsible for and failed to pay bills previously rendered by the Department, regardless of location and within the statutory period of limitations, the Department may refuse to furnish water service to such applicant until the outstanding bills are paid.
5. A consumer taking possession of a property and using water without having made application for the transfer of water service shall be held liable for the water delivered from the date of the last recorded meter reading. If proper application for transfer is not made, and if accumulated bills for water service are not paid upon presentation, the water service may be discontinued five business days after written notice is given to the consumer.
6. The Department may require a deposit from any consumer or prospective consumer to guarantee payment of bills for service are other obligations to the Department.
 - a. The amount of the deposit may be the maximum estimated charge for service for two consecutive billing periods, or as may reasonably be required by the Department in cases involving service for short periods or special occasions, but shall be not less than \$10.00.
 - b. No interest on these deposits shall be accrued, or paid, to the consumer.
 - c. The deposit shall be retained as long as it is necessary to ensure payment of obligations to the Department.
 - d. If the deposit has not been returned by the time the consumer discontinues service or pays all outstanding obligations, the deposit shall be returned less all unpaid or outstanding charges.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 530, 1985; am BWS Res. No. 659, 1996]

Sec. 2-202 Installation of Water Service

1. Installation. Water service will be installed at the expense of the applicant. The Department will determine the size and location of all water services and the number of houses, buildings or dwelling units to be served by a single service.
2. Installation Charge. Installation charges shall be based on the cost of installation as established by the Department. Said charges shall be available for inspection at the offices of the Department.
3. Water System Facilities Charge. In addition to the installation cost, a water system facilities charge shall be levied against all new water service connections to the system or connections requiring additional water supplies from existing water services. A schedule of such charges is included in the Department's Schedule of Rates and Charges for the Furnishing of Water and Water Service. The charge shall be paid by the applicant prior to installation of water service.

Water system facilities charges will not be levied in developments where the developer has installed at his cost a complete water system including source and transmission and daily storage facilities.
4. Consumer's Supply Pipe. The consumer shall install and connect at his expense his supply pipe to the shut-off valve or outlet installed by the Department.
5. Location of Water Service. An applicant for water service to property fronting on private roads, lanes, etc., where there is no public water system, must extend his supply pipe to the nearest public street on which a water main exists. All meters shall be installed in the public sidewalk areas wherever possible.
6. Alteration to Public Water System. All work and materials in connection with the change in location or elevation of any part of the existing public water system, made necessary by the installation of the new service connection, shall be at the expense of the applicant.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 528, 1985]

Sec. 2-203 Meter Reading and Rendering of Bills

1. All water supplied by the Department will be measured by means of suitable meters registering in gallons.
2. Meters will be read and bills rendered monthly or bimonthly as determined by the Department. Special readings may be made, when necessary, for closing accounts or other reason. If a meter cannot be read, an estimated bill will be rendered, said bill to be calculated whenever possible on prior consumption.
3. Closing bills for short periods of time from the last meter reading date will ordinarily be determined by the amount of water actually used, as indicated by the meter reading, plus a proration of the service charge. In prorating service charge, the billing period for monthly bills shall be considered to be 30 days, and bimonthly bills to be 60 days. After July 1, 1980, there shall be no proration of service charge.

4. Readings of Separate Meters Not Combined. For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately, and the readings thereof shall not be combined except in cases where the Department, because of operating necessity, installs two or more meters in parallel to service the same consumer's supply pipe.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-204 Payment of Bills

1. All bills shall be due and payable upon presentation to the consumer. Payment shall be made at the offices of the Department or, at the Department's option, to duly authorized collectors of the Department.
2. Any bill which is not paid within 30 days after the date of the bill shall be deemed delinquent. Water service may be discontinued five business days after written notice is given to the consumer.
3. A service fee for handling a dishonored check may be made in accordance with fees established by the Department.
4. A late payment charge may be applied to any delinquent balance payable to the Department. The late payment charge shall be assessed at the rate of one percent for each month or fraction thereof against the delinquent balance, beginning 30 days after the date of the bill.
5. For the purposes of this section, 'delinquent balance' includes any loan, fee, charge, or other liquidated sum which is 30 days past due to the Department, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or administrative order.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 659, 1996]

Sec. 2-205 Discontinuation of Water Service

1. Consumer About to Vacate Premises. Each consumer about to vacate any premises supplied with water by the Department shall give notice of his intention to vacate, specifying the date service should be discontinued; otherwise, the consumer shall be responsible for all water service furnished to such premises until the Department has received a notice of discontinuance. Before buildings are demolished, the Department should be notified so the water service can be closed.
2. Water service may be discontinued for any of the following reasons:
 - a. Nonpayment of Bills. Water service may be discontinued for nonpayment of a bill five business days after written notice is given to the consumer.
 - b. Noncompliance with Rules and Regulations. If the consumer fails to comply with any of these Rules and Regulations, the Department will have the right to discontinue service.

c. Unauthorized Use of Water. The Department may refuse or discontinue water service to any premises or consumer in order to protect itself against fraud, abuse or unauthorized use of water. For unauthorized use of water a surcharge may be assessed as established by the Department.

d. Wasteful Use of Water. Where negligent or wasteful use of water exists on any premises, the Department may discontinue service if such conditions are not corrected within five business days after giving the consumer written notice of said conditions.

e. Service Detrimental to Others. The Department, may refuse to furnish water, and may discontinue the service to any premises, where the demands of the consumer will result in inadequate service to others.

3. Where discontinuation of water service for any of the above reasons is proposed, the Department shall, prior to the proposed shut off, give to the water consumer at least five (5) business days notice. This notice shall specify to the consumer a reason for the proposed shut off as well as inform the consumer of the right to dispute the shut off by making appropriate inquiry to the Department at an address and/or phone number which shall be provided in the notice. The notice shall further inform the consumer that (1) once water has been shut off there will be a service fee charged for reinstatement of water service, and (2) in cases where the landlord pays the water bill, the consumer may transfer service to his or her name.

4. Procedures for contesting shut off:

a. If the consumer wishes to dispute a proposed shut off, the consumer must, within five (5) business days from the date of the notice of shut off, request a billing conference of the Customer Service Division. Once a billing conference is requested, it shall be scheduled at the earliest reasonable opportunity for the consumer and in no case more than ten (10) days from the request and the consumer shall be given the option of having the conference over the phone or in person with the Customer Service employee who will conduct the billing conference.

b. At the billing conference the consumer shall have the right to submit evidence, present and cross examine witnesses, and bring in an interpreter, or representative to aid in presenting his case. The consumer shall have the right to see the Department's records concerning his account, and the consumer has the right to reasonable explanation by the Customer Service employee for any matter concerning the proposed shut off. The Customer Service employee conducting the billing conference shall not have previously been involved in the case, shall not be swayed or effected in any manner by other Department personnel, and shall exercise impartial judgment in deciding the merits of the consumer's case.

The Customer Service employee conducting the billing conference shall be empowered to correct any errors in the billing, and to take whatever remedial action is necessary including a stay in order to make a just and fair resolution of the matter. The Customer Service employee conducting the conference shall make a final written decision within three (3) working days of the conference.

c. If the consumer is dissatisfied with the decision by the Customer Service employee conducting the billing conference, the consumer shall have the right within five (5) business days of receipt of the written decision to appeal the matter as follows: first,

to the head of the Collection and Credit Section; second, to the Chief of the Customer Service Division whose decision shall be the final agency decision. However, the amount due must be paid into an escrow trust account after the billing conference with the Customer Service employee and will not be postponed pending the appeal with the head of the Collection and Credit Section or with the Chief of the Customer Service Division. In conducting an appeal all upper management personnel shall exercise the same impartial judgment required of the employee conducting the billing conference.

5. Where the water consumer is a tenant, the delinquent service holder is the tenant's landlord, and a discontinuation of the tenant's water service is proposed, the following special conditions will be observed:

a. Prior to shut off, notice to the tenant shall be accomplished by delivery of notice of discontinuation of water services described in Section 2-205 (3) to the tenant in person or to the premises being serviced.

b. At the same time the tenant shall also be notified that (s)he has the right and opportunity to place water service in his/ her own name. If the tenant consumer places water service in his/her own name and the changeover in service can be accomplished without serious mechanical and financial burden, the tenant will not be held responsible for the landlord's unpaid water bills.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 462, 1978; am BWS Res. No. 659, 1996]

Sec. 2-206 Restoration of Water Service

If water service is turned off because of failure to pay a bill, or for violation of any of these Rules and Regulations, all outstanding accounts against the consumer must be paid before service is restored. For the restoration of service, a charge based on the cost of turning on the water service must be paid by the applicant. Said charge shall be as established by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-207 Nonregistering Meters

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

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-208 Meter Tests and Adjustment of Bills

1. Meter Tests. Any consumer, who for any reason questions the accuracy of the meter serving his premises, may request a test of the meter. The consumer, if he so requests, will be notified as to the time of the test and may witness same.

2. Adjustment of Bills for Meter Inaccuracy. If, as the result of test, the meter is found to register more than two percent fast under conditions of normal operation, the Department

will refund to the consumer the overcharge based on past consumption, for a period not exceeding six months, unless it can be proved that the error was due to some cause, the date of which can be fixed. In such latter event, the overcharge shall be computed back to, but not beyond, such date.

3. **Underground Leak Adjustments.** The Department may grant adjustments for excessive bills resulting from leakage in underground piping. This adjustment will be one-half of the excess consumption over a normal bill and will be granted only when repairs are made within two weeks after the consumer has been notified of the underground leak. For good cause shown to the Department, an extension of time to make repairs may be granted.

4. **Control and Maintenance.** The consumer has sole control of the water delivered through the meter and will be responsible for maintenance and repairs to pipes and fixtures on the consumer's side of the meter.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 477, 1980]

Sec. 2-209 Conservation Measures and Interruption of Water Supply

1. The Department will exercise reasonable diligence to deliver water to the consumer and avoid shortages or interruptions in service, but will not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

2. Whenever, in the Department's opinion, special conservation measures are advisable in order to forestall water shortages the Department may restrict the use of water by any means or method of control.

3. The Department reserves the right at any and all times to shut off water from the mains without notice for the purpose of making repairs, extensions, alterations, or other reason. Consumers dependent upon a continuous supply of water shall provide emergency water storage and any check valves or other devices necessary for the protection of plumbing or fixtures against failure of pressure or supply of water in the Department's mains. Repairs or improvements will be pursued as rapidly as practicable and, insofar as practicable, at such times as will cause the least inconvenience to the consumer.

4. The Department will not be liable or responsible for any damage to person or property caused by spigots, faucets, valves and other equipment that may be open when water is turned on at the meter, either when turned on originally or when turned on after a temporary shutdown.

5. The Department shall restrict the serving of drinking water to any customer unless expressly requested at any restaurant, hotel, cafe, cafeteria, or other place where food is sold, served or offered for sale. These restrictions shall not apply to catered groups of 25 people or more. Failure to comply with these requirements may result in the imposition of a fifty dollars (\$50.00) special assessment for each violation, or in the discontinuation of water service and/or penalties as authorized in Section 2-205, 2b, and Section 5-501 of these Rules and Regulations.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 597, 1991]

Sec. 2-210 Pressure Conditions

When the pressure of the Department's supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The Department will not be liable for damage due to pressure conditions caused by or arising out of the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-211 Damage to Department's Property

1. Any damage to water mains, service connections, valves, fire hydrants, or other property of the Department shall be paid for by the person, persons or legal entity responsible for the damage.
2. The consumer shall be liable for any damage to a meter or other equipment or property of the Department caused by the consumer or his tenants, agents, employees, contractors, licensees or permittees, and the Department shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor. In the event settlement for such damage is not promptly made, the Department reserves the right to discontinue water service to such premises.
3. When a meter is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay all costs required to repair the meter.
4. No obstruction shall be placed on or around any water meter, fire hydrant, or valve so as to render it inaccessible.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-212 Ingress To and Egress From Consumer's Premises

Any officer or employee of the Department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours, and at any hour during an emergency, for any purpose reasonably connected with the furnishing of water or other Departmental service and the exercise of any and all rights secured to the Department by law or these Rules and Regulations. In case any such officer or employee is refused admittance to any premises, or, being admitted, shall be hindered or prevented from carrying out his duties, the Department may cause the water service to be turned off at said premises five business days after written notice is given the consumer.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-213 Cross-Connection Control and Backflow Prevention

1. Prohibition of Certain Connections and Installations. In order to provide proper sanitary protection to the Department's water supply, and to comply with the applicable statutes, rules and regulations of the United States Environmental Protection Agency and of the State Department of Health, as presently adopted and from time to time amended, no cross-connections with other water supplies, or other physical connections, shall exist, or be installed, located, maintained or operated, which could permit backflow of contaminated water from the consumer's premises into the Department's water supply system, except as provided below:

a. Cross-Connections with Other Water Supplies. Existing water supplies which are in active use and cross-connected to the Department's system will be allowed only under the following conditions:

(1) Where such water supplies are regularly analyzed by the Department, or other agencies satisfactory to the Department, meet the requirements of the State's Safe Drinking Water Regulations and have no cross-connections which could permit backflow of contaminated water into those water supplies.

(2) Where such water supplies do not meet the requirements of (1) above, are not normally under pressure, and are maintained solely for fire fighting purposes, and, where adequate protection against backflow to the Department's water system is provided by mechanical means, or other methods or devices, satisfactory to the Department.

b. Other Physical Connections. Other physical connections may be permitted if, in the judgment of the Department, adequate protection can be provided the water supply of the Department against backflow by the installation of mechanical, or other methods or devices, approved by the Department, and installed, maintained and operated by the consumer in a manner satisfactory to the Department at all times; provided, however, that the Department may require the consumer to eliminate or rearrange designated plumbing or piping connections or fixtures, or to install a backflow device at the meter or other location, subject to the approval of the Department, whenever (1) the consumer is engaged in the handling of dangerous or corrosive liquids or industrial or process waters, highly contaminated water or sewage, or is engaged in the medical or dental treatment of persons who might have diseases transmittable by water; or, whenever (2) in the judgment of the Department there exists a danger of backflow into the Department's mains because of the possibility of unauthorized connections being created through noncompliance or inadvertence by reason of the complexity of the system or systems; or, because of failure by the consumer to provide adequately qualified personnel and supervision for maintenance and extension of the consumer's piping system or systems; or, for any other reason or cause deemed sufficient in the Department's discretion.

2. Separate Pressure System. The Department will require the installation of mechanical, or other methods or devices, on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or a separate storage

facility; or, in any way increases the pressures of the water within his premises above the pressure furnished by the Department; or, has such equipment or arrangement of piping, storage or industrial methods or processes as might under certain conditions raise the pressure of the water within his premises above the pressure of the water in the mains of the Department. Plans for all such installations must be approved by the Department.

3. Location of Protective Devices. Any device installed for the prevention of backflow as may be required under these Rules and Regulations, shall unless the Department approves otherwise in writing, be located above ground, and in such location as to be safe from flooding or submergence in water or other liquids, properly protected from external damage, freely accessible, and with adequate working room for testing and repairing.

All such devices shall be tested at least once annually, and as often as required by the Department in those instances where successive tests indicate repeated failure. Repairs, replacement of parts, etc., shall be made whenever deemed necessary by the Department at the expense of the consumer. Making annual tests shall be the responsibility of the consumer, and shall be performed only by the consumer or such other qualified person or persons as may be acceptable to the Department. Records of all tests shall be made on forms prescribed by the Department, and a copy of each such record shall be promptly furnished to the Department. Failure of the consumer to make the proper tests and submission of records may, at the discretion of the Department, result in the Department's making the tests, needed repairs, and replacements, and charging the costs thereof to the consumer.

4. Conformance with Laws and Ordinances. The several conditions relative to installation and maintenance of cross-connections and other physical connections referred to in this Section shall be subject to the changing requirements of State and Federal health and environmental statutes, rules, regulations or other authority, and of the City and County of Honolulu Building Code.

5. Discontinuance of Water Service for Noncompliance. Failure on the part of the consumer to comply with the Department's requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water service until such time as the Department is satisfied the requirements have been met.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-214 Fire Service

1. Fire service will be furnished as a public service only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire connection shall be paid for by the consumer. After the water is turned on, the Department assumes no liability for loss or damage of any kind whatsoever that may occur to the premises served, as a consequence of fluctuation in pressure or any other cause.

2. No charge will be made for water used through such service for fire protection purposes, but any water lost through leakage or used in violation of the conditions contained herein shall be paid for by the consumer at the regular schedule of water rates

and charges. The Department may disconnect and remove the said service if water is used for other than fire protection purposes or if leaks are not corrected. Whenever such disconnection is in effect, the Department shall not be in any way liable for loss or damage sustained due to the disconnection of service.

A ten-day written notice of the Department's proposed disconnection with reasons therefore will be given to the consumer before disconnection is effected by the Department.

3. Service charges will be in accordance with rates established by the Department.

4. All fire services will be metered by a detector meter of a type approved by the Department. All services shall become the property of the Department after installation.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-215 Fire Hydrants

1. Use of Fire Hydrant. Any use of a fire hydrant, or tampering therewith, or the taking of water therefrom for purposes other than fire protection by persons other than authorized employees of the Fire Department or the Department is prohibited, except upon prior application to the Department.

2. Damage to Hydrant or Property. Any damage to fire hydrants, and the consequent resulting loss or damage to property, or any injury to persons arising from or out of the damage to fire hydrants shall be paid for by the person or legal entity responsible for the damage.

3. Change in Hydrant Location. The Department will, if it approves the request for a change in location of a hydrant, change such location, provided, the cost of all labor, material, equipment and all other charges are paid by the person requesting such change.

4. Maintenance of Private Hydrants. The consumer shall, at his own expense, test periodically and maintain in good and safe working condition all private hydrants under his control and not under the jurisdiction of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-216 Resale of Water

Unless specifically agreed upon, the consumer shall not resell any water received by him from the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-217 Elevation Agreement

1. Where pressure conditions permit, two or more residential units may be constructed on an existing lot which is located above the service limit. The meter serving the lot shall be located within the service limit of the system. The water system within the lot, if required, shall provide for fire protection in accordance with the requirements of the Fire Department.

2. Where pressure conditions within the distributing main adjacent to the lots above the service limit is less than 40 psi, the existing vacant lots may be serviced provided only one single-family home is constructed on the lot. For existing lots that are located along the water main between a reservoir and the service limit, a maximum of two (2) single-family homes will be allowed.

3. Where pressure conditions permit, subdivisions served by a private water system will be permitted above the service limit. The master meter serving the private water system shall be located within the service limit of the system. As a condition of providing water service to subdivisions above the service limit with private water systems, the Department will require the formation of an Association, which shall be organized and managed so that it substantially conforms with the requirements of Section 514A-83.6 Hawaii Revised Statutes. The Association shall name the Department as an additional insured in its general liability insurance policy and shall be financially responsible for the operation and maintenance of the private water system.

4. Where the floor elevation of a unit is less than 70 feet below the spillway elevation of the reservoir, a receiving tank with air gap, in accordance with the Department's requirements, and a pump shall be installed. The consumer shall permit the Department to inspect the installation for compliance with departmental requirements.

5. The prospective consumers or associations shall enter into an agreement with the Department agreeing to accept such water service as the system is able to provide and to hold the Department harmless for all claims due to any inadequacy of water supply.

The Department will record the agreement at the Bureau of Conveyances.

[Eff 9/5/1979; BWS Res. No. 472, 1979; am and renum BWS Res. No. 530, 1985; am BWS Res. No. 591, 1991; am and renum BWS Res. No. 610, 1992]

CHAPTER III: PROTECTION, DEVELOPMENT AND CONSERVATION OF WATER RESOURCES

Sec. 3-301 Waste Disposal Facilities

1. All plans proposing the following waste disposal facilities must have the written approval of the Manager:
 - a. Sewage disposal systems.
 - (1) Cesspools.
 - (2) Septic tank systems.
 - (3) Individual household aerobic treatment units.
 - b. Disposal wells.
 - c. Sanitary landfills.
 - d. Refuse disposal dumps.
 - e. Sewage treatment plants.
 - f. Stabilization ponds.
 - g. Any other wastewater disposal facilities.
2. The Department may establish "No Pass Zones" which shall be delineated on "No Pass Zone" maps. These maps shall be used as guidelines in implementing this Section.
3. The Manager may at his discretion, withhold his approval, if there is any basis to expect that the operation of the proposed waste disposal facility and any wastewater therefrom may to any degree affect the quality and/or quantity of water resources used or expected to be used for domestic water.
4. If the Manager disapproves a proposal, he shall inform the applicant in writing of the facts and reasons upon which his disapproval is based and afford the applicant an opportunity for an informal appeal hearing. Any applicant who is aggrieved by the Manager's decision and desires reconsideration of such decision shall petition the Manager in writing within 30 days from the date of receiving such decision. The applicant should base his request for reconsideration on pertinent technical data, including boring logs which indicate that the proposed waste disposal facility in the "No Pass Zone" would not contaminate groundwater resources used or expected to be used for domestic water supplies. If after the hearing, the request for reconsideration is disapproved by the Manager, the applicant may appeal the decision to the Board, which shall have the power to affirm, modify or reverse the decision of the Manager so appealed from. Such appeal shall be taken within 30 days after the final decision of the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 502, 1982]

Sec. 3-302 Surface Waters

The subject of surface waters shall be governed by the appropriate and applicable Federal and State statutes, rules, regulations, directives and standards as currently exist and as may, from time to time hereafter be amended.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-303 Use of Pesticides

1. Any person planning to use pesticides on lands within the "RW" (Restricted Watershed) Conservation District Subzone, Department lands and installations, must obtain written approval from the Manager in addition to any other approval or permit required by law.
2. The Manager may prohibit or restrict the use of pesticides in any area when there is a reasonable basis to expect the pesticide will affect the quality of water resources used or expected to be used for domestic water.
3. If the Manager proposes to prohibit or restrict the use of pesticides in an indicated area, he shall inform the users of pesticides in the area of those facts and reasons upon which his prohibition or restriction is based, and afford the users an opportunity to be heard before taking action.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-304 Protection of Water Resources

1. Pursuant to the applicable provisions of the Revised Charter of the City and County of Honolulu, any proposed amendments to the "General Plan" and "Development Plan" of the City and County of Honolulu shall be reviewed by the Manager.
2. Whenever applications for any land use activity within the Conservation District in the City, whether permitted or not by State or City agencies, are submitted to the Manager for his review, the Manager shall investigate the effects the proposed use may have on water resources.
3. The Manager may recommend disapproval, within 30 days, if he finds any reason that the proposed activity could affect water resources and may be a detriment to the water resources used or expected to be used for domestic water.
4. If the Manager recommends disapproval, he shall inform the applicant of those facts and reasons upon which his disapproval is based, and shall afford the applicant an opportunity for informal hearing before the Manager prior to making a final decision.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-305 Application for Drilling, Modifying, Recasing, or Reusing Wells

1. An application for drilling each new well to develop water; modifying, recasing or changing the use to other than originally practiced or approved of an existing well from which water is to be drawn; or reusing for water development purposes any well which has been unused for a period of five years or more, shall be made to the Manager in writing, signed by the Owner, and shall include such of the following as are pertinent:

- a. Name, signature and post office address of the applicant and/or the Owner of the property on which the well is located. In the event that the Owner of the land on which the well is located and the Owner of the well are not the same, written notarized permission from the Owner of the land shall be filed with the application.
- b. A plan or drawing showing the proposed work, and a plot plan showing the well location referenced to the nearest property corner, City survey monument or government triangulation station.
- c. A statement of the nature, purpose and extent of the proposed usage of the water and/or the facility.
- d. A map showing the land area to be served from the well.
- e. Specifications for the proposed work, including:

- (1) The length, nominal diameter, thickness, material, type of joints and kind of casing or lining.

- (2) A plan of the well showing:

- (a) main control valve, fittings, appurtenances required by Section 3-309 of these Rules and discharge pipes leading from the well;

- (b) size, type, capacity and kind of pumps or tanks, if any;

- (c) buildings and manholes;

- (d) plan and description of meter or other facility or method of recording output;

- (e) a vertical cross section of the well including details of casing or lining, grouting of annular space, and open hole.

- (3) The elevation of the top of the well control valve, or of the top of the casing, and the approximate elevation of the ground at the well head.

2. A fee of One Hundred Dollars (\$100.00) shall accompany each application for the drilling or excavation of each new well for water development. In addition, before the permit is granted, a permittee bond for each new well, meeting the following requirements, shall be submitted to the Manager:

- a. The amount of the bond shall be set by the Manager but in no case shall the amount be greater than \$25,000.

b. The amount of bond as set by the Manager shall include the cost of sealing the well in accordance with these Rules and Regulations should it be necessary to abandon the well for any reason prior to its completion.

c. The bond shall be effective for a period covering the life of the drilling contract plus 30 days.

d. The payee of the bond shall be the Department, and the payor shall be the Owner of the well or his agent.

3. Application forms for drilling, modifying, recasing, or reusing wells may be obtained at the offices of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-306 Permit for Drilling, Modifying, Recasing, or Reusing Wells

1. An application for drilling each new well to develop water; modifying, recasing, or changing the use of an existing well from which water is to be drawn; or reusing for water development purposes any well which has been unused for a period of five years or more will be reviewed and acted upon by the Manager within thirty (30) calendar days after receipt.

2. Before a permit is granted, the Owner will be required to furnish an agreement to perform the work in accordance with these Rules and Regulations, and thereafter to operate and maintain the well in accordance with the laws of the State of Hawaii and these Rules and Regulations.

3. The Manager shall classify all wells, guided by Figures 1 and 2, included herein, and by the fundamental criteria that the primary purpose of these Rules and Regulations is to assure public safety, water conservation, prevention of groundwater degradation and/or pollution, and the obtaining and recording of geologic and hydrologic information. The Manager may reclassify any well while work is in progress if the geologic and hydrologic information that then becomes available does not substantiate his original classification. The Manager's classification of the well shall be the basis of application of these Rules and Regulations.

4. The Manager may refuse to grant a permit to drill a new well or to modify, reuse, or recase an existing well if there is a reasonable basis to expect that the proposed work will affect groundwater resources by:

a. Causing or bringing about overdraft conditions, or

b. Excessive lowering of the ambient groundwater table, or

c. Causing or bringing about excessive salt water intrusion, excessive mineralization or other degradation of water quality, or

d. Interfering with the operations of existing established water sources.

5. If the Manager elects to refuse a permit, he shall inform the applicant of the facts and reasons upon which his refusal is based and afford the applicant an opportunity for informal hearing before taking action.

6. This permit shall be valid for a period of one year (365 calendar days) from the date of issuance.

7. The Owner or his authorized representative shall notify the Manager when drilling work, including the installation of the casing, is completed, but prior to installing any equipment or appurtenances on or in the well.

8. No work, as stated in paragraph 1 above, shall commence without a permit.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-307 Suspension of Permit and Correction of Defects

1. Whenever it shall appear that any well work for which a permit has been granted by the Manager is not being done in accordance with the conditions of the permit or agreement mentioned in Section 3-306, the Manager shall notify the Owner to appear before him at a time and place designated in the Notice to show cause why the permit should not be suspended or revoked and the well sealed, or put in proper condition by the Owner. The Notice shall contain a brief statement of the grounds for suspension or revocation. After such hearing the Manager shall render his order as to revocation, suspension or continuation of the permit. The order shall be subject to appeal as provided in Section 5-502.

2. Whenever the Manager shall find that any well is not being maintained or operated in accordance with these Rules and Regulations, the Manager shall notify the Owner of such well to take whatever steps may be necessary to remedy the defect at the Owner's expense within a time specified in such Notice. If the Owner fails to comply with such Notice, and remedy the defect within the specified time, the Manager may do such work as may be necessary to put the well in proper condition at the expense of the Owner, or he may take necessary action to enforce the penalty provided by law.

3. The Notice provided in the preceding paragraphs 1 and 2 may be served by delivery to the Owner, or by delivery thereof to his last known place of business or residence, or by registered mail addressed to his last known post office address, not less than ten (10) days nor more than thirty (30) days before the date set for hearing, or time specified for correcting the defect, as the case may be.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-308 Well Casing

1. Whenever there is any reasonable basis to anticipate that any well subject to these Rules and Regulations could result in wastage or contamination of water resources, the Manager shall require the well to be cased, recased, lined or relined.

2. For all new and/or modified wells wherein casing is required, the casing and joints shall be of a quality conforming with the latest American Water Works Association specifications, or any other material approved by the Manager. If the casing is of steel material, it shall conform to the following minimum thickness.

TABLE OF CASING THICKNESS

Nominal Diameter of Casing (In.)	Casing Thickness (In.)
2	0.154
2-1/2	0.203
3	0.216
3-1/2	0.226
4	0.237
6 - 8	0.250
10	0.312
12	0.312
14	0.312
16	0.375
18	0.375
20	0.375

For well diameters greater than 20",
casing thickness shall be as specified by the Manager.

The well owner shall insure that proper precautions are taken during installation to prevent collapse.

3. In all new and/or modified wells wherein casing is required, the annular space shall be grouted in a manner approved by the Manager from a depth set by the Manager to the ground surface.

4. Joints in the steel casing may be either welded or of the screwed type with external sleeves. Welded joints are to be made by a State certified welder. External sleeve joints shall be screwed to refusal before being lowered into the ground. The threads of the pipe casing and the sleeves shall be cleaned of any rust, dirt or grease and given a coating of approved metal preservative. After the joint has been made up, all exposed surface of the joints, sleeves and uncovered threads are to be given a final coating of the same preservative.

5. The lower end of the casing shall be set at such depth and by such method, chosen by the contractor and approved by the Manager, as will minimize the possibility of leakage and insure that any loose material will not enter or ravel into the well. Tests for leakage in and around the casing shall be conducted under the direction of the Manager after drilling or recasing is completed. For the purposes of such tests a suitable standpipe shall be temporarily installed by the Owner at his own expense when so requested by the Manager.

6. Should a well casing be found to be leaking and causing wastage of water or contamination of water resources, the Owner must either stop the leak or seal the well at his own expense, and in a manner satisfactory to the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-309 Other Requirements for Wells

1. For all new wells constructed after March 1972 from which water is to be drawn, the Owner shall provide and maintain the following at his own expense:

- a. Devices satisfactory to the Manager for measuring and recording total draft. Where the well is one of a battery of interconnected wells, a centralized measuring and recording facility may be installed.
- b. Means to determine water level satisfactory to the Manager.
- c. Adequate access and clearance for well drilling equipment.

2. For all new artesian wells constructed after March 1972, wherein the static water level can rise to the well head, the Owner shall provide and maintain the following equipment at his own expense in addition to that required in paragraph 1 above:

- a. A valve of the same diameter as the well casing, so arranged as to facilitate the introduction of instruments for inspection and test purposes, the valve shall be capable of stopping the flow from the well and shall be installed directly at the top of the well casing.
- b. A valve or petcock 1/4" or larger shall be installed below the valve required in paragraph (2a) above, for periodic testing of the well or sampling of the water under static conditions.
- c. Clearance at the well to permit the well casing to be extended above the altitude of the static artesian head.

3. The replacement of pumps or other equipment at a well for its control and operation that will materially increase the output from the well shall be subject to the approval of the Manager, measured by the criteria set forth in Section 3-306(4). The Manager's decision whether or not to approve shall be made within two weeks after receipt of the notification.

4. The Manager shall be notified at least 48 hours before the Owner removes pumps or other devices installed in the well bore. When such devices are removed, the Manager shall be allowed access to the cleared well for inspection and measurements. In emergencies, the Manager shall be notified as soon as practicable after the devices are removed.

5. The Owner of any well subject to these Rules and Regulations shall be responsible for providing adequate safeguards at the well at his own expense, so that any person permitted to be on such property where the well is located shall not be exposed to any dangerous hazard or nuisance.

6. For all wells constructed prior to March 1972, wherein the static water level can rise to the well head, the Owner shall provide and maintain an operable control valve to prevent unnecessary wastage.

Sec. 3-310 Log of Well, Length of Casing and Depth of Well

1. The Owner shall require that the well driller maintain a continuous log of the drilling of the well, including a description and samples of the materials encountered, together with the depths to the top and bottom of each change in geologic characteristics. The log shall include a record of water levels encountered, any changes thereof, and the rate of flow at the surface, if any, for different depths of drilling.

2. Within ninety (90) calendar days after construction of each well, the Owner shall submit a Driller's Report to the Manager on forms approved by the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-311 Qualifications of Well Drillers

The drilling, modifying, recasing, reusing, or sealing of any well shall be done only under the direct supervision of personnel properly certified by the Department of Regulatory Agencies, State of Hawaii.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-312 Inspection of Work

The Manager may supply an inspector, whose duties shall be to obtain and report the progress of the work of drilling, modifying, recasing, reusing, or sealing of wells. The Manager and his assistants or inspectors shall have free access to all parts of the work at all times, and shall be given any assistance required and every facility, information and means of thoroughly inspecting the work and the materials used or to be used.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-313 Utilization of Well Water

1. All water wells shall be operated in a manner that will readily and effectively prevent wastage and pollution of water. The Manager may exclude high-level tunnels from the provisions of this section if it is specifically determined in each case that wastage of water therefrom cannot be reasonably corrected.

2. The Manager may limit the amount of water drawn from any well covered under these Rules and Regulations if there is a reasonable basis to expect that the overdraft will:

- a. Cause or bring about overdraft conditions, or
- b. Excessively lower the ambient groundwater table, or
- c. Cause or bring about excessive salt water intrusion, excessive mineralization, or other degradation of water quality, which may render a domestic water source unfit for such purposes, or
- d. Interfere with the operations of existing established water sources.

3. If the Manager proposes to limit draft from any well, he shall inform the Owner of sufficient facts and reasons upon which his limitation is based, and afford the Owner an opportunity for informal hearing before taking action.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 475, 1980]

Sec. 3-314 Data Relating to Wells

1. Every Owner or user of any well in the City shall, upon request of the Manager, disclose the location of such well and all other facts or information within his knowledge or possession relating to such well. He shall include a statement of the manner in which the well is being used or operated, the volume of water being drawn or flowing therefrom, and the method and means of control thereof.

2. Owners of wells in existence on October 1, 1959 shall not be required to alter or augment existing facilities or appurtenances to obtain data, but shall assist the Manager, when required, in installing facilities or altering or augmenting existing facilities at the discretion and cost of the Department in order that such data may be obtained.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-315 Test Borings

1. The driller shall notify the Manager prior to any test boring work.

2. The driller shall submit a completed information form within ten (10) calendar days after giving notice of proposed test borings. Forms may be obtained at the offices of the Department.

3. If information discloses that there is any reasonable basis to anticipate that the test borings would cause contamination or wastage of groundwater resources, the driller shall complete the work at his own expense in a manner satisfactory to the Manager.

4. No fee is required for test borings.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-316 Abandonment and Sealing

1. Every Owner or user of any well in the City and County who fails to demonstrate actual use of the well for a period of five (5) years, shall be notified that said well is verified as abandoned.

2. Abandoned wells shall be sealed by the owner at his own expense within a reasonable period after notification. The sealing method chosen by the Owner shall be approved in writing by the Manager and shall assure protection of groundwater resources against wastage and contamination.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 3-317 Access to Wells and Appurtenances

Any member and any authorized representative or employee of the Department shall have free access to all wells and their appurtenances at any reasonable time for the purpose of inspecting or testing or securing such hydrologic or other information as the Manager may deem necessary.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-318 Low Groundwater Level Conditions

1. Caution Low Groundwater Condition

A caution low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the levels designated in Column A of said schedule for said areas.
- b. Whenever chloride content rises 8 ppm but less than 12 ppm over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which a caution low groundwater condition exists:

- a. Inform the public that a Caution Low Groundwater Condition exists.
- b. Conduct an intensive public appeal for water conservation through the mass media.
- c. Institute voluntary irrigation and other water use schedules to reduce water consumption.
- d. Send letters to large consumers and other private well operators asking them to cut back their usage.

2. The Manager shall, at each regular Board meeting while a caution low groundwater condition exists, report to the Board the status of the head and chloride levels of the Department's facilities; the weekly average of daily pumpage; the effectiveness of the voluntary conservation measures being advocated; recommendations to increase or decrease public appeals to conserve water, and such other information which the Board may desire or require from time to time to evaluate the status of the low groundwater condition and make modification to the voluntary conservation measures being advocated.

3. Alert Low Groundwater Condition

An alert low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the levels designated in Column B of said schedule for said areas.
- b. Whenever chloride content rises 12 ppm but less than 16 ppm over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which an alert low groundwater condition exists:

- a. Declare that an alert low groundwater condition exists. An alert low groundwater condition shall continue to exist, once it is declared by the Board, until such time as the Board declares that the condition is terminated.
- b. Implement mandatory restrictions within the scope of these Rules and Regulations.
- c. Punish offenders within the scope of these Rules and Regulations.

4. Critical Low Groundwater Condition

A critical low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the level designated in Column C of said schedule for said areas.
- b. Whenever chloride content rises 16 ppm or more over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which a critical low groundwater condition exists:

- a. Declare that a critical low groundwater condition exists. A critical low groundwater condition shall continue to exist, once it is declared by the Board, until such time as the Board declares that the condition is terminated.
- b. Implement mandatory restrictions within the scope of these Rules and Regulations.
- c. Punish offenders within the scope of these Rules and Regulations.

5. The Manager shall, at each regular Board meeting while a declared alert or critical low groundwater condition as provided herein is in effect, report to the Board the status of the head and chloride levels of the Department's facilities; the weekly average of daily pumpage; the effectiveness of the restrictions and allotments in force; recommendations to increase or reduce restrictions and allotments; and such other information which the Board may desire or require from time to time to evaluate the status of the low groundwater condition and make modifications to the restrictions and allotments imposed.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 475, 1980; am BWS Res. No. 624, 1994]

Sec. 3-319 Mandatory Restrictions Related to Alert Low Groundwater Condition

1. Board of Water Supply Consumers

During an alert low groundwater condition period, the Board may set lawn and ground cover water irrigation restrictions on any of the Department's consumers. Such restrictions may relate to the time when such irrigation may take place and the quantity of water used and may be different for the various classes of the Department's consumers as the Board shall determine. In addition, the Board may establish water allotments for commercial, residential, industrial, military,

governmental, and agricultural consumers. The allotment shall not be less than 90% of the previous 12-month monthly average or less than 350 gallons/day for single family and duplex residences.

2. Private Wells

During an alert low groundwater condition period, the Board may ask owners of private wells to comply with maximum monthly water allotments established for each private well or battery of private wells. Such allotments shall be stated as a percentage of the highest average daily draft for each month of the year over the last 5 years prior to the effective date of declaration by the Board.

Example: John Doe Well - Average Daily Pumpage Each Month

Jan.	2.3 mgd	1.7 mgd	*2.4 mgd	2.0 mgd	1.9 mgd
Feb.	1.8 mgd	1.9 mgd	1.8 mgd	*2.0 mgd	1.8 mgd
Mar.	*1.9 mgd	1.8 mgd	1.8 mgd	1.7 mgd	1.8 mgd
Apr.	2.2 mgd	2.0 mgd	*2.6 mgd	2.3 mgd	2.3 mgd
etc.	etc.	etc.	etc.	etc.	etc.

***Highest Average Daily Pumpage for Each Month of the Year Over the Last 5 Years for John Doe Well**

Jan.	2.4 mgd.
Feb.	2.0 mgd.
Mar.	1.9 mgd.
Apr.	2.6 mgd.
etc.	etc.

In no case shall the allotment be less than 90% of the highest average daily draft for each month of the year over the last 5 years. Any owner of 2 or more separate wells may regulate the draft of their wells so that aggregate monthly draft will not exceed the combined monthly allotment for all of their wells.

3. Department personnel may issue warnings and citations for violations of mandatory restrictions set by the Board.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-320 Mandatory Restrictions Related to Critical Low Groundwater Condition

1. Board of Water Supply Consumers

The Board may declare that one or more of the following restrictions shall apply to any or all classes of the Department's consumers. Such restrictions may relate to the time when the uses listed in this paragraph may occur and the quantity of water used and may be different for the various classes of the Department's consumers as the Board may determine.

- a. Limits on lawn and ground cover water irrigation.
- b. Limits on plant and garden irrigation.
- c. Limits on the washing of cars, boats, trailers, and other vehicles.
- d. Limits on the filling of swimming pools and other types of pools and ponds.
- e. Limits on the washing of sidewalks, walkways, driveways, patios, parking lots, tennis courts, and other hard surfaced areas.
- f. Limits on the operations of fountains.

2. Private Wells

During a critical low groundwater condition period, the Board may ask owners of private wells to comply with maximum monthly water allotments established for each private well or battery of private wells. Such allotments shall be stated as a percentage of the highest average daily draft for each month of the year over the last 5 years prior to the effective date of declaration by the Board. The Board may from time to time increase or decrease the initial percentage limit set for each well or battery of wells provided that in no case shall the percentage be less than 70% of the highest average daily draft for each month of the year over the last 5 years.

Any owner of 2 or more separate wells may regulate the draft on their wells so that the aggregate monthly draft will not exceed the combined monthly allotment for all of their wells.

3. Department personnel may issue warnings and citations for violations of mandatory restrictions set by the Board.

4. Special Rates and Charges Relating to Critical Low Groundwater Condition.

During a critical low groundwater condition period, a surcharge schedule for excess water use shall be established according to the following procedure. The Board shall set water allotments per billing period for each class of the Department's consumers. Such allotments shall be stated as a percentage (which may be greater than 100% but not less than 70%) of the previous 12-month monthly average. In addition the allotment shall not be less than 350 gallons per day for single family and duplex residences. The Board may from time to time increase or decrease the initial percentage limit set for any class of consumers. Allotment percentages may be set at different times and at different levels for the various classes of consumers as the Board shall determine. In determining what percentages to declare for various classes of consumers at various times, the Board shall consider present and predicted weather conditions, the rate of decline of the ground water head levels, the impact on the economy, compliance with regulations by various classes of consumers, new service applications, development of supplementary source, impact on the budget of the Department, and the social impact of proposed restrictions. Water

consumed in excess of the water allotment per billing period for each consumer shall be charged according to the following schedule:

Gallons in excess of Allotment for Meter Sizes 2" and Larger (Monthly or Bi-monthly Billing)	Gallons in excess of Allotment for Meter Sizes 5/8" to 1-1/2" (Monthly Billing)	Gallons in excess of Allotment for Meter Sizes 5/8" to 1-1/2" (Bi-Monthly Billing)	Surcharge
First 25% or part thereof	First 3,000 gallons or part thereof	First 6,000 gallons or part thereof	2 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part thereof	Next 6,000 gallons or part thereof	3 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part	Next 6,000 gallons or part thereof	4 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part	Next 6,000 gallons or part thereof	12 times existing water rate*
All use over 100%	All use over 12,000 gallons	All use over 24,000 gallons	20 times existing water rate*

**If the service is charged by block rates, the surcharge will be charged at the Block Rate that the allotment falls in.*

For residential consumers, the surcharge shall be charged at the block rate that the allotment falls in. Surcharges shall be assessed each consumer after receipt of the first water bill following the establishment of allotments by the Board. Upon termination of allotments by the Board, surcharges shall cease.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-321 Penalties

1. Any violation by any person of the restrictions declared by the Board under Sections 3-319 and 3-320 of this Chapter shall be punishable according to Chapter II, Section 2-205 and Chapter V, Section 5-501 of these Rules and Regulations.
2. Any consumer who violates the restrictions declared by the Board under Sections 3-319 and 3-320 of this Chapter or who consumes water in excess of the amount designated below for their class shall be subject to the installation of a flow restriction device by the Department and punishable according to Chapter V, Section 5-501 of these Rules and Regulations. An offender shall pay \$50.00 for the installation and removal of a flow restriction device by the Department. Water service may be discontinued for an offense committed after the installation of a flow restrictor in accordance to Chapter II, Section 2-205.

Class of Consumer	Maximum Allowable Consumption in Excess of Allotment
I. Residential including single family and duplex	I. 5,000 gallons per monthly billing period, 10,000 gallons per bi-monthly billing period.
II. Resort, commercial, multi-family, industrial, agricultural, military, and government.	II. Difference between allotment and previous 12-month monthly average.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-322 Procedures for Control of Water Use During Low Groundwater Level Condition

1. Declaration of Low Groundwater Level Condition

The Manager shall inform the public and the Department's consumers of the declaration of an alert or critical low groundwater condition by publishing such declaration in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The alert or critical low groundwater condition shall begin at midnight on the third day of the publication declaring such condition.

2. Notice of Restrictions

The Manager shall inform the public and the Department's consumers of the restrictions being imposed because of an alert or critical low groundwater condition by publishing such restrictions in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The restrictions shall begin at midnight on the third day of the publication declaring such condition and shall terminate at midnight on the first day of a publication terminating such condition.

3. Notice of Water Allotment to Consumers

Each consumer shall be notified of their water bill or by direct mail to the consumer. In cases where a water bill is not sent directly to the person using the water, the consumer shall be responsible for informing the user of the water allotment per billing period applicable to them.

4. Notice of Maximum Monthly Water Allotment to Private Well Operators

Each private well operator shall be notified by mail of their monthly water allotment.

5. Exceptions

Consideration of written applications for exceptions regarding the allotment system or regulations and restrictions on water use set forth in this Chapter shall be as follows:

a. Written applications for exceptions shall be accepted, and may be granted, by the Manager.

b. Grounds for granting such exceptions are:

- (1) Failure to do so would cause an unnecessary and undue hardship to the Applicant, including but not limited to adverse economic impacts such as loss of production or jobs;
- (2) Failure to do so would cause an emergency condition affecting the health, sanitation, fire protection, or safety of the Applicant or the public;
- (3) For single family residences with more than four persons permanently residing in the home, if a written application for an exception is granted as provided herein, the applicable allotment shall be increased by 40 gallons per person per day for each person permanently residing in the home in excess of four persons;
- (4) For multiple residential units with more than two dwelling units where the allotment is less than 280 gallons per day per dwelling unit, if a written application for an exception is granted as provided herein, the applicable allotment shall be 280 gallons for each unit;
- (5) Denial of an application for exception may be appealed in writing to the Board.

6. Termination of Low Groundwater Level Condition

The Board may terminate a declared low groundwater level condition whenever head levels at fewer than five of the area heads listed in Schedule I are within the prevailing condition or whenever chloride content has risen less than 12 ppm over three consecutive months at sources that caused the declared low groundwater level conditions.

The Manager shall inform the public and the Department's consumers of the termination of an alert or critical low groundwater condition by publishing such termination in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The alert or critical low groundwater condition and all restrictions and allotments associated therewith shall terminate at midnight on the first day of a publication terminating such condition.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-323 Exemption of Private Wells Within Designated Groundwater Control Areas

New and existing private wells within Designated Groundwater Control Areas only shall be exempt from the provisions of the Rules and Regulations. However, owners of private wells shall be asked to comply with any allotments set by the Board for private wells. Control and regulation of such wells shall be subject to State statutes, rules, regulations, directives, and standards as currently exist and as may, from time to time hereafter, be amended.

Groundwater Head Levels

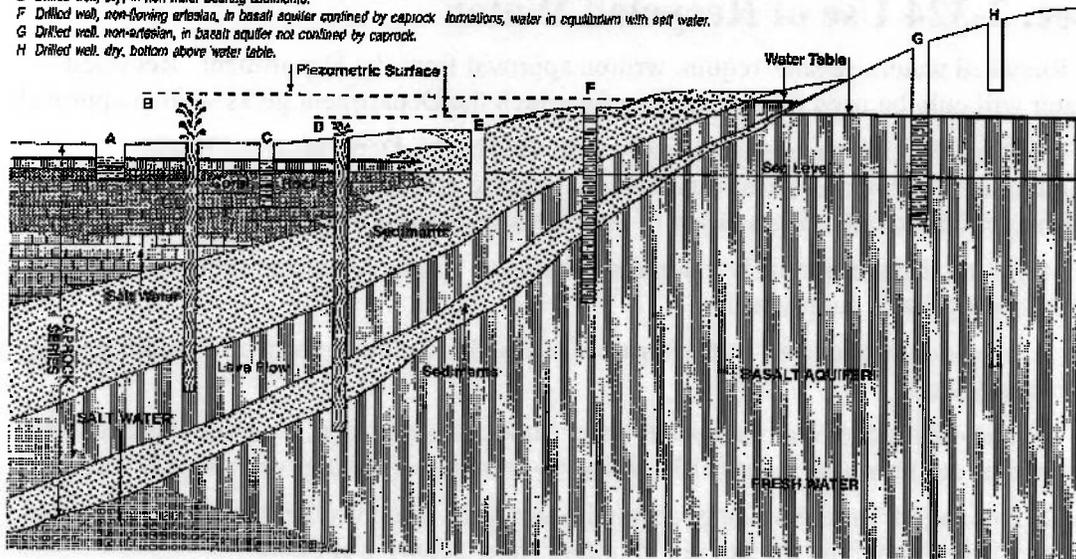
SCHEDULE I

COLUMN A ("Caution" Low Groundwater Conditions)		COLUMN B ("Alert" Low Groundwater Conditions)		COLUMN C ("Critical" Low Groundwater Conditions)	
Area	Head Level (ft.)	Area	Head Level (ft.)	Area	Head Level (ft.)
Kaimuki	23.5	Kaimuki	22.5	Kaimuki	20.5
Beretania	21.0	Beretania	20.0	Beretania	17.5
Kalihi	20.5	Kalihi	19.5	Kalihi	17.0
Moanalua	18.5	Moanalua	17.5	Moanalua	15.0
Halawa	15.5	Halawa	14.5	Halawa	12.0
Kalauao	15.5	Kalauao	14.5	Kalauao	12.0
Pearl City	14	Pearl City	13	Pearl City	12
Waipahu	17	Waipahu	16	Waipahu	15
Hoaeae-Kunia	13	Hoaeae-Kunia	12	Hoaeae-Kunia	11
Makaha	7	Makaha	6	Makaha	4
Waialua	11	Waialua	10.5	Waialua	10
Kaluanui	16	Kaluanui	15	Kaluanui	14
Punaluu	17	Punaluu	16	Punaluu	14
Waihee Tunnel**	15 psi	Waihee Tunnel**	10 psi	Waihee Tunnel**	5 psi

**Bulkhead pressure

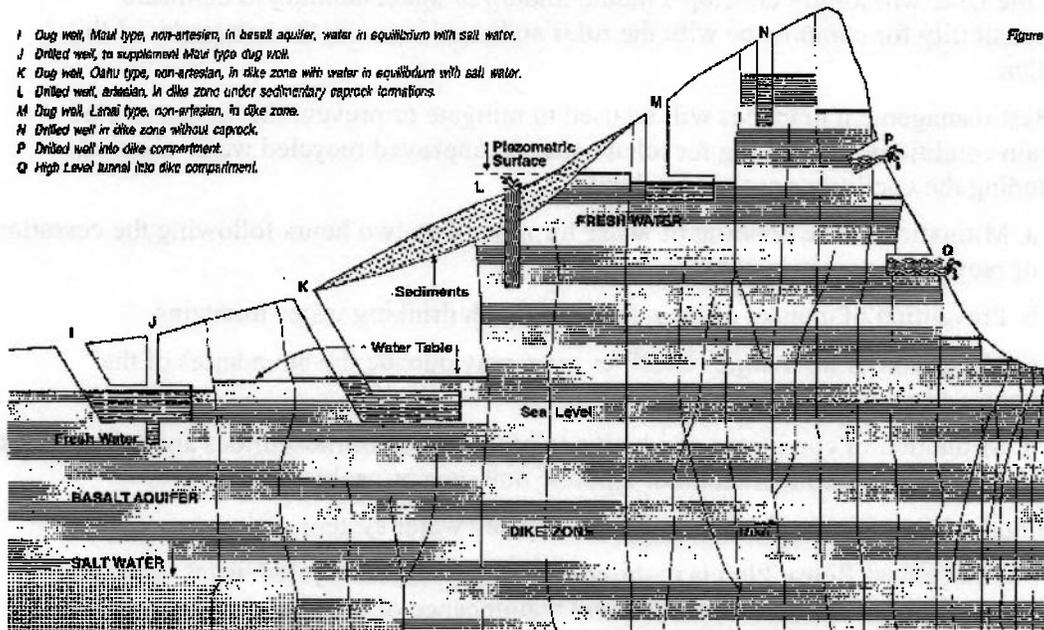
- A Dug well, non-artesian, in formation of caprock series.
- B Drilled well, artesian, in water bearing formations of caprock series.
- C Drilled well, non-artesian, in lava or sediments of caprock series.
- D Drilled well, artesian, in lava flows confined under caprock formations, water in equilibrium with salt water.
- E Drilled well, dry, in non-water bearing sediments.
- F Drilled well, non-flowing artesian, in basalt aquifer confined by caprock formations, water in equilibrium with salt water.
- G Drilled well, non-artesian, in basalt aquifer not confined by caprock.
- H Drilled well, dry, bottom above water table.

Figure 1



- I Dug well, Mout type, non-artesian, in basalt aquifer, water in equilibrium with salt water.
- J Drilled well, to supplement Mout type dug well.
- K Dug well, Oahu type, non-artesian, in dike zone with water in equilibrium with salt water.
- L Drilled well, artesian, in dike zone under sedimentary overrock formations.
- M Dug well, Lanai type, non-artesian, in dike zone.
- N Drilled well in dike zone without caprock.
- P Drilled well into dike compartment.
- Q High Level tunnel into dike compartment.

Figure 2



[Eff 3/31/1980; BWS Res. No. 475, 1980; am BWS Res. No. 624, 1994; am BWS Res. No. 796, 2010]

Sec. 3-324 Use of Recycled Water

1. Recycled water use sites require written approval from the Department. Recycled water will only be used for the purpose for which the Department gives written approval.
2. Users of recycled water shall comply with the Hawaii Department of Health Guidelines (DOH Guidelines) established to ensure protection of public health and prevent environmental degradation of aquifers and/or surface waters.
3. Minimum distances must be maintained between a recycled water approved use site and drinking water supply wells.
 - a. Irrigation of recycled water must be at least 50 feet away from any drinking water supply well.
 - b. The outer edge of any recycled water impoundments (e.g., reservoirs, golf course ponds, etc.) must be at least 100 feet away from any drinking water supply well.
 - c. Drainage from areas using recycled water must be controlled to prevent the water from coming within 50 feet of a drinking water supply well.
4. Prior to using recycled water on any approved recycled water use site, the Department and the User will jointly develop a memorandum of understanding to delineate responsibility for compliance with the rules and regulations in the remainder of this section.
5. Best management practices will be used to mitigate or prevent the occurrence of certain conditions when using recycled water on approved recycled water use sites, including the conditions outlined below:
 - a. Mitigation of the ponding of water for more than two hours following the cessation of recycled water irrigation.
 - b. Prevention of contact of recycled water with drinking water fountains.
 - c. Mitigation of discharge, runoff, or overspray outside the boundaries of the approved recycled water use site.
 - d. Mitigation of conditions conducive to proliferation of mosquitoes and other disease vectors, and to avoid creation of a public nuisance or health hazard.
6. Standard hose bibs will not be used on recycled water system piping.
7. A Management Reuse Plan is required for the approved recycled water use site to delineate responsibilities of operation and maintenance of the site. A template for the preparation of a Management Reuse Plan is available from the Department.
 - a. A User Supervisor is required for each approved recycled water use site. Any change in the User Supervisor will require approval by the Department.
 - b. The User Supervisor:
 - i. Should be knowledgeable about the entire recycled water system within his/her responsibility;

- ii. Should be knowledgeable about all applicable conditions of recycled water use;
 - iii. Will be responsible for installing, operating, and maintaining the recycled water system;
 - iv. Will be responsible for preventing potential hazards;
 - v. Will be responsible for implementing the DOH Guidelines; and
 - vi. Will be responsible for coordinating with the Department's cross-connection control program.
- c. The Management Reuse Plan will include operation criteria for irrigation.
- i. Rationale for scheduling irrigation.
 - ii. How to determine when to stop irrigation.
 - iii. The number of fields that can or should be irrigated at the same time.
 - iv. The order in which fields should be irrigated.
 - v. The sequence to follow when starting and stopping the irrigation system.
 - vi. How to control flow and pressure.
- d. The Management Reuse Plan will include a contingency plan that identifies actions and precautions to be taken to protect public health in the event of a non-approved use, such as an overspray or runoff from the approved recycled water use site, and ponding of recycled water.
8. A public education plan will be developed to inform persons about the use of recycled water in areas where they are likely to come in contact with it.
- a. When spray irrigation is used, the Department and user property manager will comprise a reuse committee. The intent of this committee is to identify, document, and notify the Department of Health of inappropriate use of recycled water.
 - b. Signs with conspicuous pictorial and text warning will be approved by the Department and will be posted in all areas where recycled water is used. The wording will be of sufficient size to be clearly read by the public. Examples of approved signs are available from the Department.
9. Information will be provided to employees who work in an approved recycled water use site. Information will include oral and written information that:
- a. Recycled water is being used.
 - b. Recycled water is not suitable for drinking and that drinking recycled water may result in potential illness.
10. Daily records of operation and maintenance information will be maintained, including:
- a. The volume of recycled water flow applied to the approved recycled water use area.
 - b. The volume of any supplemental water flow applied to the approved recycled water use area.

- c. The total area irrigated.
- d. The cycle or number of applications per day.
- e. The total volume of recycled water and supplemental water applied to the approved recycled water use are in gallons per acre per day.
- f. The total daily precipitation.
- g. The number of incidents of ponding for more than 2 hours.
- h. The number of incidents of runoff from the approved use area.
- i. The stress condition of the crop.
- j. Days when irrigation does not occur.
- k. Freeboard of any recycled water storage impoundment.

11. Cross-connections of recycled water supplies and potable water supplies are prohibited. Additional information and restrictions about cross-connections can be found in Sec. 2-213.

[Eff 1/1/2002; BWS Res. No. 722, 2001]

CHAPTER IV: RULES GOVERNING PARKING AT THE BOARD OF WATER SUPPLY

Sec. 4-401 Off-Street Parking Areas

The following areas are designated for off-street parking as indicated:

1. Visitor Parking

Areas in the back of the Public Service Building and in front of the Engineering Building, shown as Areas A and B in Appendix A, attached.

2. Employee Parking

Areas makai of Lusitana Street bounded by Alapai, Lisbon and Lauhala Streets, respectively, which are shown as Areas C, D & E, in Appendix A.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-402 Parking Authorization

Except as specified otherwise by appropriate signs and/or markings, parking in the above-designated areas is authorized only as follows:

1. Areas A and B - For bona fide visitors on Departmental business.

2. Areas C, D and E - For bona fide employees of the Department, whose vehicles display the required decal evidencing the issuance of a parking permit by the Manager or his authorized representative.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-403 Parking Hours

Except as otherwise specifically authorized, the off-street parking areas shall be open Monday through Friday, inclusive, from 6:30 a.m. to 5:30 p.m., holidays excepted.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-404 Removal of Unauthorized Vehicles

The Manager or his authorized representative is hereby authorized to remove or cause to be removed at the vehicle owner's expense any vehicle parking within the areas described in Section 4-402 when:

1. Such vehicle is parked by a person who is not a bona fide visitor on Departmental business.

2. Such vehicle does not display the required decal evidencing the issuance of a parking permit by the Manager or his authorized representative.

3. Such vehicle is not parked wholly within a designated stall and straddles an adjoining stall.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

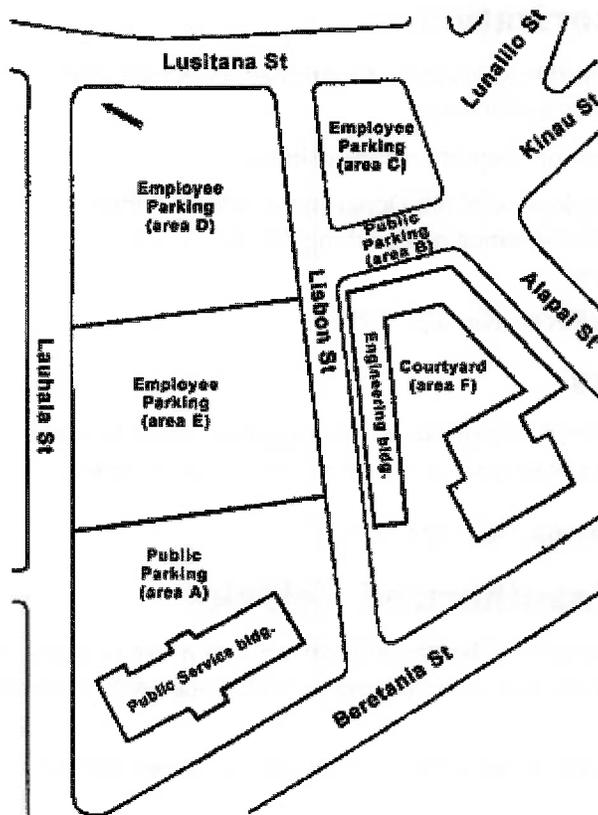
Sec. 4-405 Authorization to Initiate Parking Fees

The Manager is hereby authorized to establish and institute parking fees for employees of the Department when such fees are deemed appropriate; provided however, that such fees shall be comparable to the parking rates established for employees at the City Hall Complex.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-406 Authorization to Establish Other Parking Areas

The Manager is hereby authorized to establish and designate other areas within the Department's premises for off-street parking and to apply the applicable provisions of these rules accordingly.



[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

CHAPTER V GENERAL PROVISIONS

Sec. 5-501. Purpose

The purpose of this chapter is to provide a framework for the management, operation, and maintenance of the County's information technology resources. This chapter shall be read in conjunction with the provisions of the County Code, and shall not be construed to conflict with any other provision of law.

(Ord. 10-2009, Sec. 5-501, 10/20/09)

Sec. 5-502. Definitions

The following definitions shall apply to the provisions of this chapter unless otherwise indicated. Words and phrases not defined herein shall be construed to have their plain and ordinary meaning.

(Ord. 10-2009, Sec. 5-502, 10/20/09)

Sec. 5-503. Report of Status

The Board shall receive and review a report from the County Administrator regarding the status of the County's information technology resources.

(Ord. 10-2009, Sec. 5-503, 10/20/09)

Sec. 5-504. Information Security

The County Administrator shall develop and implement a comprehensive information security policy that shall include, but not be limited to, the following: (a) identification of critical information assets; (b) assessment of risks to those assets; (c) implementation of controls to mitigate risks; (d) monitoring and reporting on the effectiveness of controls; (e) incident response and recovery planning; and (f) regular testing and updates of the security policy.

(Ord. 10-2009, Sec. 5-504, 10/20/09)

Sec. 5-505. Vendor Selection Process

The County Administrator shall establish a fair and equitable process for the selection of vendors for information technology services. The process shall include the following: (a) identification of requirements; (b) solicitation of proposals; (c) evaluation of proposals; and (d) selection of the most qualified vendor.

(Ord. 10-2009, Sec. 5-505, 10/20/09)

CHAPTER V: GENERAL PROVISIONS

Sec. 5-501 Penalty

Any person who shall violate any provision of any of the foregoing Rules and Regulations shall be guilty of a misdemeanor, pursuant to Chapter 1, Article 3, Section 1-3.1 of the Revised Ordinances of Honolulu, as amended and upon conviction thereof shall be punished for each offense as prescribed by law, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-502 Appeals

Appeals to the Board as prescribed in Sections 7-105(k) and 7-118 of the Revised Charter of the City and County of Honolulu shall be conducted in accordance with procedures established under Sections 91-9, -10, -11 and -12 of the Hawaii Revised Statutes.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-503 Repeal of Rules

The Rules and Regulations and all amendments thereto previously adopted by the Board are hereby repealed.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-504 Severability

If any rule, section, sentence, clause, or phrase of these Rules and Regulations, or the application thereof to any person, circumstance, or property is held to be unconstitutional or invalid, the remaining provisions or applications of these Rules and Regulations to other persons, circumstances, or property shall not be affected, and to this end the provisions of these Rules and Regulations are severable. The Board hereby declares that it would have adopted these Rules and Regulations as presently promulgated, irrespective and notwithstanding the fact that any one or more of said rules, sections, sentences, clauses, or phrases might be declared unconstitutional or invalid.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-505 Rules Inoperative, When

If any provision of these Rules and Regulations jeopardizes the receipt by the State, City and County of Honolulu, or Department of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as such funding is jeopardized, be deemed inoperative.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]



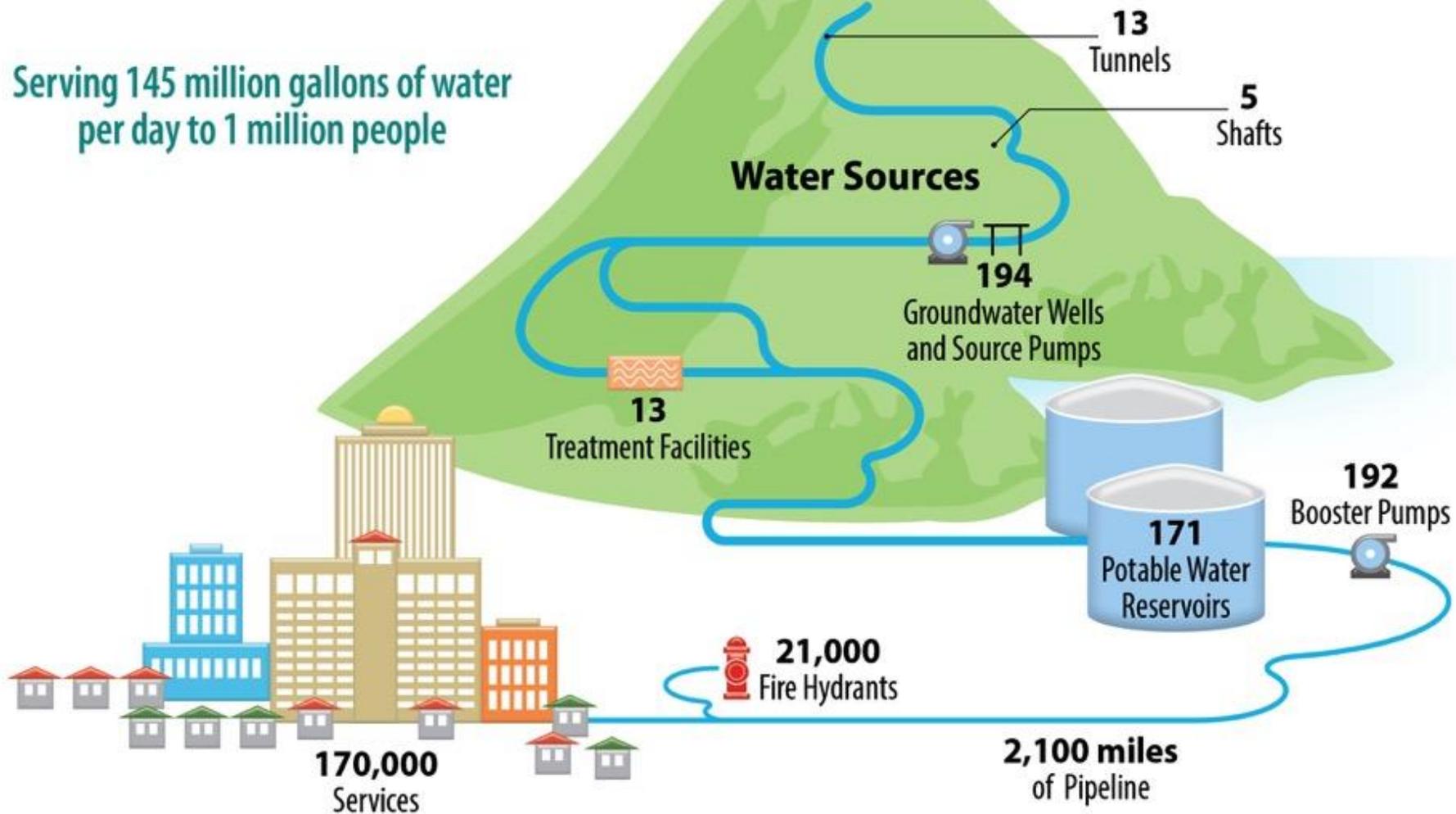
DRAFT WATER SYSTEM FACILITIES CHARGE UPDATES

Small Business Regulatory Review Board

October 21, 2021
boardofwatersupply.com

Delivering water from **underground water sources to your home** requires a large and complex system.

Serving 145 million gallons of water per day to 1 million people



The BWS Water Master Plan ...

- ... **Looked ahead** 30 years
- ... **Evaluated** the entire water system
- ... **Identified** necessary improvements
- ... **Balanced needs with costs** of providing water to our customers





Over the next **30 years**, BWS will invest in **800+ infrastructure projects** island-wide, with total costs above **\$5.3 billion**.



WATER SYSTEM FACILITIES CHARGE IS:

- A one-time charge based on water use capacity
- Applies to:
 - All new development requiring water from the BWS's system
 - Additional capacity needed for an existing water service
- Excludes:
 - Developments that have paid for and installed all of a water system
 - Portion of the system installed by developers, e.g., source, transmission and/or storage



WHY UPDATE THE WSFC NOW?

- Current charges adopted in 1993
- Water use patterns have changed
- Growth needs have changed
- Available capacities in existing system have changed
- Costs have increased
- WSFC revenues do not cover costs of growth-related projects



WSFC SHORTFALL: ABOUT \$30 MILLION PER YEAR



\$10.3 million/year
WSFC monies collected
2015 – 2020 (average)

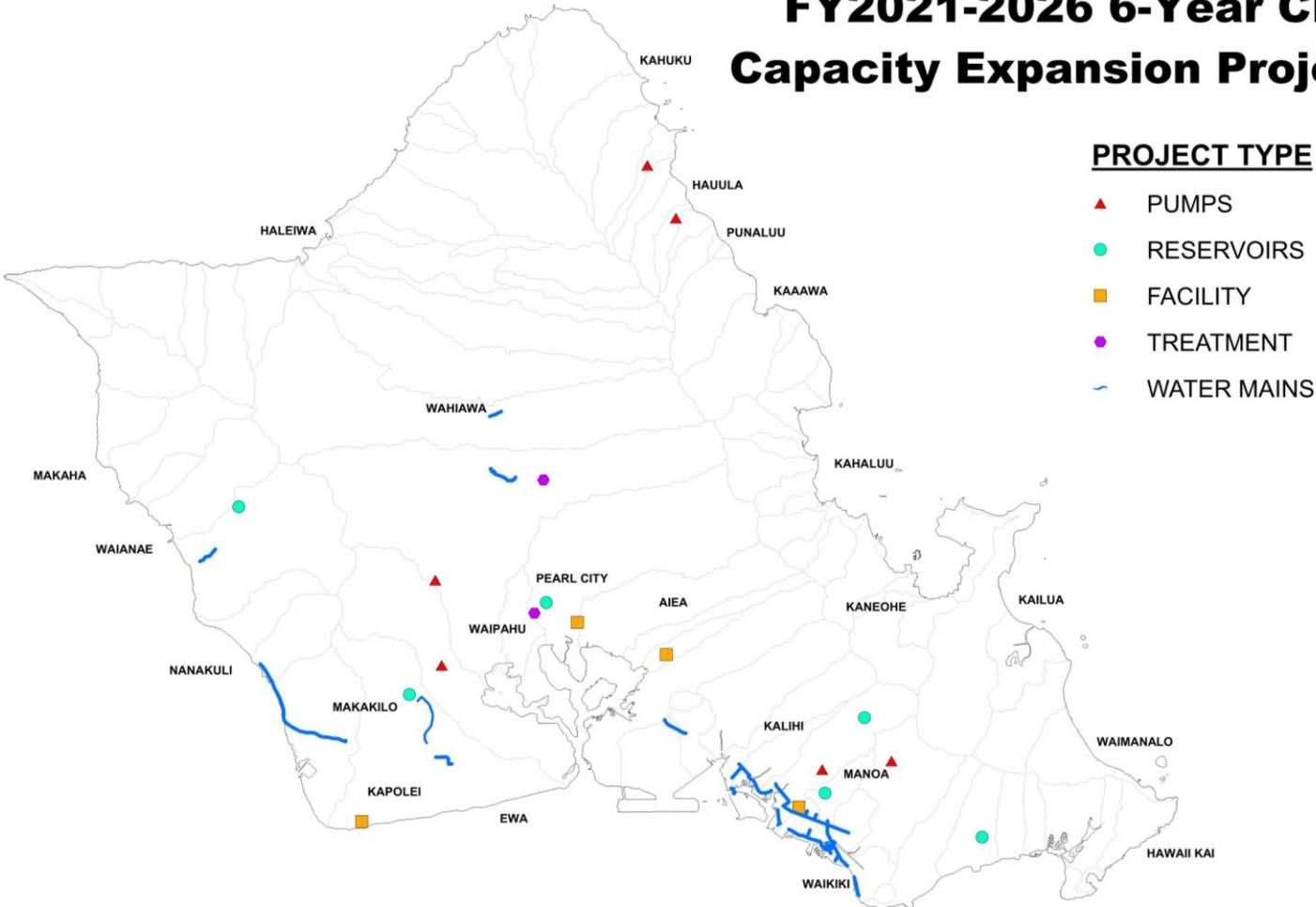
\$41.8 million/year
Projected annual cost of
growth-related improvements
2021 – 2026 (average)



BENEFITS OF UPDATING THE WSFC

PAYS FOR CRITICALLY IMPORTANT GROWTH-RELATED PROJECTS LIKE THESE, SCHEDULED FOR CONSTRUCTION IN THE NEXT 6 YEARS.

FY2021-2026 6-Year CIP Capacity Expansion Projects



PROPOSED UPDATED WSFC FOR SINGLE-FAMILY RESIDENTIAL DEVELOPMENT

Residential (Minimum 20 Fixture Units)	Current	Proposed
<u>Single-Family Residential</u>		
Resource Development	\$80.04	\$64.43
Transmission	\$37.87	\$96.02
Daily Storage	\$67.42	\$59.00
Total charge per fixture unit	\$185.33	\$219.45

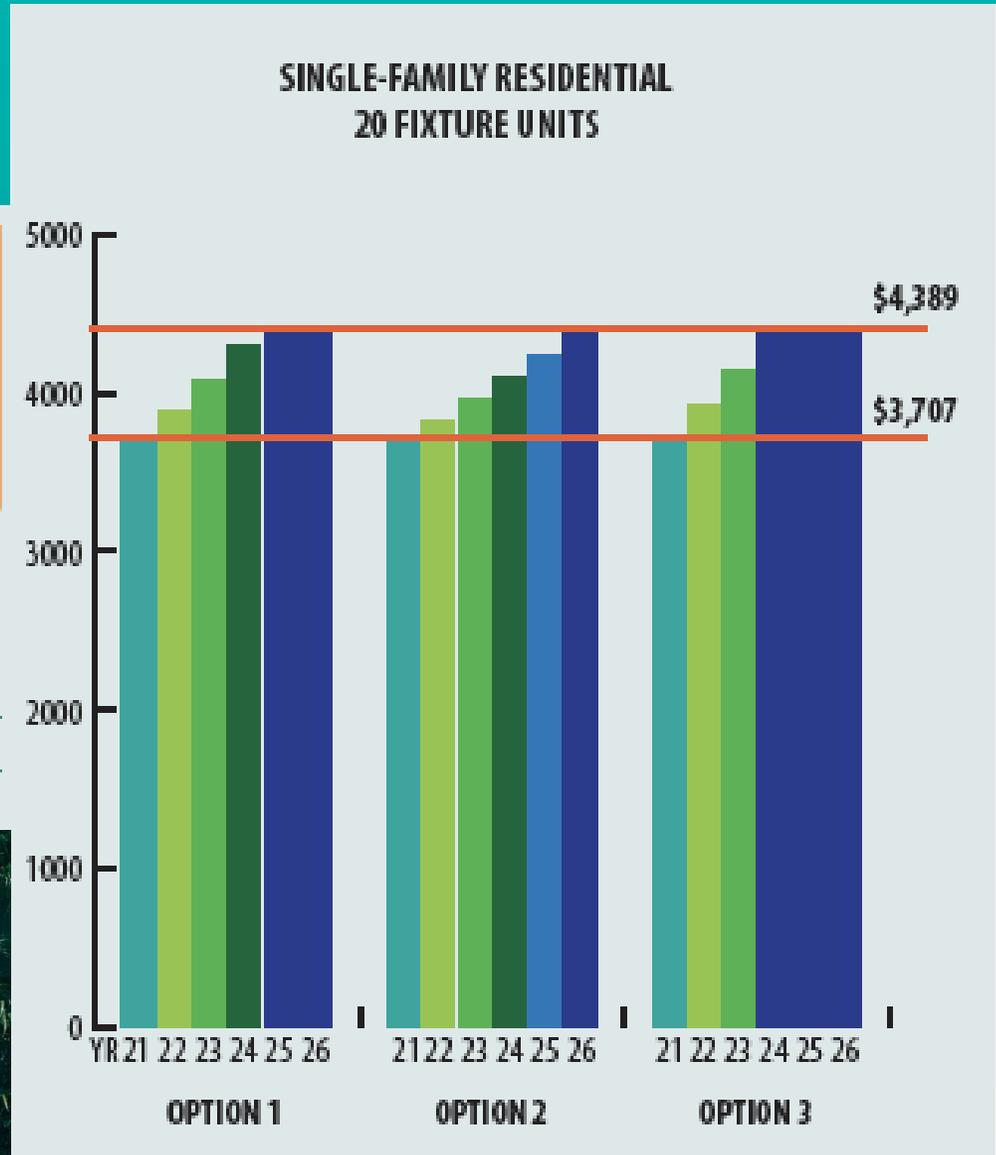


WHAT THAT LOOKS LIKE, YEAR BY YEAR

CHANGE FOR SINGLE-FAMILY RESIDENTIAL:
+18%

Options for implementing the WSFC for Single Family Residential

- OPTION 1** Phase in 5% maximum increase annually
- OPTION 2** Phase in evenly over 5 years
- OPTION 3** Phase in over 3 years



PROPOSED UPDATED WSFC FOR MULTI-UNIT RESIDENTIAL DEVELOPMENT

Residential (Minimum 20 Fixture Units)	Current	Proposed
<u>Multi-Family – Low-Rise</u>		
Resource Development	\$117.14	\$98.17
Transmission	\$55.46	\$118.17
Daily Storage	\$98.67	\$72.62
Total charge per fixture unit	\$271.27	\$288.96
<u>Multi-Family – High-Rise</u>		
Resource Development	\$88.14	\$74.73
Transmission	\$41.73	\$89.96
Daily Storage	\$74.25	\$55.28
Total charge per fixture unit	\$204.12	\$219.97

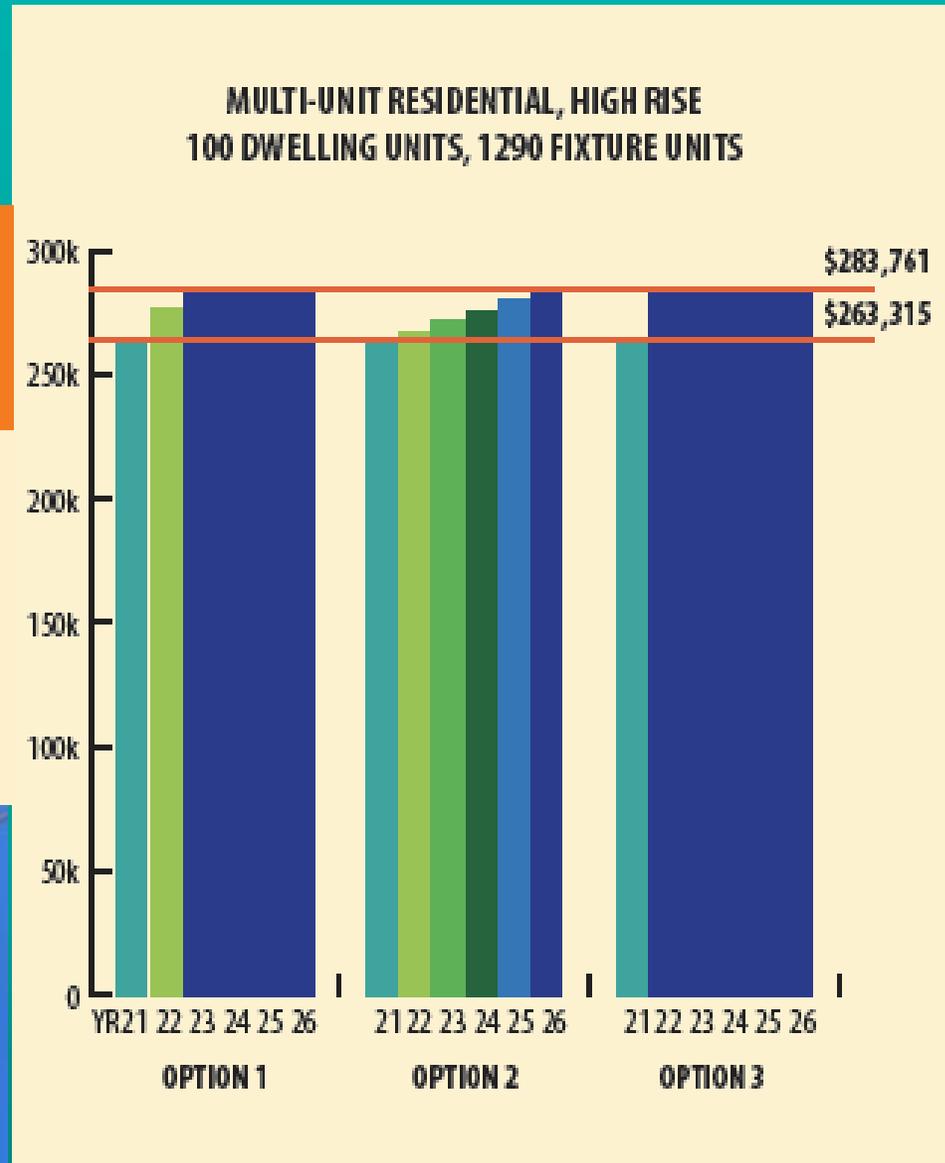


WHAT THAT LOOKS LIKE, YEAR BY YEAR

**CHANGE FOR MULTI-UNIT RESIDENTIAL:
HIGH-RISE +7.8%**

Options for implementing the WSFC for Multi-Unit Residential

- OPTION 1** Phase in 5% maximum increase annually
- OPTION 2** Phase in evenly over 5 years
- OPTION 3** Implement immediately, no phase in



PROPOSED UPDATED WSFC FOR NON-RESIDENTIAL DEVELOPMENT

Non-Residential (Commercial, Industrial, Hotel, Parks and Schools)	Current 50 Fixture Units or Less	Current Additional Fixture Units >50	Proposed All (Minimum of 20 fixture units)
Resource Development	\$274.74	\$95.15	\$111.88
Transmission	\$130.65	\$45.04	\$160.33
Daily Storage	\$232.46	\$80.10	\$98.53
Total charge per fixture unit	\$620.85	\$220.29	\$370.74

The updated WSFC for non-residential developments will have one rate per fixture unit, unlike current fee structure. Smaller developments, which often have small businesses as tenants, will see a significant decrease in the WSFC fees. The “break-even” for whether the WSFC will increase vs. decrease is 133 fixture units.



WHAT THAT LOOKS LIKE, YEAR BY YEAR

CHANGE FOR NON-RESIDENTIAL/COMMERCIAL:

< 50 FIXTURE UNITS: - 40%

> 50 FIXTURE UNITS: INCREASES
WITH FIXTURE UNIT NUMBERS

Options for implementing the WSFC for Non-Residential/Commercial

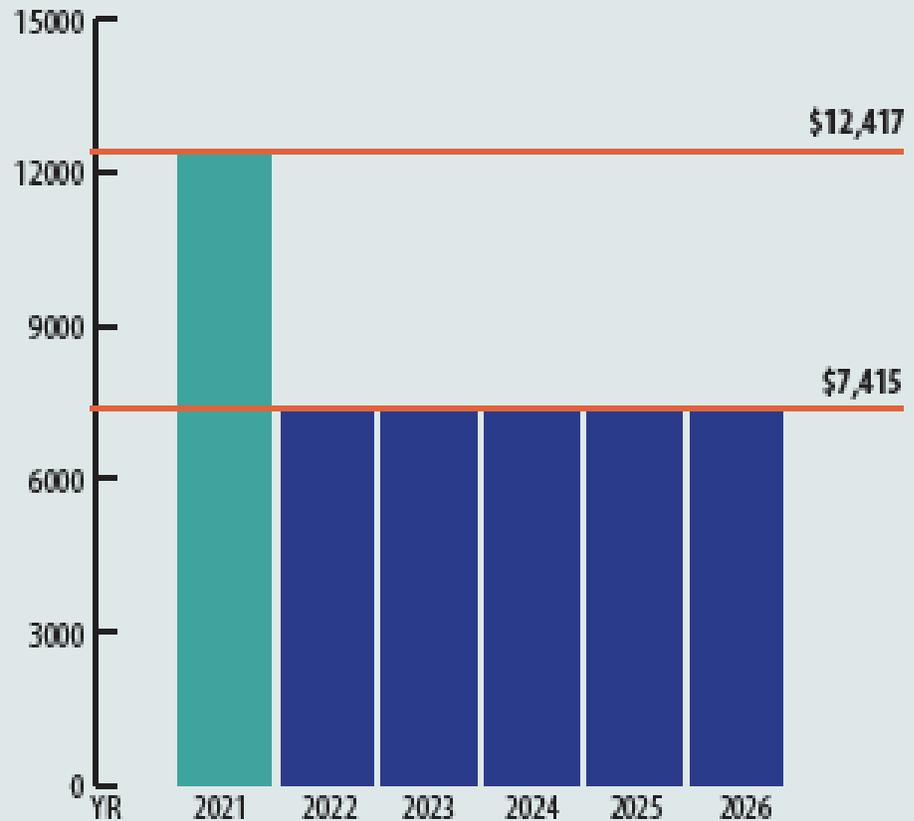
OPTION 1 Phase in 5% maximum increase annually

OPTION 2 Phase in evenly over 5 years

OPTION 3 Implement immediately, no phase in



NON-RESIDENTIAL (FAST FOOD RESTAURANT) 20 FIXTURE UNITS



WHAT THAT LOOKS LIKE, YEAR BY YEAR

CHANGE FOR NON-RESIDENTIAL/COMMERCIAL:

< 50 FIXTURE UNITS: - 40%

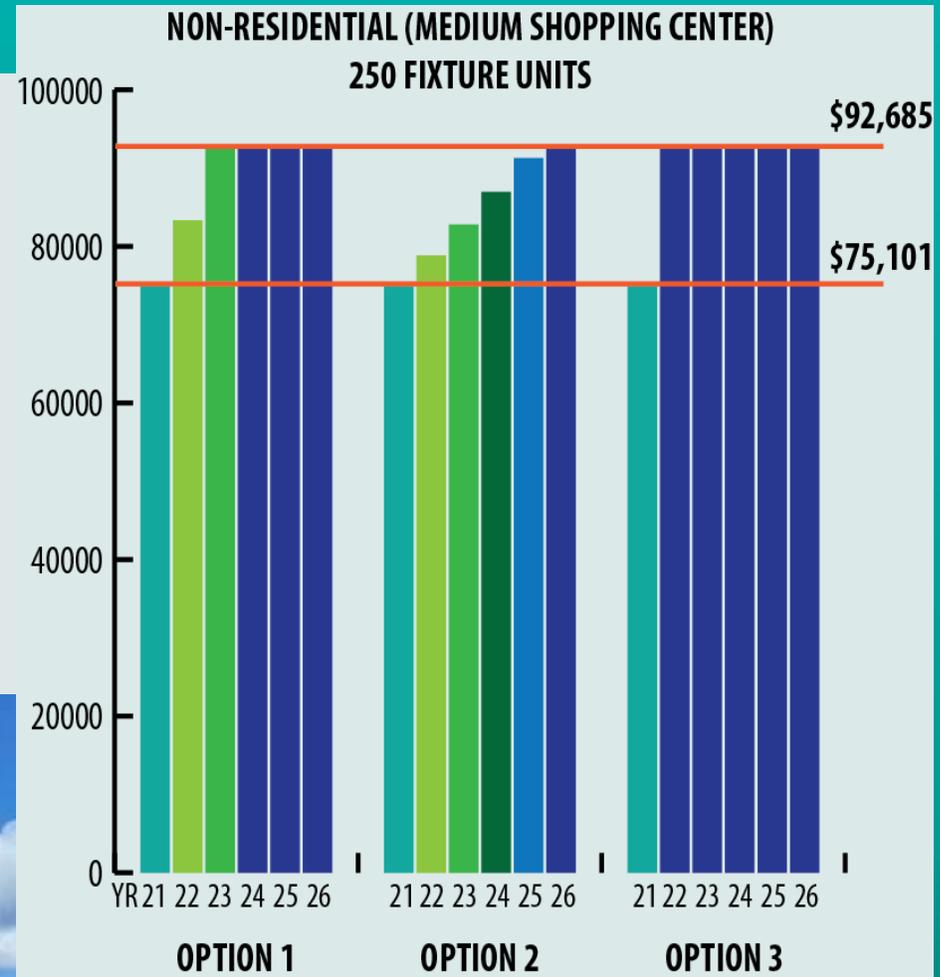
> 50 FIXTURE UNITS: INCREASES
WITH FIXTURE UNIT NUMBERS

Options for implementing the WSFC for Non-Residential/Commercial

OPTION 1 Phase in 5% maximum increase annually

OPTION 2 Phase in evenly over 5 years

OPTION 3 Implement immediately, no phase in



WAIVERS FOR AFFORDABLE HOUSING AND HOMELESS SHELTERS ARE AVAILABLE

- Currently offered for up to 500 units per year.
- Contact the Honolulu Board of Water Supply for more information.

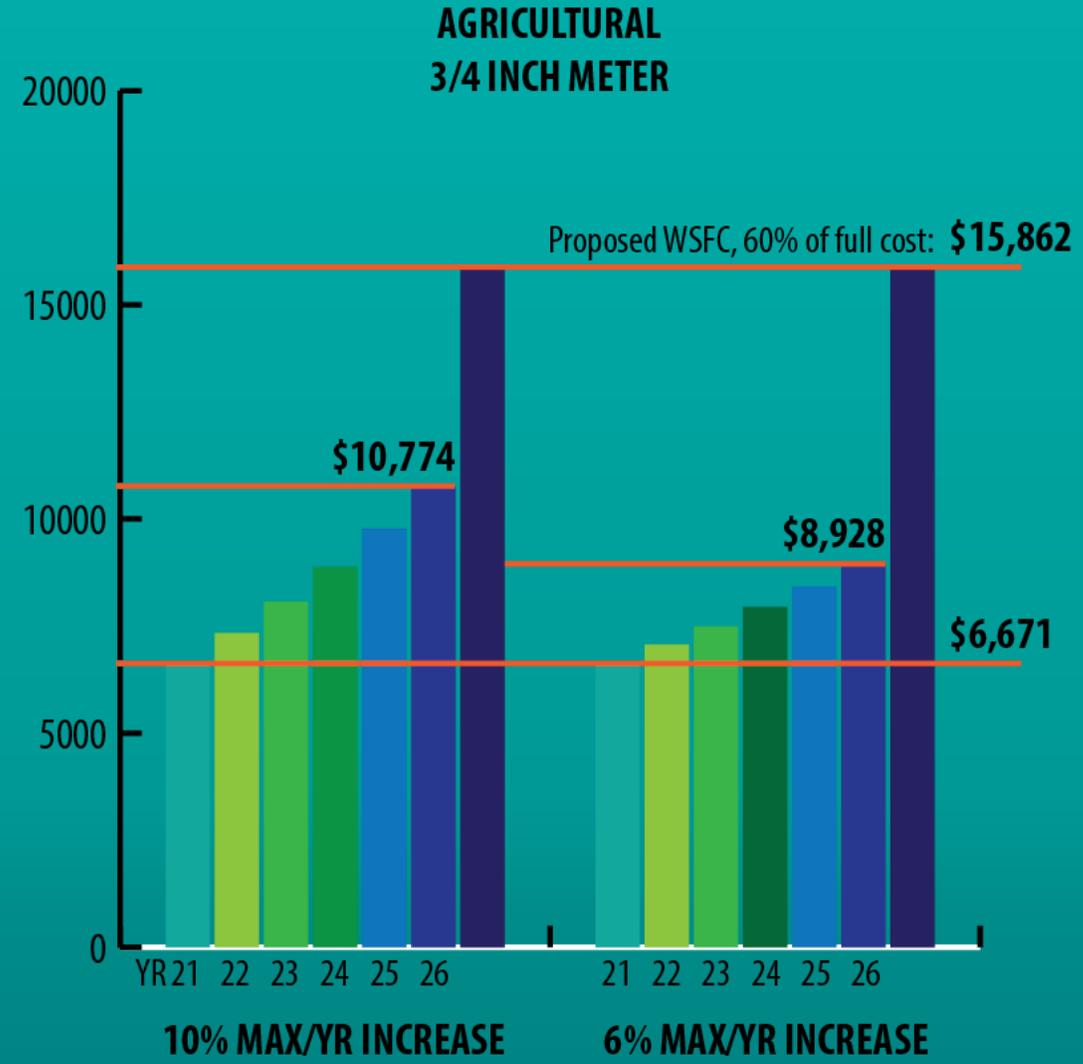
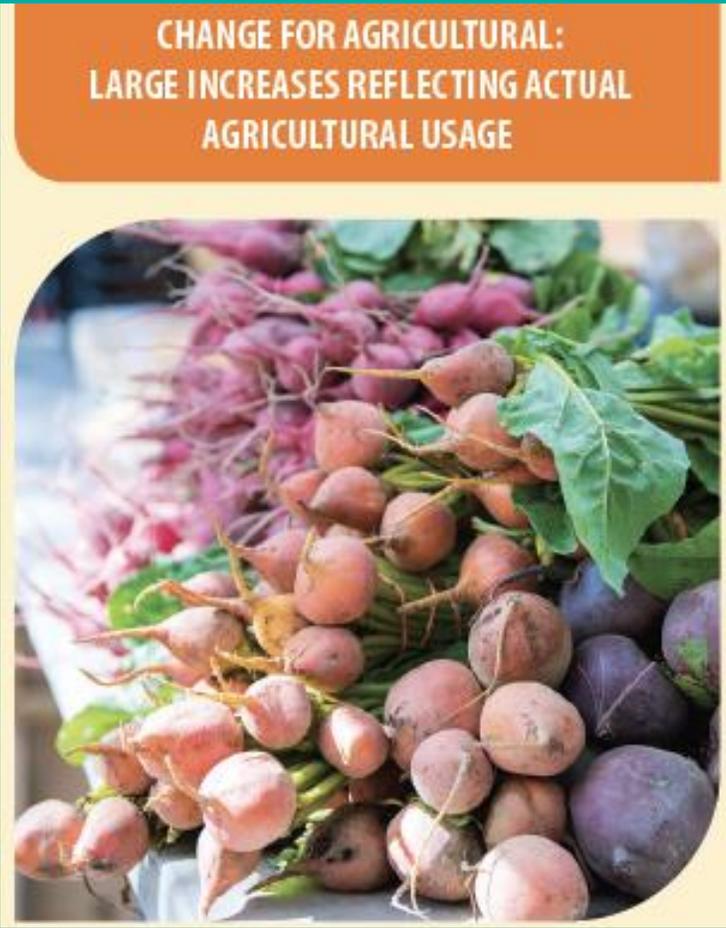
Fiscal Year	# Affordable Dwelling Units	# Homeless Dwelling Units	# Total Qualified Units	\$ Waived WFSC
FY 2018 – 2019	76	102	178	\$103,432.03
FY 2019 – 2020	302	0	302	\$489,770.41
FY 2020 – 2021	578	0	578	\$789,665.47
TOTALS to date	956	102	1,058	\$1,382,867.91



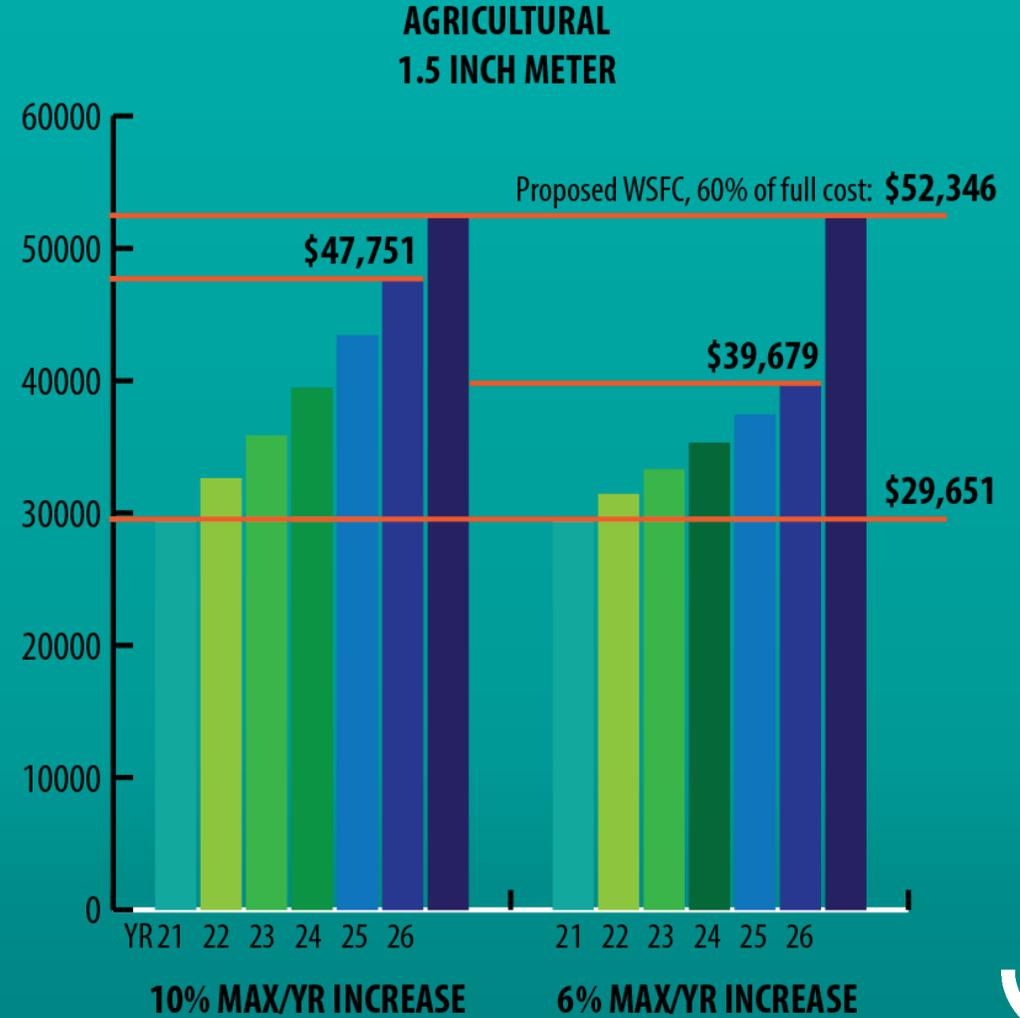
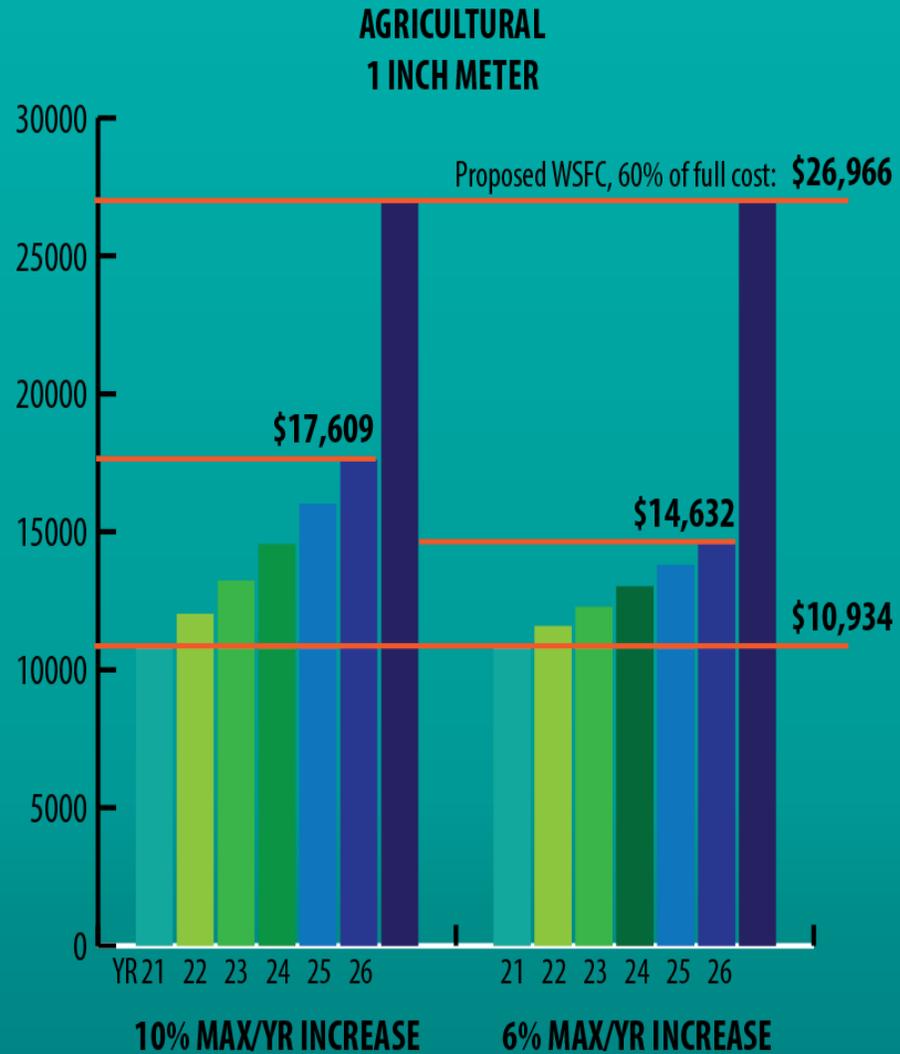
PROPOSED UPDATED AG WSFC WILL COVER 60% OF THE COST, SIMILAR TO THE BWS AGRICULTURAL WATER RATES SUBSIDY



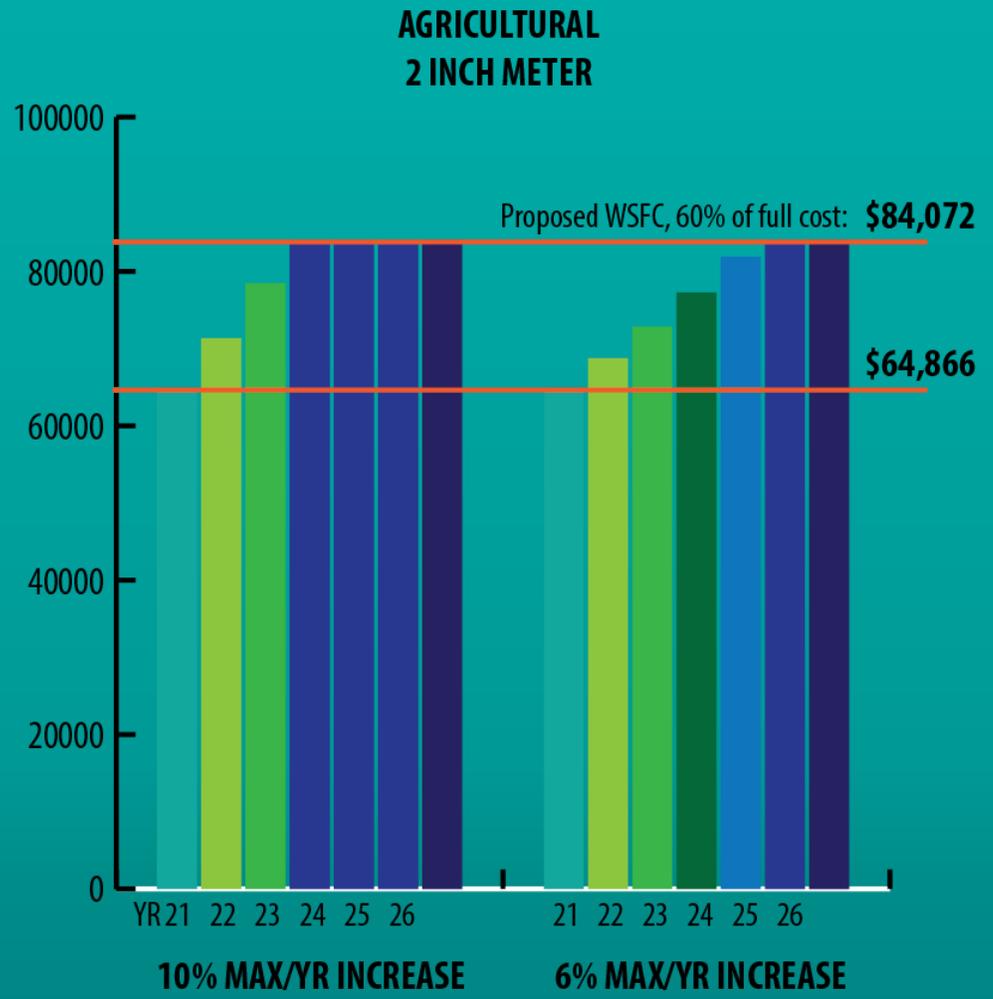
WHAT THAT LOOKS LIKE, YEAR BY YEAR



WHAT THAT LOOKS LIKE, YEAR BY YEAR



WHAT THAT LOOKS LIKE, YEAR BY YEAR



Proposed updated Ag WSFC could take between 6 and 19 years to reach full proposed rate.

This depends on the annual increases (e.g., 10% vs. 6% maximum annual increase) and meter size.



ADDITIONAL REQUIREMENTS AND ACTIONS

- Agriculture water use plan required for new Ag water customers
 - Helps right-size the water meter
- Encourage water conservation for all BWS ag customers
- Supplemental funding from other sources to offset revenue impacts



SUMMARY OF WSFC OPTIONS AS DIRECTED BY BOARD

Customer Type	Option 1	Option 2	Option 3
Single-Family Residential	5% maximum annual phase in	Even phase in over 5 years	Phase in over 3 years
Multi-Unit Residential Low Rise	5% maximum annual phase in	Even phase in over 5 years	No phase in
Multi-Unit Residential High Rise	5% maximum annual phase in	Even phase in over 5 years	No phase in
Non-Residential	5% maximum annual phase in*	Even phase in over 5 years	No phase in
Agricultural	10% maximum annual increase**	6% maximum annual increase***	10% maximum annual increase**

* 11 years to full charge for largest non-residential customers

**Years to full charge for Ag
 ¾-inch: 9 years
 1-inch: 10 years
 1.5-inch: 6 years
 2-inch: 3 years

***Years to full charge for Ag
 ¾-inch: 18 years
 1-inch: 19 years
 1.5-inch: 13 years
 2-inch: 6 years



WE'VE BEEN ASKING THE PUBLIC FOR INPUT

At this time, BWS water customers pay for a portion of the costs of growth-related capacity projects. Recognizing that this cost burden will shift from our customers to the developers of new or expanded projects once the updated WSFCs are implemented, what is your opinion about how quickly to phase them in?

- Do you recommend taking more time, up to five years (more for the largest non-residential developments and Ag) to phase in?
- Or do you prefer to implement them more quickly?



Mahalo!

WWW.BOARDOFWATERSUPPLY.COM



IV. New Business – Before Public Hearing

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 73, Barbers, promulgated by DCCA

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

Date: 10/14/2021

Department or Agency: DCCA - Professional and Vocational Licensing Division

Administrative Rule Title and Chapter: Title 16, Chapter 73

Chapter Name: Barbers

Contact Person/Title: Jenny Yam - Executive Officer

E-mail: jyam@dcca.hawaii.gov Phone: 586-2692

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.

We do not anticipate any adverse effects.

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

No additional direct or indirect costs are anticipated.

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.).
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.

Monetary benefits to the department are not anticipated.

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.

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process we hope to address any concerns.

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

Currently there are no alternatives to the prospective rule changes.

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.

No direct costs or affects are expected for small businesses.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on 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.

No.

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

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

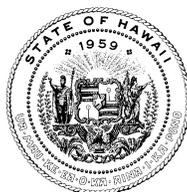
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

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

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

DAVID Y. IGE
GOVERNOR



CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JOSH GREEN
LIEUTENANT GOVERNOR

AHLANI K. QUIOGUE
LICENSING ADMINISTRATOR

BOARD OF BARBERING AND COSMETOLOGY

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. BOX 3469
HONOLULU, HAWAII 96801
cca.hawaii.gov/pvl

October 12, 2021

MEMORANDUM

TO: Chairperson Cundiff
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

FROM: Catherine P. Awakuni Colón, Director
Department of Commerce and Consumer Affairs

SUBJECT: Small Business Impact Review of the Proposed Amendments to Chapter 73, Title 16, Hawaii Administrative rules, Relating to Barbers and Chapter 78, Title 16, Hawaii Administrative Rules, Relating to Cosmetology.

Attached for your review is the proposal to amend Hawaii Administrative Rules (“HAR”) Title 16, Chapters 73 (Barbers) and 78 (Cosmetology), the rules of the Board of Barbering and Cosmetology (“Board”).

I. Proposed Rules:

The primary purpose of the proposed amendments is to:

Repeal section 16-73-56 (Barber rules) and 16-78-76 (Cosmetology rules)

- The mandatory requirement for all instructor-trainees, students, apprentices, applicants for examination and licensure, and all licensed individuals under the Board of Barbering and Cosmetology (approximately 11,209 individual licensees which includes barbers, beauty operators, and beauty instructors) to obtain and provide medical clearance certificate from a physician attesting that the individual is free from disease pursuant to HAR §§16-73-56 and 16-78-76 were suspended since the Eighth Supplementary Proclamation Related to the Covid-19 Emergency issued on May 18, 2020, until the Twenty-First Proclamation Related to the Covid-19 Emergency which expired on August 6, 2021, due to its anticipated administrative impact on the medical profession, industry licensees, and Board staff;
- The Governor adopted emergency rules on August 6, 2021, to repeal HAR §§16-73-56 and 16-78-76 for 120 days to ensure that medical professionals may focus on providing critical care to patients during the COVID-19 pandemic and be

alleviated from the significant administrative burden of providing medical clearance certificate.

- At its August, 31, 2021 meeting, the Board unanimously carried to clarify that the HAR §§16-73-56 and 16-78-76 are considered “null, void, or unnecessary” in accordance with HRS §91-3(g) and to further state that the Department of Health, County offices, the Office of the Governor, and federal government agencies such as the CDC would be more appropriate agencies to determine whether a medical clearance certificate should be required to protect the public health.
- HRS §§438-8.5 and 439-12.5 continue to provide the Board authority, at its discretion, to request or require medical clearance tests from its licensees.

II. Small Business Impact Statement pursuant to section 201M-2, HRS:

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

We do not anticipate any adverse effects on businesses or any additional direct costs for businesses to bear.

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

We do not anticipate any adverse effects.

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

No additional direct or indirect costs are anticipated.

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?

Monetary benefits to the department are not anticipated.

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?

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process we hope to address any concerns.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on the proposed rules.

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

There are no mandated federal, state, or county standards applicable to this area.

III. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to implement and clarify the statutory requirements.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

The department submits these proposed rules and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

If you have any questions, please contact Jenny Yam, Executive Officer, Board of Barbering and Cosmetology, (808) 586-2692.

Very truly yours,



CATHERINE P. AWAKUNI COLÓN
Director

CPAC:JMY:la

Attachment

cc: Jenny M. Yam, Executive Officer

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-73
Hawaii Administrative Rules

M DD, YYYY

1. Chapter 16-73, Hawaii Administrative Rules, entitled "Barbers", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 73

BARBERS

Subchapter 1 General Provisions

§16-73-1	Objective
§16-73-2	Definitions
§16-73-3	Notification and filing of names, addresses, and changes
§16-73-4	Exceptions to place of practice
§16-73-5	Number of apprentices limited
§16-73-6	Display of licenses or permits
§16-73-7	Renewal of licenses

§16-73-8 Workmanship

Subchapter 2 Applications

§16-73-11 Forms and instructions
§16-73-12 Application for examination
§16-73-13 Application for barber apprentice
§16-73-14 Application for barber shop license

Subchapter 3 Qualification Requirements

§16-73-18 Qualification for barber and barber apprentice
§16-73-19 Qualification for barber shop
§16-73-20 Temporary permit
§16-73-20.5 Barber training program
§16-73-21 Denial of application
§16-73-22 Demand for hearing
§16-73-23 Proceedings upon demand for hearing

Subchapter 4 Examination

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-73-1 Objective. This chapter adopted by the board of barbers, hereafter referred to as "board," is intended to clarify and implement chapter 438, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively protected. [Eff 8/11/66; am and ren §16-73-1, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-5)

§16-73-2 Definitions. Definitions of terms found in section 438-1, HRS, shall be adopted by reference. In addition, as used in chapter 438, HRS, and this chapter:

"Barber training" means barber apprenticeship in a licensed barber shop under supervision of a licensed barber or as a student at a barber school with licensed barbers and licensed by the state department of education. [Eff 8/11/66; am and ren §16-73-2, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §§438-1, 438-7, 438-10)

§16-73-3 Notification and filing of names, addresses, and changes. (a) Each person holding a license, permit, or any other authority to practice or engage in any activity in the State, under any and all laws administered by the board, shall file the person's proper and current mailing address with the board and shall immediately notify the board in writing of any and all changes which occur.

(b) In addition to the requirements of subsection (a), each holder of a license to operate a barber shop shall file the name and location of the barber shop, the name and license number of the barber in charge of the shop, and in the case of a partnership or a corporation, shall also file with the board the names and addresses of the partners or officers and directors, as the case may be, and shall notify the board within ten days of any and all changes which occur. Licenses are not transferable.

If a barber shop changes ownership it is considered a new shop. A barber shop that is remodeled and reopened on the same site as an existing shop and under the same ownership shall not be considered a new shop. [Eff 8/11/66; am and ren §16-73-3, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §§438-2, 438-5)

§16-73-4 Exceptions to place of practice. (a)

A duly licensed barber may practice outside of a licensed barber shop:

- (1) To service the public who for valid reasons are unable to visit a shop;
- (2) Barber schools;
- (3) Beauty shops; or
- (4) For a charitable event.

(b) The conditions for practicing outside of a shop are as follows:

- (1) Arrangements are made through a licensed shop;
- (2) Records are kept of such arrangements; and
- (3) The service shall comply with sanitary practices of section 16-73-38. [Eff 8/11/66; am and ren §16-73-4, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-2)

§16-73-5 Number of apprentices limited. There

shall not be a ratio of more than two apprentices to one barber in any barber shop. [Eff 8/11/66; am and ren §16-73-5, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-7)

§16-73-6 Display of licenses or permits. The

permit or license together with evidence of current validation, shall be conspicuously displayed at or near the barber's work station and the person to whom it was issued shall have evidence of current validation. [Eff 8/11/66; am and ren §16-73-6, 7/30/81; am and comp 8/25/90; am and comp 11/25/94;

comp] (Auth: HRS §438-5) (Imp: HRS §438-9)

§16-73-7 Renewal of licenses. Renewal fees paid by mail shall be considered paid when due if the envelope bears a postmark of December 31 or earlier of the year in which the fees were due. [Eff 8/11/66; am and ren §16-73-7, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-12)

§16-73-8 Workmanship. All work performed shall conform to the industry standards. Conduct or practice contrary to recognized industry standards shall be construed as professional misconduct, gross negligence, or manifest incapacity. [Eff and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-14)

SUBCHAPTER 2

APPLICATIONS

§16-73-11 Forms and instructions. An application filed with the board shall be prepared in accord with and contain the information called for in the application form provided by the board and any instructions which may be required by the board with respect to the filing. The application forms may be modified from time to time as required. [Eff 8/11/66; am and ren §16-73-11, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-12 Application for examination. An application to take the examination shall be filed at least forty-five days before the examination. Examinations are regularly conducted four times a year. An application for examination shall be accompanied by the required fee which shall not be refunded. The executive secretary of the board shall determine the sufficiency of preliminary qualifications of applicants for admission to examination. [Eff 8/11/66; am and ren §16-73-12, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-13 Application for barber apprentice. An application for barber apprentice shall satisfy the qualification requirements. The barber apprentice shall include a barber student who shall register with the board as a barber apprentice. The executive secretary or such other person as may be designated by the department shall determine the sufficiency of qualifications of applicants. [Eff 8/11/66; am and ren §16-73-13, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-14 Application for barber shop license. The executive secretary or such other person as may be designated by the department shall determine the sufficiency of qualifications of applicants. [Eff 8/11/66; am and ren §16-73-14, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §§438-2, 438-7)

SUBCHAPTER 3

QUALIFICATION REQUIREMENTS

§16-73-18 Qualification for barber and barber apprentice. (a) A barber and barber apprentice shall file a notarized application. The application shall include:

- (1) Verification that the applicant is at least seventeen years of age; and
- (2) The required and appropriate fees.

(b) A barber applicant, in addition to complying with subsection (a), shall provide verification of successfully completing at least fifteen hundred clock hours of barber training as reflected in section 16-73-20.5.

(c) Upon complying with subsection (a), a barber apprentice applicant shall be issued an apprentice permit to learn and train in the practice of barbering. The apprentice permit shall be valid for a period that covers fifteen hundred clock hours but not more than twelve months, provided that an extension of not more than six months may be granted upon request with an explanation for the extension.

(d) Any barber apprentice registered with the board prior to January 1, 1994, and files a barber application before July 31, 1994, may satisfy the barber training requirement of section 16-73-18(b) upon completion of at least six months of experience under supervision of a licensed barber. The training shall include but is not limited to:

- (1) Barber regulations;
- (2) Safety and sanitation;
- (3) Haircutting (standard and styling);
- (4) Shaving;
- (5) Scalp and facial treatment;
- (6) Permanent waving;
- (7) Hair coloring and lightening; and
- (8) Product chemistry.

(e) A barber applicant who has not obtained licensure after four consecutive examinations offered by the board shall be required to apply as a barber apprentice and train for six months before qualifying for another series of examinations. The barber applicant shall provide verification of the six month barber training. The six months of barber training shall be concentrated in the areas of the applicant's weaknesses.

(f) A barber applicant's training requirement may be satisfied in whole or in part with equivalent out-of-state barber training. Should the out-of-state training be insufficient to satisfy the training requirement, then the difference may be made up by verification of at least six months barbering experience. [Eff 8/11/66; am and ren §16-73-18, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-19 Qualification for barber shop. (a)

An applicant for a barber shop license shall file a notarized application and provide the following:

- (1) Name and license number of the licensed barber to qualify shop for license;
- (2) Verification that the shop complies with the sanitation requirements of the department of health; and
- (3) If the applicant is a corporation or partnership, verification of proper registration with the business registration division (BREG) of the department.

(b) The licensed barber shop shall be responsible for all operations of the shop and shall be responsible to see that only currently qualified persons are practicing in the shop.

(c) The barber shop license is nontransferable. The following changes require filing of a barber shop application along with payment of required fees:

- (1) A change in ownership shall meet the shop qualification requirements and be considered a new license~~[.]~~ ;
- (2) A change in shop name shall identify a licensed barber and shop owner without affecting the shop license number~~[.]~~ ; and
- (3) A shop relocation shall require filing of a sanitation clearance and identification of a licensed barber without affecting the shop license number. [Eff 8/11/66; am and ren §16-73-19, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; am and comp] (Auth: HRS §438-5) (Imp: HRS §§438-2, 438-7)

§16-73-20 Temporary permit. (a) A temporary permit shall be issued upon request to barber applicants that have been approved for examination. The temporary permit authorizes the permittee to work and train while waiting for examination. The temporary permit covers a period of four examinations as consecutively scheduled by the board from the date of qualifying for the first examination.

(b) The qualified barber applicant shall file a temporary permit application and pay a temporary permit fee as provided in chapter 16-53.

(c) The temporary permit provides that a qualified applicant work and train under supervision of a licensed barber in a qualified shop. [Eff 8/11/66; am and ren §16-73-20, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-10)

§16-73-20.5 Barber training program. (a) The barber training program provides the standards and procedures for barber training as identified as Exhibit A, dated September 7, 1993, located at the end of this chapter. The program reflects the barbering

subjects, the range of training hours for each subject and the minimum required operations for the identified subjects.

(b) The barber training curriculum shall be not less than fifteen hundred clock hours that includes but is not limited to the subjects, hours and operations as identified as Exhibit B, dated September 7, 1993, located at the end of this chapter.

(c) The barber training progress report reflects the monthly training hours and operations as identified as Exhibit C, dated September 7, 1993, located at the end of this chapter. The progress report shall be retained by the barber school or shop and be subject to inspection by the board.

(d) The notice of completion or withdrawal of barber training shall be utilized to reflect the completed training in hours in the appropriate subjects as identified as Exhibit D, dated September 7, 1993, located at the end of this chapter.

(e) Sixty minutes shall constitute one curriculum hour. Theory training shall be classroom type training of reading and acquiring knowledge of the practice of barbering. Theory training shall be introduced before practical application training begins. Practical application training shall occur on a mannequin or model before training on clients.

(f) Practical application operations are reflected as hands-on training in the identified subject areas whether the training occurs on mannequins, models or clients.

(g) Barber training shall occur in a licensed barber school or shop. Barber students or apprentices shall first register with the board before barber training begins. [Eff and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-21 Denial of application. In the event any application is denied, the board shall notify the applicant by letter of the board's action. The letter

shall include a concise statement of the reasons for denial and a statement informing the applicant of the right to a hearing. [Eff 8/11/66; am and ren §16-73-21, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-6)

§16-73-22 Demand for hearing. Each person whose application has been denied shall be entitled to a hearing, provided that a demand for a hearing is filed with the board within sixty days of the date of mailing of the letter informing the applicant of the board's denial. [Eff 8/11/66; am and ren §16-73-22, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-6)

§16-73-23 Proceedings upon demand for hearing. If a demand for hearing is filed within the time prescribed, the board shall order a hearing, in accordance with chapter 16-201. [Eff 8/11/66; am and ren §16-73-23, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-6)

SUBCHAPTER 4

EXAMINATION

§16-73-27 Barber. (a) Barber examinations shall be conducted in accordance with procedures formulated by the testing service and authorized by the board to develop and administer examinations.

Failure to comply with established procedures may result in disqualification from future examinations.

(b) The examinations shall incorporate the board's law and rules, barber theory and practical barber demonstration.

(c) The examination shall be conducted four times a year, usually in March, June, September, and December.

(d) The examination shall be given in the English language. [Eff 8/11/66; am and ren §16-73-27, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-8)

§16-73-28 Re-examination. The applicant not achieving a passing score on any part shall be required to retake and pass each part failed to be licensed as a barber, provided that the applicant must pass the failed parts by the fourth examination as consecutively scheduled by the board from the date of qualifying for the first examination. Should the applicant fail to achieve a passing grade by the fourth examination as consecutively scheduled by the board, the applicant shall be required to apply as an apprentice for six months before qualifying for another series of examinations. [Eff 8/11/66; am and ren §16-73-28, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-8)

§16-73-29 Reader/interpreter. An applicant shall be permitted to have a reader/interpreter for the written examination parts. The cost of a reader/interpreter shall be borne by the applicant. The applicant requesting a reader/interpreter shall be a person not having the ability to read and comprehend the English language because of education, first language difficulty, or a medical handicap. The

reader/interpreter shall not be associated with the barber or cosmetology profession. [Eff 8/11/66; am and ren §16-73-29, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-8)

§16-73-30 Credits. The applicant shall earn credits for each examination part passed and the credit shall be maintained for the next three examinations as consecutively scheduled by the board from the date the applicant first qualifies for examination. [Eff 8/11/66; am and ren §16-73-30, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-8)

§16-73-31 Passing score. A grade of not less than 75.00 points shall be a passing score for any part of the examination. [Eff 8/11/66; am and ren §16-73-31, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-8)

§16-73-32 Place of examination. The examinations shall be regularly held in Honolulu. However, upon timely request by applicants residing on an island other than Oahu and a showing that their number exceeds eight, the board may, in its discretion, conduct examinations on that neighboring island. [Eff 8/11/66; am and ren §16-73-32, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-8)

SUBCHAPTER 5

REQUIREMENTS FOR A BARBER SHOP

§16-73-36 Public health. Each applicant shall submit a certificate from the state department of health which indicates that the shop meets all sanitation and public health requirements before a license to operate and conduct a barber shop shall be issued. [Eff 8/11/66; am and ren §16-73-36, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-2)

§16-73-37 Shop conditions. A person who operates a barber shop shall comply with the following conditions:

- (1) The walls, floors, ceilings, furniture, fixtures, and all other parts and surfaces in a shop shall be kept clean at all times. Hair dropping shall be removed from the floor as soon as practicable and placed in a securely covered container pending disposal. Excessive accumulations shall not be allowed;
- (2) Every shop shall be properly and adequately lighted and ventilated;
- (3) Every shop shall be provided with adequate sanitary facilities, including toilets, hot and cold running water, sinks or wash basins. Toilets shall be located in suitable and properly ventilated toilet rooms with self-closing doors; and
- (4) A work station, including barber chair, shall be maintained in a safe, clean, and sanitary manner. [Eff 8/11/66; am and ren §16-73-37, 7/30/81; am and comp 8/25/90; am

and comp 11/25/94; comp]
(Auth: HRS §438-5) (Imp: HRS §438-7)

§16-73-38 Sanitary practices. All persons who are engaged in barbering shall observe the following sanitary practices:

- (1) The use of any astringent in lump or styptic pencil form, sponge, lump alum, powder puff, neck duster, shaving brush, or shaving mug shall be prohibited in any shop. Possession of the same is prima facie evidence that same is being used there in the practice of barbering;
- (2) No barber shall stop the flow of blood by using alum or other material unless the same is used in liquid form or as a powder and applied with a clean towel;
- (3) Razors, shears, scissors, clippers, tweezers, finger bowls, or combs, or any like article shall not be used on any customer unless they have been thoroughly cleaned and sanitized since last used. All such instruments shall be thoroughly cleaned and sanitized by a method approved by the department of health, after having been used on a patron. After sanitization, they shall be stored in a manner to prevent contamination, or be sanitized again immediately before reuse;
- (4) No barber shall remove or attempt to remove any wart, mole, pimple, or ingrown hair or undertake any treatment properly performable by persons trained in medical science. Cleaning of ears is prohibited;
- (5) All persons engaged in barbering shall wash their hands thoroughly with soap and hot water immediately before attending to any person, and shall wear at all times a clean uniform or outer coat or apron of washable material;

- (6) Towels or other fabrics that come in contact with the skin or hair of a person shall not be used on more than one patron without being laundered in an acceptable manner. Such towel or fabric after use on a patron, shall be placed in a hamper or suitable receptacle, from which it shall not be removed except for laundering or final disposal. Laundry shall be washed clean and then subjected to a sanitizing process before being used on a patron again. The sanitation process shall hold such laundry for at least twenty minutes at a temperature of at least 180 F;
- (7) Prior to serving any patron, the headrest of any chair shall be covered with a clean towel or a clean sheet of paper. If any towel or implement is to be wet, such towel or implement shall be wet in running water and shall not be dipped in any water container;
- (8) All towels and other linens used in any shop shall be kept in a closed cabinet at all times when not in use;
- (9) All creams, tonic, cosmetics, and other applications used on patrons shall be kept in clean closed containers; and
- (10) A clean strip of cotton, towel, or paper band shall be placed around the neck of each patron served so that at no time will the hair, cloth, or cape come in contact with the neck or skin of the patron. [Eff 8/11/66; am and ren §16-73-38, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-7)

§16-73-39 Infectious and contagious diseases.

- (a) Persons afflicted with a contagious or infectious disease in a communicable form shall not be permitted

to attend any person in any barber shop, nor shall any person afflicted with such disease be permitted to receive any treatment in any barber shop.

(b) Any person who has been afflicted with any such disease shall return to work only upon a written statement from a physician that it is safe for the person to return to work. [Eff 8/11/66; am and ren §16-73-39, 7/30/81; am and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5)
(Imp: HRS §438-8.5)

§16-73-40 Shop license. More than one license to conduct a barber shop may be issued to any place of business; provided that each license holder is jointly and severally responsible and liable to the board. [Eff 8/11/66; am and ren §16-73-40, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-2)

§16-73-41 Display of shop license. (a) The license to operate and conduct a barber shop shall be conspicuously displayed, together with evidence of current validation, in the place of business.

(b) The shop owner or person in charge of the shop shall be responsible to see that only qualified persons are permitted to practice in the shop and ensure that the license or permit is conspicuously displayed adjacent to or near the work station. [Eff 8/11/66; am and ren §16-73-41, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp]
(Auth: HRS §438-5) (Imp: HRS §§438-2, 438-9)

§16-73-42 Failure to comply. Refusal or neglect on the part of any owner, manager, or employee to comply with this chapter shall be construed to be

unprofessional conduct and may subject any violator to suspension or revocation of the license. [Eff 8/11/66; am and ren §16-73-42, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §438-14)

§16-73-43 Repealed. [R 8/25/90]

SUBCHAPTER 6

VIOLATION

§16-73-47 Violation. (a) Any person or corporation who shall practice, maintain a shop, or act in any capacity without a license or permit, when a license or permit is required as provided for by chapter 438, HRS, and this chapter shall be prosecuted as provided by law, which may include but is not limited to revocation, suspension, fine or combination thereof, or refusal to grant or renew any license or permit.

(b) In all cases where the board proposes to suspend, revoke, fine or refuse to grant or renew any license or permit, it shall afford all parties an opportunity to be heard as provided for under chapter 91, HRS, and chapter 16-201. [Eff 8/11/66; am and ren §16-73-47, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §§438-5, 438-13)

§16-73-48 Restoration of forfeited license. (a) A license is immediately and automatically forfeited after the expiration date for non-compliance with the requirements for maintaining or renewing the license.

- (b) A forfeited license may be restored under the following conditions:
- (1) File a completed restoration application along with a notarized signature;
 - (2) Payment of all delinquent biennial renewal fees including the current fee;
 - (3) Payment of a penalty fee for each biennial renewal as provided in the department's fee rules, chapter 16-53; and,
 - (4) Should the restoration request be made after three years from the date of forfeiture, a written explanation along with supporting documentation shall be necessary and shall be subject to approval by the board. [Eff and comp 11/25/94; comp]
(Auth: HRS §438-5) (Imp: HRS §438-12)

SUBCHAPTER 7

PRACTICE AND PROCEDURE

§16-73-51 Administrative practice and procedure.

The rules of practice and procedure for barbering shall be as provided in chapter 16-201, which are incorporated by reference and made a part of this chapter. [Eff 11/1/65; am and ren §16-73-51, 7/30/81; am and comp 8/25/90; am and comp 11/25/94; comp] (Auth: HRS §91-2) (Imp: HRS §91-2)

~~[SUBCHAPTER 8~~

~~MEDICAL CLEARANCE~~

~~§16-73-56 Medical clearance.~~ If the department of health declares an emergency or epidemic concerning one or more contagious or infectious disease or diseases, all licensed barbers, barber applicants, and apprentices shall provide a medical clearance certificate from a physician attesting that the licensee or applicant is free from that particular contagious or infectious disease or diseases as the ease may be.] [Eff and comp 8/25/90; comp 11/25/94; R] (Auth: HRS §438-5) (Imp: HRS §438-8.5)

SUBCHAPTER 9

ORAL TESTIMONY

§16-73-61 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony at the beginning of the testimony shall identify themselves and the organization, if any, that they represent;

- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda." [Eff and comp 8/25/90; comp 11/25/94; comp] (Auth: HRS §438-5) (Imp: HRS §92-3)

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

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

4. These amendments to and compilation of chapter 16-73, 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 the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on M DD, YYYY, and filed with the Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business – Before Public Hearing

D. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 78, Cosmetology, promulgated by DCCA

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

Date: 10/14/2021

Department or Agency: DCCA - Professional and Vocational Licensing Division

Administrative Rule Title and Chapter: Title 16, Chapter 78

Chapter Name: Cosmetology

Contact Person/Title: Jenny Yam - Executive Officer

E-mail: jyam@dcca.hawaii.gov Phone: 586-2692

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.

We do not anticipate any adverse effects.

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

No additional direct or indirect costs are anticipated.

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.).
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.

Monetary benefits to the department are not anticipated.

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.

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process we hope to address any concerns.

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

Currently there are no alternatives to the prospective rule changes.

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.

No direct costs or affects are expected for small businesses.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on 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.

No.

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

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

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

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

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-78
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-78, Hawaii Administrative Rules, entitled "Cosmetology" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 78

COSMETOLOGY

Subchapter 1 General Provisions

§16-78-1	Objective
§16-78-2	Definitions
§16-78-3	Notification and filing of names, addresses, and changes
§16-78-4	Duplicate certificates and licenses
§16-78-5	Renewal of license
§16-78-5.5	Restoration of forfeited license
§16-78-6	Responsibility
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Subchapter 2 Applications

§16-78-9	Forms and instructions
§16-78-10	Application for examination and license
§16-78-11	License applications
§16-78-12	Applications for registration
§16-78-13	Denial
§16-78-14	Demand for hearing
§16-78-15	Falsification of application
§16-78-16	Abandonment of application

Subchapter 3 Validation

§16-78-19	Requirements for registration
§16-78-20	Requirements for examination and license
§16-78-21	Temporary permit
§16-78-22	Curriculum

Subchapter 4 Examinations

§16-78-26	Subject matter
§16-78-27	Passing score
§16-78-28	Examination
§16-78-29	Reexamination
§16-78-30	Language
§16-78-31	Supplies and equipment
§16-78-32	Repealed

Subchapter 5 Exemptions and Exceptions

§16-78-36	Exemptions
§16-78-37	Exceptions

Subchapter 6 Beauty Shop Requirements

§16-78-41	Compliance with other laws
§16-78-42	Shop
§16-78-43	Price list
§16-78-44	Employment of apprentices
§16-78-45	Employment of barbers

Subchapter 7 Beauty School Requirements

§16-78-48	Schools
§16-78-49	Application
§16-78-50	License
§16-78-51	Courses of study
§16-78-52	Law and rules
§16-78-53	Principal
§16-78-54	Instructor-student ratio
§16-78-55	Instructor trainee
§16-78-56	Bond
§16-78-57	School facilities
§16-78-58	Equipment
§16-78-59	Enrollment
§16-78-60	School hours
§16-78-61	Students
§16-78-62	Instructors
§16-78-63	Library
§16-78-64	Signs

Subchapter 8 Oral Testimony

§16-78-68	Oral testimony
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Subchapter 9 Practice and Procedure

§16-78-72	Administrative practice and procedure
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Subchapter 10 Medical Clearance--Repealed

§16-78-76	Repealed
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SUBCHAPTER 1

GENERAL PROVISIONS

§16-78-1 Objective. This chapter is intended to clarify and implement chapter 439, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated. [Eff 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-2 Definitions.

"Certificate of registration" means either a license or a registration certificate issued by the board.

"Director" means the director of the department.

"Executive secretary" means any person employed and assigned by the department to provide administrative services to the board, and to act as a liaison between the board and the department.

"Instructor-trainee" means a person who is engaged in a school in learning to be an instructor and while so doing does or assists in teaching any of the classified practices under the direct supervision of an instructor.

"Person" includes individuals, partnerships, corporations, associations, or public or private organization of any character other than governmental agencies. [Eff 7/4/64; am 4/17/70; am and ren §16-78-2, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (IMP: HRS §439-1)

§16-78-3 Notification and filing of names, addresses, and changes. (a) Any licensed person shall file one's mailing address with the board and shall notify the board in writing within thirty days of any and all changes.

(b) In addition to the requirements of subsection (a), an apprentice or instructor-trainee shall file with the board the name and address of the beauty shop or school where that person is learning and the name and license number of the beauty operator or instructor from whom that person is learning, and shall notify the board in writing within thirty days of any and all changes.

(c) In addition to the requirements of subsection (a) a licensed beauty shop, or school shall file the name and location of the shop or school, the name and license number of the person in charge of and responsible for the shop or school, and, in the case of a partnership, corporation, or association, shall also file with the board the names and addresses of the partners, officers, and directors, as the case may be, and shall notify the board within thirty days of all changes. [Eff 7/4/64; am and ren §16-78-3, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-4 Duplicate certificates and licenses. A fee shall be assessed for duplicate certificates and licenses. [Eff 7/4/64; am and ren §16-78-4, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-5 Renewal of license. Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of December 31 or earlier. [Eff 7/4/64; am and ren §16-78-5, 7/2/81; am and comp

12/21/89; comp 2/22/05; comp] (Auth:
HRS §439-7) (Imp: HRS §439-15)

§16-78-5.5 Restoration of forfeited license.

(a) A license is immediately and automatically forfeited after the expiration date for non-compliance with the requirements for maintaining or renewing the license.

(b) A forfeited license may be restored under the following conditions:

- (1) File a completed restoration application along with a valid signature;
- (2) Payment of all delinquent biennial renewal fees including the current fee;
- (3) Payment of a penalty fee for each biennial renewal as provided in the department's fee rules, chapter 16-53; and
- (4) Should the restoration request be made after three years from the date of forfeiture, a written explanation along with supporting documentation shall be necessary and shall be subject to approval. [Eff and comp 2/22/05; comp] (Auth: HRS §439-2) (Imp: §439-15)

§16-78-6 Responsibility. Beauty shop or beauty school shall be responsible for all operations and shall be responsible to see that only duly licensed or registered persons work in the place of business or school. [Eff and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-7 Workmanship. All work performed shall conform to the industry standards. Conduct or practice contrary to recognized industry standards

shall be construed as professional misconduct, gross carelessness, or manifest incapacity. [Eff and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-19)

SUBCHAPTER 2

APPLICATIONS

§16-78-9 Forms and instructions. (a) An application, accompanied by the required fees and filed with the board, shall be prepared in accordance with and contain the information called for in the application form prescribed by the board, or any instructions which may be required by the board.

(b) The executive secretary or such other person authorized by the department shall determine the sufficiency of qualifications of applicants.

(c) The applicant shall attach to the required and appropriate application a recent passport sized photograph. [Eff 7/4/64; am and ren §16-78-9, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §§439-7, 439-15) (Imp: HRS §439-11)

§16-78-10 Application for examination and license. (a) Applications for examination and license for a beauty operator or an instructor shall be filed at least seven weeks prior to the examination month, which may be regularly given not less than three times a year.

(b) A temporary permit may be issued to an applicant that has met the requirements for examination. The applicant shall provide the information necessary to issue a temporary permit. [Eff 7/4/64; am and ren §16-78-10, 7/2/81; am and comp

12/21/89; comp 2/22/05; comp] (Auth:
HRS §439-7) (Imp: HRS §§439-11, 439-16)

§16-78-11 License applications. (a)

Applications for license of a beauty shop shall include the necessary documents and information as required in sections 16-78-41 to 16-78-45, in addition to:

- (1) Verification that the shop complies with the sanitary requirements of the department of health;
- (2) Name of a currently licensed beauty operator who shall practice at the shop;
- (3) Should the applicant be a corporation or partnership, verification of proper registration with business registration division (BREG); and
- (4) Should the applicant be an individual, a passport sized photograph of the applicant taken not more than one year prior to the date of application.

(b) Applications for license of a beauty school shall submit the necessary documents and information as required by sections 16-78-48 to 16-78-63. [Eff 7/4/64; am 12/27/66; am and ren §16-78-11, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp]
(Auth: HRS §439-7) (Imp: HRS §§439-17, 439-18)

§16-78-12 Applications for registration.

Applications for registration shall be for an apprentice and an instructor trainee. [Eff 7/4/64; am and ren §16-78-12, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7)
(Imp: HRS §439-10)

§16-78-13 Denial. In the event an application for examination, issuance or restoration of a license, or registration is denied or refused, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons therefor and if the applicant is entitled to a hearing, a statement informing the applicant to the right to a hearing if the applicant so desires. [Eff 7/4/64; am and ren §16-78-13, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-19)

§16-78-14 Demand for hearing. Any person whose application for admission to the examination, for the issuance, or restoration of a license, or registration has been denied by the board, shall be entitled to a hearing; provided that a demand for a hearing is filed with the board within sixty days of the date of the letter informing the applicant of the denial of application; and provided further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter. [Eff 7/4/64; am and ren §16-78-14, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-20)

§16-78-15 Falsification of application. The board may deny an applicant admission to the examination, or issuance of license, void applicant's examination score, or revoke a license on the ground of falsification of any information supplied in the application for examination, application for license, application for registration, experience verification form, or supporting documents. [Eff 7/4/64; am and ren §16-78-15, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-19)

§16-78-16 Abandonment of application. An application shall be deemed to have been abandoned if all requirements, including filing of forms and payment of fees have not been completed within two years from the date first filed. [Eff and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-2)

SUBCHAPTER 3

VALIDATION

- §16-78-19 Requirements for registration.** (a)
The apprentice applicant shall:
- (1) Submit verification of having an education equivalent to the completion of high school;
 - (2) Provide the name and address of the beauty shop, and the name of the beauty operator supervising the apprentice;
 - (3) Applicants who are transferring from a shop to a school or a school to a shop shall submit verification of training hours completed at the shop or school. Apprentices transferring to a school may be credited with one half number of training hours. Students transferring to a shop may be credited with double the number of training hours;
 - (4) Apprentices shall have forty-two months from the date of registration to complete training at the minimum of twenty hours per week;
 - (5) Apprenticeship training shall comply with the board's apprenticeship manual and apprenticeship curriculum. Exhibit A

- entitled "Apprenticeship Manual," dated March 9, 1988, located at the end of this chapter, is made part of this chapter; and
- (6) No credit will be given for beauty training in a shop prior to date of registration with the board.
- (b) An instructor-trainee shall:
- (1) Submit verification of having an education equivalent to the completion of high school;
 - (2) Provide a copy of a current beauty operator license in good standing; and
 - (3) Submit verification of one year beauty operator experience in this State or another jurisdiction having standards substantially equivalent to those of this State. [Eff 7/4/64; am and ren §16-78-19, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-10)

§16-78-20 Requirements for examination and license. (a) Instructor applicants shall provide verification of:

- (1) Having a current beauty operator license or an instructor license;
- (2) Having one year experience as a licensed beauty operator; and
- (3) Satisfactorily completing not less than six hundred hours or four months of beauty school instructor training in this State or another jurisdiction having substantially equivalent standards. If the training is not substantially equivalent, the applicant shall provide verification of one year instructor experience.

(b) Beauty operator applicants shall have an education equivalent to the completion of high school. One year experience as a licensed beauty operator in another jurisdiction shall satisfy the high school education requirement.

(c) Beauty operator applicants shall satisfy the beauty training requirement as a student at a beauty school, as an apprentice in a beauty shop, or being currently licensed in another jurisdiction.

- (1) Beauty training from another jurisdiction shall be accepted provided that the training is substantially equivalent to those as prescribed by the board. If the training is less than those prescribed by the board, then the applicant shall make up the difference as a beauty student or as an apprentice; or
- (2) The license of an applicant currently licensed in another jurisdiction shall be recognized provided that the jurisdiction has substantially equivalent training as prescribed by the board. If the training requirement is less than those prescribed by the board, then the applicant shall make up the difference as a beauty student or provide verification of one year experience as a licensed beauty operator in that jurisdiction. [Eff 7/4/64; am and ren §16-78-20, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §§439-7, 439-12) (Imp: §§439-11, 439-12)

§16-78-21 Temporary permit. (a) A temporary permit shall be issued upon request to applicants approved for examination to train and work while waiting for the examination.

(b) The temporary permit shall cover a period of three examinations as consecutively scheduled by the board from the date the applicant qualifies for the first examination and requests a temporary permit.

(c) The temporary permit provides the qualified applicant to train and work in a licensed beauty shop under supervision of a licensed beauty operator in the appropriate certification category. [Eff 7/4/64; am 12/27/66; am and ren §16-78-21, 7/2/81; am and comp

12/21/89; comp 2/22/05; comp] (Auth:
HRS §§439-7, 439-11) (Imp: HRS §439-16)

§16-78-22 Curriculum. The curriculum for beauty training includes, but is not limited to, the subjects and hours for each certification category and instructor-trainee as follows:

- (1) Exhibit B entitled "Apprenticeship Curriculum," dated March 9, 1988, located at the end of this chapter, is made a part of this chapter;
- (2) Exhibit C entitled "Beauty School Curriculum," dated March 9, 1988, located at the end of this chapter, is made a part of this chapter; and
- (3) Exhibit D entitled "Instructor-trainee Curriculum," dated March 9, 1988, located at the end of this chapter, is made a part of this chapter. [Eff 7/4/64; am 4/17/70; am and ren §16-78-22, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp]
(Auth: HRS §§439-7, 439-12) (Imp: HRS §439-12)

SUBCHAPTER 4

EXAMINATIONS

§16-78-26 Subject matter. The examination shall be designed to test the applicant's theoretical and practical knowledge in the practice of cosmetology and cosmetology law and rules which the board or its designated testing service determines to be essential to the protection of the general public. [Eff 7/4/64; am and ren §16-78-26, 7/2/81; am and comp 12/21/89;

comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-14)

§16-78-27 Passing score. A grade of not less than 75.00 points shall be a passing score for any part of the examination. [Eff 7/4/64; am and ren §16-78-27, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-14)

§16-78-28 Examination. (a) No license shall be issued to any person unless the person takes and passes the examination as prescribed by the board for the license applied for. Failure to obtain a passing score shall result in failure of the examination as a whole.

(b) The examination shall be given only on established dates and at designated locations in the State. Exceptions to established dates shall be made for the benefit of candidates who for religious reasons may not sit on scheduled examination dates. Conditions and procedures for admittance to this special date shall be determined by the board and testing service.

(c) Examinations shall be conducted in accordance with procedures formulated by the testing service authorized by the board to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar applicants from being examined in any future examinations. [Eff 7/4/64; am and ren §16-78-28, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-14)

§16-78-29 Reexamination. (a) An applicant who fails to attain a passing score in any part of the examination shall be required to repeat the entire examination.

(b) Should an applicant fail to get a passing score by the end of the second year from the date of qualifying for the first examination, the applicant shall file an application for re-examination.

(c) An applicant who registers for examination but fails to sit for the examination is a no show applicant and forfeits the examination fee. The no show applicant shall register and pay examination fee for any subsequent examination. [Eff 7/4/64; am and ren §16-78-29, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7)
(Imp: HRS §439-7)

§16-78-30 Language. All examinations shall be conducted in the English language and no applicant shall be permitted the use of an interpreter. [Eff 7/4/64; am and ren §16-78-30, 7/2/81; comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7)
(Imp: HRS §439-7)

§16-78-31 Supplies and equipment. Each applicant shall be required to provide their own supplies, and equipment for the examination. [Eff 7/4/64; am and ren §16-78-31, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-32 Repealed. [R 12/21/89]

SUBCHAPTER 5

EXEMPTIONS AND EXCEPTIONS

§16-78-36 Exemptions. The rules governing the practice of cosmetology shall not apply to the following persons when acting within the scope of their profession or occupation:

- (1) Persons authorized by law of this State to practice medicine and surgery;
- (2) Persons authorized by law of this State to practice barbering;
- (3) An officer or employee of the United States, if the practice is performed by the employees within the federal property;
- (4) Manufacturer's representatives or sales persons in retail outlets who sell beauty products or techniques for promotional purposes without compensation for the cosmetology services;
- (5) Persons who are employed by a firm or corporation dealing as a beauty operator for the sole purpose of giving demonstrations on the use of the products on one's self or a model;
- (6) Educational activities conducted in connection with any monthly, annual, or other special program from which the general public is excluded. This exemption shall apply only to the specific days of the special program;
- (7) Persons employed by theatrical groups, modeling agencies or photography studios without being directly compensated by the client being serviced; or
- (8) Persons employed by health care facilities who are providing care to patients. [Eff 7/4/64; am and ren §16-78-36, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp
] (Auth: HRS §439-7) (Imp: HRS §439-2)

§16-78-37 Exceptions. The practice of cosmetology shall be carried on only by persons duly licensed to practice in this State and only in a licensed beauty shop, except as provided in this subsection. A duly licensed beauty operator may practice cosmetology:

- (1) Upon patients or residents in a hospital or nursing home;
- (2) Upon inmates or residents of institutions of mental health or correctional institutions;
- (3) Upon an invalid or handicapped person in that person's place of residence;
- (4) Upon a person at a charitable event, provided this exception shall apply only to the specific event on the specific day or days;
- (5) Educational activities conducted in connection with any monthly, annual, or other special program from which the general public is excluded. This exception shall apply only to the specific days of the special program; and
- (6) As an employee of a theatrical group, modeling agency or photography studio, provided the client does not compensate the licensee. [Eff 7/4/64; am and ren §16-78-37, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

SUBCHAPTER 6

BEAUTY SHOP REQUIREMENTS

§16-78-41 Compliance with other laws. The board may accept a signed statement from the department of health that the shop for which the certificate is sought is or will be in full compliance with all State public health and safety requirements. [Eff 7/4/64; am and ren §16-78-41, 7/2/81; comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-42 Shop. A fee shall be charged for relocation under the same name and ownership. License certificates are nontransferable. [Eff 7/4/64; am 12/27/66; am and ren §16-78-42, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-43 Price list. (a) No beauty shop shall perform any work upon the public unless there is displayed in a conspicuous place, both reception room and work room, one or more signs which shall read as follows:

"PRICE LIST AVAILABLE UPON REQUEST"

This sign shall be printed in letters of not less than three-fourths inch in size.

(b) Every shop shall have a price list available. The price of each and every service offered and the price of each and every product to be used in connection with the services shall be plainly set forth on a price list. [Eff 12/27/66; am and ren §16-78-43, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-44 Employment of apprentices. Shops employing apprentices shall comply with the board's apprenticeship manual and apprenticeship curriculum. Failure to comply may be cause for disciplinary action. [Eff 12/17/66; am 4/17/70; am and ren §16-78-44, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-45 Employment of barbers. A barber with a valid and current license shall be permitted to work in a beauty shop without meeting any additional cosmetology licensing requirements. [Eff and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-1)

SUBCHAPTER 7

BEAUTY SCHOOL REQUIREMENTS

§16-78-48 Schools. No license for a beauty school shall be issued unless the applicant presents evidence to the board that the applicant has satisfactory school facilities, equipment, meets all of the requirements of the board, and is qualified to offer a course of study as provided by the board. [Eff 7/4/64; am 4/17/70; am and ren §16-78-48, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §§439-7, 439-19) (Imp: HRS §439-18)

§16-78-49 Application. Each applicant for certificate of registration to conduct a school shall submit the following to the board:

- (1) A complete statement of the applicant's training and experience in order to establish his fitness to conduct a school as proposed;
- (2) A bank reference of the applicant's financial standing;
- (3) Certificate of clearance from the county building department and from the department of health;
- (4) Concise floor plan, giving measurements of all spaces and total space and showing placement of all equipment;
- (5) A copy of student contract and enrollment forms;
- (6) Copy of school catalog or brochure and all documents proposed to be used in recruiting students;
- (7) A statement of the method and content of advertising to be used;
- (8) Copy of diploma or certificate to be awarded;
- (9) Schedule of all fees, tuition and charges to be made;
- (10) Name and certificate of principal in charge of school and name and certificate number of all instructors;
- (11) Copy of school rules;
- (12) A surety or cash bond in the sum of \$10,000 payable and in a form satisfactory to the board. The condition contained therein shall be that the school shall provide indemnification to any student who suffers loss as a result of the school not fulfilling its obligations under the terms of its certificate of registration. The bonding requirement may be reduced at the discretion of the board by a showing of the school that the requirement is excessive and that at no time advance collections from students amount to as much as \$10,000; and
- (13) An itemized list of all materials that constitute a student's kit. [Eff 7/4/64; am

4/17/70; am and ren §16-78-49, 7/2/81; am
and comp 12/21/89; comp 2/22/05; comp
] (Auth: §439-7) (Imp:
HRS §439-7)

§16-78-50 License. Licenses to operate a beauty school are nontransferable. [Eff 7/4/64; am and ren §16-78-50, 7/2/81; comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-51 Courses of study. Courses of study shall be in accordance with the board's beauty school curriculum and instructor-trainee curriculum. [Eff 7/4/64; am and ren §16-78-51, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-18)

§16-78-52 Law and rules. State law and rules adopted by the [State] state board shall be taught in all classes. [Eff 7/4/64; am and ren §16-78-52, 7/2/81; comp 12/21/89; comp 2/22/05; am and comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-53 Principal. The principal shall provide the name and certificate number of all instructors and be in charge of and responsible for the operation of the school. [Eff 7/4/64; am and ren §16-78-53, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-54 Instructor-student ratio. The instructor student ratio shall be one instructor for every twenty-five students. A school shall have a minimum of two licensed instructors, which may include the principal, provided the principal is a licensed instructor. [Eff 7/4/64; am 4/17/70; am and ren §16-78-54, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-55 Instructor-trainee. The beauty school shall assure the instructor-trainee is in compliance with the following:

- (1) Training shall be under direct supervision of a licensed instructor;
- (2) Training shall comply with the board's instructor-trainee curriculum;
- (3) Instructor-trainee shall not practice cosmetology at the beauty school as a beauty operator;
- (4) Instructor-trainee shall be furnished with an instructor manual; and
- (5) Instructor-trainee shall be identified with a name tag stating "Instructor-trainee."
[Eff 7/4/64; am and ren §16-78-55, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-18)

§16-78-56 Bond. The surety or cash bond required to be furnished by any school shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, unless terminated or cancelled by the surety. Such termination or cancellation shall not be effective, however, unless notice thereof is delivered by the surety to the board

at least sixty days prior to date of termination or cancellation. The certificate of registration of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto a new bond has been filed with the board. [Eff 7/4/64; am 4/14/70; am and ren §16-78-56, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-57 School facilities. The room or rooms where work is done on customers shall not be used as a class or lecture room when customers are present. There shall be adequate facilities for classroom use, appropriately equipped. There shall also be sufficient lockers available for students' private property. [Eff 7/4/64; am 9/9/66; am and ren §16-78-57, 7/2/81; comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-58 Equipment. (a) The school shall maintain at least the following minimum equipment for each twenty-five students enrolled:

- (1) Three shampoo bowls;
- (2) Three dryers;
- (3) Sufficient reclining chairs for facials (punees are acceptable);
- (4) Three manicure tables;
- (5) One chair and dresserette station for each student;
- (6) Mannequin for each student with first quality hair for use in practicing the art of cosmetology (mannequins shall be placed on firm stands);
- (7) Wet sterilizers (sufficiently large to accommodate the instruments used by twenty-five students);
- (8) Electrical appliances for the proper training of beauty culture; and

(9) X-ray equipment shall not be used.

(b) The requirement of subsection (a) shall be standard beauty equipment and maintained in good working condition. [Eff 7/4/64; am and ren 7.11; 9/9/66; am and ren §16-78-58, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-59 Enrollment. (a) The number of students shall be small enough to permit an effective educational program. The number of students shall be set so that the total of students, patrons, and faculty does not exceed the occupancy requirements of the [~~State~~] state board of health and the building department of the county in which the school is located.

(b) Students shall be at least sixteen years of age and have an education equivalent to the completion of high school. [Eff 9/9/66; am and ren §16-78-59, 7/2/81; am and comp 12/21/89; comp 2/22/05; am and comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-60 School hours. The program of instruction for any instructor or student shall not exceed forty hours per week nor more than eight hours in any one day. [Eff 7/4/64; am and ren 7.13; 9/9/66; am and ren §16-78-60, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-61 Students. Students who resume their beauty culture courses after a lapse of three years or more shall not receive credit hours for previous course work. [Eff 7/4/64; am and ren 7.14; 9/9/66; am and ren §16-78-61, 7/2/81; comp 12/21/89; comp]

2/22/05; comp] (Auth: HRS §439-7)
(Imp: HRS §439-7)

§16-78-62 Instructors. The beauty school shall assure the instructors are in compliance with the following:

- (1) Instructors shall be in attendance at all times when students are working upon customers;
- (2) Instructors shall not practice cosmetology at the school as operators; and
- (3) Instructors shall teach only in the certification category in which the instructor holds a beauty operator license and shall be identified with a name stating "instructor" and the appropriate beauty operator category. [Eff 7/4/64; am and ren 7.15; 9/9/66; am and ren §16-78-62, 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-63 Library. Each school shall maintain a reasonably adequate library of books relating to the science and art of beauty culture. [Eff 7/4/64; am and ren 7.16; 9/9/66; am and ren §16-78-63, 7/2/81; comp 12/21/89; comp 2/22/05; comp]
(Auth: HRS §439-7) (Imp: HRS §439-7)

§16-78-64 Signs. No school shall perform any work upon or for members of the general public unless there is displayed in a conspicuous place in both reception room and work room one or more signs no smaller than 18" x 24" which shall read as follows: "School of Beauty Culture Work done by students under supervision." No school shall advertise or hold

itself out as doing professional work, or in any manner guaranteeing the work of students. [Eff 7/4/64; am and ren 7.17; 9/9/66; am and ren §16-78-64, 7/2/81; comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §4397) (Imp: HRS §439-7)

SUBCHAPTER 8

ORAL TESTIMONY

§16-78-68 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall notify the board not later than forty-eight hours before the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony at the beginning of the testimony shall identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

(6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff 11/7/64; am 12/28/69; am and ren §16-78-68 7/2/81; am and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §§438-5, 92-3) (Imp: HRS §§438-5, 92-3)

SUBCHAPTER 9

PRACTICE AND PROCEDURE

§16-78-72 Administrative practice and procedure.

The rules of practice and procedures for cosmetology shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 12/21/89; comp 2/22/05; comp] (Auth: HRS §91-2) (Imp: HRS §91-2)

~~[SUBCHAPTER 10~~

~~MEDICAL CLEARANCE~~

~~§16-78-76 Medical clearance.~~ Upon the department of health declaring an emergency or epidemic concerning one or more contagious or infectious disease or diseases, all licensed beauty operators, licensed instructors, beauty operator applicants, instructor applicants, instructor-trainees, students, and apprentices shall provide a medical clearance certificate from a physician attesting that the licensee or applicant is free from that particular contagious or infectious disease or diseases, as the case may be." [Eff and comp 12/21/89; comp 2/22/05; R] (Auth: HRS §439-7) (Imp: HRS §439-12.5)

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

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

4. These amendments to and compilation of chapter 16-78, 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 MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Deputy Attorney General

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

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

IV. New Business – Before Public Hearing

E. Discussion and Action on Proposed New Administrative Rules Title 23, Chapter 5, Establishment and Administration of Right-of-Way Widths and Setback Lines for Planned Street and Transit Improvements, promulgated by Department of Transportation Services – City and County of Honolulu

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

Date: 10/21/2021

Department or Agency: City and County of Honolulu - Department of Transportation Services

Administrative Rule Title and Chapter: Title 23, Chapter 5

Chapter Name: ESTABLISHMENT AND ADMINISTRATION OF RIGHT-OF-WAY WIDTHS AND SETBACK LINES FOR PLANNED STREET AND TRANSIT IMPROVEMENTS

Contact Person/Title: Dre Kalili/Melissa Miranda-Johnson

E-mail: dreanalee.kalili@honolulu.gov/mmiranda1@h Phone: 768-8303

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? **See attached correspondence.**

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.)

* * *

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

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

DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

RICK BLANGIARDI
MAYOR



J. ROGER MORTON
DIRECTOR

JON Y. NOUCHI
DEPUTY DIRECTOR

October 13, 2021

Robert Cundiff, Chair
Small Business Regulatory Review Board
c/o Department of Business, Economic
Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

Dear Chair Cundiff:

**SUBJECT: Proposed Repeal and Adoption of Administrative Rules;
Establishment and Administration of Right-of-Way Widths and
Setback Lines for Planned Street and Transit Improvements**

The City and County of Honolulu's Department of Transportation Services (DTS) intends to repeal existing rules on right-of-way widths and setback lines for planned street and transit improvements and to adopt new rules on the same matter. We submit for your board's review the enclosed draft rules. These proposed rules aim to streamline the City's procedure to modify the requirements for right-of-way widths and setback lines. These rules are applicable to all property owners, including small businesses.

While we neither expect a direct and significant economic burden upon a small business, nor to the formation, operation, or expansion of a small business, we appreciate your review.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Roger Morton".

J. Roger Morton
Director

Enclosure

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF TRANSPORTATION SERVICES

Adoption of

RULES AND REGULATIONS OF THE DEPARTMENT OF
TRANSPORTATION SERVICES FOR THE ESTABLISHMENT AND
ADMINISTRATION OF RIGHT-OF-WAY WIDTHS AND SETBACK LINES
FOR PLANNED STREET AND TRANSIT IMPROVEMENTS

XXX XX, 2021

1. City and County of Honolulu Administrative Rules, entitled
"Establishment and Administration of Right-of-Way Widths and Setback Lines
for Planned Street and Transit Improvements", is adopted to read as follows:

"TITLE 23

DEPARTMENT OF TRANSPORTATION SERVICES

CHAPTER 5

ESTABLISHMENT AND ADMINISTRATION OF RIGHT-OF-WAY WIDTHS
AND SETBACK LINES FOR PLANNED STREET AND TRANSIT
IMPROVEMENTS

§23-5-1	Authority
§23-5-2	Purpose
§23-5-3	Scope
§23-5-4	Administration
§23-5-5	Definitions
§23-5-6	Petition for Adoption, Amendment, or Repeal of Rules and Regulations
§23-5-7	Right-of-Way and Setback Requirements
§23-5-8	Severability

§23-5-1 Authority. Pursuant to Section 6-1703, Revised Charter of the City and County of Honolulu, as amended, these Rules and Regulations hereinafter contained are hereby established. [Eff _____] (Auth:

RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-2 Purpose. The purpose of these Rules and Regulations is to establish and maintain future right-of-way widths and setback lines for planned street and transit improvements shown on the public facilities maps as well as for planned improvements to minor streets. [Eff] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-3 Scope. These Rules and Regulations shall apply to all areas within the City and County of Honolulu for which a Development Plan or a Sustainable Communities Plan has been adopted. Unless otherwise determined by the Director, all improvements on property abutting or having access to planned street or transit improvements streets under the jurisdiction of the City and County of Honolulu or the State of Hawaii shall be in accordance with the street setback requirements established by these Rules and Regulations as allowed by law. [Eff] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-4 Administration. The Director shall administer the provisions of these Rules and Regulations in consultation with other appropriate governmental agencies. [Eff] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-5 Definitions. For the purposes of these Rules, unless it is plainly evident from the context that a different meaning is intended, words and phrases used herein are defined as follows:

"Bikeway" is as defined in Chapter 15 of the ROH.

"City" means the City and County of Honolulu, whose geographical limits include the Island of Oahu and all other islands in the State of Hawaii, not included in any other county and the waters adjacent thereto.

"City Charter" means the Revised Charter of the City and County of Honolulu, 1973, as amended.

"Department" means the Department of Transportation Services of the City and County of Honolulu, unless otherwise specified.

"Development Plan(s)" is as defined in Article VI, Chapter 15 of the City Charter.

"Director" means the Director of Transportation Services, City and County of Honolulu, unless otherwise specified.

"General Plan" is as defined in Article VI, Chapter 15 of the City Charter.

"Planning Area Map" means maps of various areas within the City and County of Honolulu, prepared pursuant to these Rules and Regulations and maintained by the Department of Planning and Permitting, reflecting right-of-way and setback requirements for streets and highways.

"Public Facilities Map" means an illustration incorporated into a Development Plan of the infrastructure needed to implement the plan, the location of existing facilities, and conceptual locations for future facilities.

"Public Infrastructure Map" means an illustration adopted by the City Council of major public infrastructure projects that impact adopted growth policies or needed public facility policies for each of the development plan areas in the City and County of Honolulu. Symbols for such publicly funded projects must be shown on the applicable public infrastructure map prior to the appropriation of land acquisition or construction funds in the City's capital improvement program budget.

"ROH" means the Revised Ordinances of Honolulu 1990, as amended.

"Setback" means a future right-of-way line for a street or highway.

"Street" is as defined in Chapter 15 of ROH.

- (1) "Major Street" means a freeway, expressway, arterial, or collector street, whether publicly or privately owned, which is primarily intended to serve through traffic or the circulation of traffic between different communities and/or portions of a community. In the case of arterials and collector streets, access to abutting properties may also be permitted. Attachment "A" lists all major streets on the island of Oahu under the jurisdiction of the City.
- (2) "Minor Street" means a street other than a major street to provide access to abutting property and serve local traffic to and from these properties. Streets not listed in Attachment "A" are classified as minor streets. Attachment "B" lists all minor streets proposed for future improvements.

[Eff _____] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-6 Petition for Adoption, Amendment, or Repeal of Rules and Regulations. (a) Petition. Any interested person or public agency may petition the Department requesting the adoption, amendment, or repeal of any section or provision of these Rules and Regulations.

(b) Submission. The petition shall be submitted in five (5) copies to the Director, Department of Transportation Services, City and County of Honolulu, 650 South King Street, Honolulu, Hawaii 96813. It shall include:

- (1) A statement of the nature of the petitioner's interest.
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) Disposition of Petition. The Department shall within thirty (30) days after the submission of the petition either:

- (1) Reject the petition in writing, stating its reasons for such rejection;
- (2) Initiate proceedings in accordance with Section 91-3, Hawaii Revised Statutes, for the adoption, amendment, or repeal of the Rules, as the case may be; or
- (3) Initiate modifications pursuant to the Director's administrative authority under §23-5-7(e). [Eff _____] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-7 Right-of-Way and Setback Requirements. (a) Establishment of Right-of-Way and Setback Requirements. The Director hereby establishes proposed right-of-way widths and street setback lines for (i) planned street improvements shown on the Public Facilities Maps or Public Infrastructure Maps, (ii) transit improvements shown on the Public Facilities Maps or Public Infrastructure Maps, and (iii) Minor Streets. The right-of-way widths and street setback lines hereby established are based upon the Development Plan or Sustainable Communities Plan land uses for the respective areas covered by the plans and the standards set forth in the Subdivision Rules and Regulations of the City.

(b) Specific Right-of-Way and Setback Requirements. Proposed right-of-way widths and street setback lines are hereby established by the Director as follows:

- (1) Major Streets. For planned street improvements shown on the Public Facilities Maps or Public Infrastructure Map (Major Streets) and listed in Attachment "A", according to the approved Planning Area Maps for the Primary Urban Center, Ewa, Central Oahu, Waianae, North Shore, East Oahu, Koolaupoko and Koolauloa areas, on display at the Department of Planning and Permitting, Frank F. Fasi Municipal Building, 650 South King Street, Honolulu, Hawaii, and incorporated herein by reference. Attachment "A" lists all major streets on the island of Oahu under the jurisdiction of the City. Those streets planned for future improvements and shown on the Public Facilities Maps are indicated with an asterisk.
- (2) Minor Streets. For those minor streets shown in Attachment "B", according to the approved Planning Area Maps, for the Primary Urban Center, Ewa, Central Oahu, Waianae, North Shore, East Oahu, Koolaupoko, and Koolauloa areas, on display at the Department of Planning and Permitting, Frank F. Fasi Municipal Building, 650 South King Street, Honolulu, Hawaii, and incorporated herein by reference.
- (3) Transit corridor; Former OR&L Right-of-Way. An open space corridor consisting of lands along the former OR&L right-of-way from Iwilei to West Beach shall be maintained for future transit purposes.

(c) Corner Roundings at Street Intersections. Requirements for corner roundings at street intersections will be based upon the appropriate design standards as shown in the City and County of Honolulu Complete Streets Design Manual.

(d) Planning Area Maps; Clarification. Except as hereinafter provided, modifications to the Planning Area Maps shall be made pursuant to the Administrative Authority set forth in subsection (e) below. As necessary or upon the written request of any interested person, the Director may do the following:

- (1) Clarify the width of a proposed right-of-way or location of a street setback line when the proposed right-of-way width or street setback line cannot be determined accurately from the Planning Area Maps; or
- (2) Modify a right-of-way width or street setback requirement shown on the Planning Area Maps when it is impracticable to require the entire proposed right-of-way width. The determination of the

Director shall be in writing and shall have the same status as other orders of the Department.

(e) Administrative Authority. The Director shall have the authority to make modifications to the street right-of-way and setback requirements, and to make the appropriate revisions to the Planning Area Maps established by these Rules and Regulations as authorized by law, including, but not limited to:

- (1) Major Streets.
 - (A) Modify street right-of-way and setback requirements provided that the change does not conflict with the improvements as reflected on the Public Facilities Maps or Public Infrastructure Maps.
 - (B) Establish new or delete existing street right-of-way and setback requirements following the enactment of an amendment which deletes or adds such a street or planned improvement on the Development Plan or Sustainable Communities Plan with respect to the street.
 - (C) Abandon a street right-of-way in accordance with the provisions of Sections 264-1 and 264-3, Hawaii Revised Statutes, and the concurrent or subsequent enactment of an amendment to the Land Use Map in a Development Plan with respect to the street.
 - (D) Modify street right-of-way width as required to provide for a bikeway or a sidewalk.
- (2) Minor Streets.
 - (A) Reduce, increase, establish new, suspend or delete existing street right-of-way and setback requirements.
 - (B) Adjust the location or alignment of a planned street improvement.
 - (C) Abandon a street right-of-way in accordance with the provisions of Sections 264-1 and 264-3, Hawaii Revised Statutes, and the concurrent or subsequent enactment of an amendment to the Land Use Map in a Development Plan with respect to the street.
 - (D) Modify street right-of-way width as required to provide for a bikeway or a sidewalk.
- (3) Director's Exercise of Authority.
 - (A) In evaluating whether to modify a right-of-way or street setback requirement, the Director may consider legal justification, impacts to neighboring properties, projected increases in density, and circulation needs.

- (B) The Director may decline to modify a right-of-way or street setback if the width of the street cannot accommodate circulation needs or may condition modification upon an agreement by all affected property owners to restrictions on future construction on or subdivision of the affected property that may increase density.
- (C) The Director shall set forth the rationale for the modification which shall be kept with the modified Planning Area Maps pursuant to subsection (d).

(f) Amendment to Development Plans. All amendments to planned street improvements shown on the Land Use Maps and Public Facilities Maps (Major Streets), and all major street deletions shall be processed in accordance with the applicable provisions of the Development Plan ordinances, and the "Rules of the Department of Planning and Permitting for Processing Amendments to the Development Plans and Sustainable Communities Plans of the City and County of Honolulu." Appropriate right-of-way widths and setbacks shall be established by the Director within 120 days of the enactment of such amendment.

[Eff _____] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

§23-5-8 Severability. If any section or provision of these Rules is held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining sections or provisions of these Rules which can be given effect with the invalid section or provision." [Eff _____] (Auth: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)(Imp: RCH §§4-105, 6-1703, ROH §§1-9.1, 24-1.7)

2. The adoption of these rules shall take effect ten days after filing with the Office of the City Clerk.

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, and section 1-9.2, Revised Ordinances of Honolulu, which were adopted on XXX XX, 2021, and filed with the Office of the City Clerk.

J. Roger Morton
Director

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

TITLE 23

DEPARTMENT OF TRANSPORTATION SERVICES

CHAPTER 5

ESTABLISHMENT AND ADMINISTRATION OF RIGHT-OF-WAY WIDTHS
AND SETBACK LINES FOR PLANNED STREET AND TRANSIT
IMPROVEMENTS

ATTACHMENT A – MAJOR STREETS

Key:

- * - Denotes facilities show on the Public Facilities Map and planned for future improvements
- + - Denotes streets that include portions that are classified as Minor Streets.

Primary Urban Center (PUC) Area

Street Name	Termini (From/To)
Ahua St.	Nimitz Hwy./Kikowaena St.
Aiea Heights Dr.*	Moanalua Rd./State Park
Ala Aolani St.	Moanalua Rd./Ala Noe Pl.
Ala Lilikoi St.	Salt Lake Blvd./Likini St.
Ala Mahamoe St.	Kaua St./Jarrett White Rd.
Ala Moana Park Bikeway	Ala Wai Canal/Ala Moana Park Drive Ewa Entrance
Ala Napunani St.	Salt Lake Blvd./Moanalua Rd.
Ala Wai Blvd.*	Kapahulu Ave./Kalakaua Ave.
Alakea St.*	Ala Moana Blvd./Beretania St.
Alapai St.*	King St./Lusitana St.
Alencastre St.*	St. Louis Dr./St. Louis Dr.
Alewa Dr.	Hoomaikai St./Wyllie St.
Alexander St.	Wilder Ave./H-1
Alohea Ave.*	Brokaw St./Makapuu Ave.
Arizona Rd./Camp Catlin Rd .	Salt Lake Blvd./Nimitz Hwy.
Atkinson Dr.	Ala Moana Blvd./Kapiolani Blvd.
Auahi St.*	Connections to Pohukaina St. and Queen St. Extension
Auwaiolimu St.	Lusitana St./Nehoa St.
Beretania St.*	University Ave./King St.
Bertram St.*	St. Louis Dr./St. Louis Dr.

Street Name	Termini (From/To)
Bethel St.	Nimitz Hwy./Beretania St.
Bishop St.*	Nimitz Hwy./Beretania St.
Booth Rd.*	Pacific Heights Dr./Kekuanoni St. to 2000 feet in
Campbell Ave.	Kapahulu Ave./Monsarrat Ave.
Citron St.*+	Kuikahi St./Isenberg St.
Cooke St.*	Ala Moana Blvd./King St.
Date St.*	Isenberg St./Kapahulu Ave.
Diamond Head Rd.*	Paki Ave./Trousseau St.
Dillingham Blvd.*	Laumaka St./King St.
Dole St.	Punahou St./St. Louis Dr.
East Manoa Rd.*	Manoa Rd./Alani Dr.
Elepaio St.	Kilauea Ave./Kahala Ave.
Harding Ave.*	Kapahulu Ave./21st Ave.
Hillcrest St.	Houghtailing St./Kealia Dr.
Hoohai St.	Hoolaulea St./Hoomoana St.
Hookui St./Puowaina Dr.	Auwaiolimu St./Tantalus Dr.
Hoolaulea St.	Moanalua Rd./Hoohai St.
Hoomoana St.	Hoohai St./Komo Mai Dr.
Hotel St.*	King St./Richards St.
Houghtailing St.*	King St./Hillcrest St.
Hunakai St.	Kahala Ave./Kilauea Ave.
Iholena St.	Lolena St./Judd St.
Iolani Ave.*	Alapai St./Lusitana St.
Isenberg St.	Kapiolani Blvd./Beretania St.
Judd St.*	Kunawai Ln./Nuuanu Ave.
Kaahahele St.*	Moanalua Rd./Mauka Extension
Kaahumanu St.	Kamehameha Hwy./Komo Mai Dr.
Kaamilo St.	Moanalua Rd./Aiea Heights Dr.
Kahala Ave.*	Diamond Head Rd./Pueo St.
Kaheka St.	Kapiolani Blvd./King St.
Kaimakani St. Bikeway	Ulune St./Poko Rd.
Kaimuki Ave.*	Kapiolani Blvd./6th Ave Rd..
Kaiulani Ave.	Kalakaua Ave./Kuhio Ave.
Kalakaua Ave.*	Beretania St./Paki Ave.
Kalia Rd.*	Ala Moana Blvd./Lewers St.
Kalihi St.*	Likelike Hwy./Kalaepaa Dr.
Kamakee St.*	Ala Moana Blvd./Kapiolani Blvd.
Kamehameha Hwy.	Kalihi Stm. Br./Laumaka St.
Kamehameha IV Rd.	School St./Likelike Hwy.

Street Name	Termini (From/To)
Kanekapolei St.*	Kuhio Ave./Ala Wai Blvd.
Kaonohi St.	Kamehameha Hwy./1 mile north of Iho Pl.
Kapahulu Ave.*	Kalakaua Ave./Harding Ave.
Kapiolani Blvd.*	South St./Kapahulu Ave.
Kapulei St.	Kekuanoni St./Pauoa Rd.
Kealaolu St.*	Kalaniana'ole Hwy./Kahala Ave.
Kealia Dr.	Hillcrest St./Makanani Dr.
Keeaumoku St.*	Kapiolani Blvd./Nehoa St.
Kekuanoni St.	Booth Rd./Kapulei St.
Kikowaena St.	Ahua St./Moanalua Rd.
Kilauea Ave.*	6th Ave./Akiaki Pl.
Kinau St.	Alapai St./Keeaumoku St.
King St.*	Ola Lane Overpass/Harding Ave.
Koko Dr.	Paula Dr./16th Ave.
Koko Head Ave.	Pahoa Ave./Waialae Ave.
Komo Mai Dr.	Aumakua St./Kaahale St.
Kuakini St.*	Lanakila Ave./Nuuanu Ave.
Kuhio Ave.*	Kalakaua Ave./Kapahulu Ave.
Kukui St.*	Nuuanu Ave./Queen Emma St.
Kuikahi St.*+	Citron St./Philip St.
Lanakila Ave.*	School St./Kunawai Ln.
Lehua Ave.	Kamehameha Hwy./Navy Boundy.
Lewers St.*	Kalia Rd./Ala Wai Blvd.
Likini St.	Pakini St./Ala Napunani St.
Liliha St.*	School St./Wyllie St.
Lolena St.	Makanani Dr./Iholena St.
Lowrey Ave.	Manoa Rd./East Manoa Rd.
Lurline Dr.	Sierra Dr./Monterey Dr.
Lusitana St.*	Alapai St./Pauoa Rd.
Makanani Dr.	Kealia Dr./Lolena St.
Makapuu Ave.*	Diamond Head Rd./Kilauea Ave.
Makiki Heights Dr.	Tantalus Dr./Mott Smith Dr.
Manoa Rd.*	Nehoa St./900 feet north of Waakaua St.
McCully St.*	Kalakaua Ave./Dole St.
Metcalf St.*	Dole St./University Ave.
Middle St.*	King St./Rose St.
Moanalua Rd.*	Waimano Home Rd./Aiea I.C.
Monsarrat Ave.*	Kalakaua Ave./Trousseau St.
Monterey Dr.	Lurline Dr./Paula Dr.

Street Name	Termini (From/To)
Mooheau Ave.*	Kapahulu Ave./6th Ave.
Mott Smith Dr.	Makiki Heights Dr./Nehoa St.
Nalanieha St.	Likelike Hwy./Kalihi St.
Nehoa St.	Prospect St./Punahou St.
Noah St.*	St. Louis Dr./St. Louis Dr.
Nuuanu Ave.*	Nimitz Hwy./Wyllie St.
Oahu Ave.*	University Ave./East Manoa Rd.
Pacific Hts. Rd.*	Pauoa Rd./End
Pahoa Ave.*	Koko Head Ave./Kilauea Ave.
Paki Ave.	Kapahulu Ave./Diamond Head Rd.
Pakini St.	Salt Lake Blvd./Likini St.
Pali Hwy.	Beretania St./Vineyard Blvd.
Palolo Ave.	Waiialae Ave./10th Ave.
Paula Dr.	Monterey Dr./Koko Dr.
Pauoa Rd.*	Kapulei St./Nuuanu Ave.
Pensacola St.*	Nehoa St./Waimanu St.
Philip St.*	Kalakaua Ave./Punahou St.
Piikoi St.*	Ala Moana Blvd./Pensacola St.
Prospect St.*	Pensacola St./Iolani Ave.
Pueo St.*	Kahala Ave./Kilauea Ave.
Pukoloa St.	Puuloa Rd./Ahua St.
Punahou St.*	Philip St./Nehoa St.
Punchbowl St.*	H-1/Ala Moana Blvd.
Puuhale Rd.*	Nimitz Hwy./Dillingham Blvd.
Pohukaina St.*	Punchbowl St./Ward Ave.
Queen Emma St.	Beretania St./School St.
Queen St.*	Nimitz Hwy./Pensacola St.
Richards St.*	Beretania St./King St.
Salt Lake Blvd.*	Kamehameha Hwy./Puuloa Rd.
School St.*	Rose St./Lusitana St.
Sierra Dr.	Waiialae Ave./Lurline Dr.
South St.*	Ala Moana Blvd./Kapiolani Blvd.
St. Louis Dr.*	Waiialae Ave./Alencastre St.
Tantalus Dr.	Auwaiolimu St./Makiki Heights Dr.
Ulune Extension*	Aiea Heights Dr./Kaimakani St.
Ulune St.	Kaimakani St./Halawa Heights Dr.
University Ave.*	Kapiolani Blvd./Oahu Ave.
Waiakamilo Rd.	Nimitz Hwy./King St.
Waiialae Ave.*	Kapahulu Ave./H-1 Off-Ramp

Street Name	Termini (From/To)
Waimano Home Rd.*	Kamehameha Hwy./Waimano Home Rd.
Waimanu St.*	Pensacola St./Piikoi St.
Ward Ave.*	Ala Moana Blvd./Prospect St.
Wilder Ave.*	Pensacola St./Dole St.
Wyllie St.*	Alewa Dr./Nuuanu Ave.
5th Ave.	Waialae Ave./H-1
6th Ave.*	Palolo Ave./Brokaw St.
10th Ave.*	Palolo Ave./Kilauea Ave.
11th Ave.*	Waialae Ave./H-1
16th Ave.	Kilauea Ave./Koko Dr.
18th Ave.*	Diamond Head Rd./Harding Ave.
21st Ave.*	Harding Ave./Waialae Ave.

Ewa Area

Street Name	Termini (From/To)
Farrington Hwy.*	Kalaeloa Blvd./Fort Weaver Rd.
Hanakahi St.*	Fort Weaver Rd./North Rd.
North Rd.*	Fort Weaver Rd./Hanakahi St.
Papipi Rd.*	Fort Weaver Rd./Pohakupuna Rd.
Renton Rd.*	Fort Weaver Rd./Honolulu Urban Boundary

Central Oahu Area

Street Name	Termini (From/To)
California Ave.*	Kilani Ave./0.2 miles northeast of Hill Dr.
Glen Ave.*	Kilani Ave./Royal Palm Dr.
Hikimoe St. Ext.*+	End/Moloalo
Kaukonahua Rd.*	Kamehameha Hwy./Honolulu Urban Boundary
Kilani Ave.*	California Ave./Glen Ave.
Kuahelani Ave.	Meheula Pkwy./Lanikuhana Ave.
Lanikuhana Ave.*	Hookelewaa St./Meheula Pkwy.
Mahoe St.*	Waipahu St./Hiapo St.
Meheula Pkwy.	H-2/Lanikuhana Ave.
Mokuola St. Ext.*+	End/Farrington Hwy.
Royal Palm Dr.	Glen Ave./Uuku St.
Uuku St.*	Royal Palm Dr./California Ave.

Street Name	Termini (From/To)
Waipahu Depot Rd.*	Farrington Hwy./Waipahu St.
Waipahu St.*	Kunia Rd./Kamehameha Hwy.
Wilikina Dr.*	Kamananui Rd./Honolulu Urban Boundary
Waipahu St. By-Pass*	Ikepono St./200 feet past Paiwa St.
Paiwa St.*+	Waipahu St./100 feet past Kahuailani St.
Waikele Bridge Realignment*	Waikele Stream/Waipahu St.

East Honolulu Area

Street Name	Termini (From/To)
Ainakoa Ave.	Kalaniana'ole Hwy./Halekoa Dr.
Ainapo St.	Hahaione St./Pepeekeo St.
Ani St.	Hao St./Hind Iuka Dr.
East Hind Dr.	Hind Iuka Dr./Kalaniana'ole Hwy.
Elelupe Rd.	Kalaniana'ole Hwy./Kuliouou Rd.
Hahaione St.	Hawaii Kai Dr./Ainapo St.
Halekoa Dr.	Ainakoa Ave./Alaeloa Pl.
Halemaumau St.	Kalaniana'ole Hwy./Mahimahi St./Kalaniana'ole Hwy .
Hao St.	Nohu St./Ani St.
Hawaii Kai Dr.*	Kalaniana'ole Hwy./Kealahou St.
Hind Iuka Dr.	Ani St./East Hind Dr.
Keahole St.	Kalaniana'ole Hwy./Hawaii Kai Dr.
Kealahou St.	Kalaniana'ole Hwy./Ipuai St.
Kuliouou Rd.	Elelupe Rd./Kalaniana'ole Hwy.
Laukahi St.	Kalaniana'ole Hwy./Kihi St.
Lunalilo Home Rd.	Nawiliwili St./Hawaii Kai Dr.
Nawiliwili St.	Lunalilo Home Rd./Kalaniana'ole Hwy.
Nohu St.	West Hind Dr./Hao St.
Pepeekeo St.	Ainapo St./Hawaii Kai Dr.
Wailua St.	Hawaii Kai Dr./Lunalilo Home Rd.
West Hind Dr.	Kalaniana'ole Hwy./Hind Iuka Dr.

Koolaupoko Area

Street Name	Termini (From/To)
Ahuimanu Pl.	Hui Ulili St./Kahekili Hwy.
Akamai St.	Keolu Dr./Akumu St.

Street Name	Termini (From/To)
Akumu St.	Akamai St./Keolu Dr.
Alala Rd.*	Kawailoa Rd./Mokulua Dr.
Anoi Rd.	Kukane St./Luluku Rd.
Aumoku St.*	Kaneohe Bay Dr./Koa Kahiko St.
Awakea Rd.*	Wanaao Rd./Ka Awakea Rd.
Dike Rd.*	Hamakua Dr./Mokapu
Haiku Rd.*	Kahuhipa St./Kamehameha Hwy.
Hamakua Dr.*	Keolu Dr./Kailua Rd.
Hele St.*	Keolu Dr./Kina St.
Hui Iwa St.	Kahekili Hwy./Hui Ulili St.
Hui Ulili St .	Hui Iwa St./Ahuimanu Pl.
Ilipilo St.	Kainui Dr./Mokapu Blvd.
Ka Awakea Rd.*	Awakea Rd./Papalani St.
Kahuhipa St.	Kamehameha Hwy./Haiku Rd.
Kailua Beach Park 0.7 Miles*	Bikeway through park
Kailua Rd.*	Kainehe St./Kalaheo Ave.
Kainalu Dr.	Kainui Dr./Kailua Rd.
Kainui Dr.*	Oneawa St./Kalaheo Ave.
Kalaheo Ave.*	Mokapu Rd./Lihiwai Rd.
Kalama St.*	Oneawa St./Kainalu Dr.
Kalaniana'ole Hwy.*	State Highway Jurisdiction/Oluolu St.
Kamehameha Hwy.*	Likelike Hwy./Kahekili Hwy.
Kaneohe Bay Dr.*	1,100 feet Kailua of H-3/110 feet Kailua of Malae Pl.
Kawailoa Rd.*	Lihiwai Rd./Alala Rd.
Keahala Rd.*	Kahekili Hwy./Kamehameha Hwy.
Kenela St.*	Koa Kahiko St./Na Moku St.
Keolu Dr.*	Kalaniana'ole Hwy./Keolu Dr.
Kihapai St.	Oneawa St./Punaa St.
Koa Kahiko St.*	Kamehameha Hwy./Kenela St.
Kuulei Rd.*	Oneawa St./Kalaheo Ave.
Lilipuna Rd.*	Kamehameha Hwy./Yacht Club St.
Luluku Rd.*	Anoi Rd./Kamehameha Hwy.
Maunawili Rd.	Kalaniana'ole Hwy./Aloha Oe Dr.
Mokapu Rd.*	Kalaheo Ave./Marine Corp Air Station
Mokulele Dr.	Kamehameha Hwy./Kaneohe Bay Dr.
Na Moku St.*	Kenela St./Mokulele Dr.
Oneawa St.	Kailua Rd./Kainui Dr.
Papalani St.	Wanaao Rd./Keolu Dr.
Punaa St.	Kihapai St./Oneawa St.

Street Name	Termini (From/To)
Puohala St.*	Kaneohe Bay Dr./Waikalua Rd.
Uluhala St.	Ulupii St./Kalaniana'ole Hwy.
Ulumanu Dr.*	Akiohala St./Kailua Rd.
Ulupii St.	Ulumanu Dr./Uluhala St.
Waihee Rd.	Kamehameha Hwy./Ahilama Rd.
Waikalua Rd.*	Kamehameha Hwy./Kaneohe Beach Park
Waialele Rd.*	Lilipuna Rd./William Henry Rd.
Wanaao Rd.*	Keolu Dr./Kailua Rd.
William Henry Rd.*	Waialele Rd./Kamehameha Hwy.

North Shore Area

Street Name	Termini (From/To)
Goodale Ave.	Farrington Hwy./Waialua Beach Rd.
Haleiwa Rd.*	Kamehameha Hwy./Waialua Beach Rd.
Kamehameha Hwy.*	Weed Junction/Proposed Kamehameha Hwy. Realignment (FAP 83)
Kaukonahua Rd.*	Farrington Hwy./Kamehameha Hwy.
Waialua Beach Rd.*	Weed Junction/Crozier Dr.
Wilikina Dr.	Kaukonahua/Honolulu Urban Boundary

Waianae Area

Street Name	Termini (From/To)
Hakimo Rd.*	Farrington Hwy./Paakea Rd.
Haleakala Ave.*	Farrington Hwy./Nanakuli Ave.
Lualualei Homestead Rd.*	Farrington Hwy./Halona Rd.
Makakilo Dr.	H-1 to 500 feet north of Panana St. to End
Nanakuli Ave.*	Haleakala Ave./Farrington Hwy.
Old Fort Weaver Rd.	Farrington Hwy./Mango Tree Rd.
Plantation Rd.*	Farrington Hwy./Waianae Valley Rd.
Waianae Valley Rd.*	Farrington Hwy./Haleahi Rd.

TITLE 23

DEPARTMENT OF TRANSPORTATION SERVICES

CHAPTER 5

ESTABLISHMENT AND ADMINISTRATION OF RIGHT-OF-WAY WIDTHS
AND SETBACK LINES FOR PLANNED STREET AND TRANSIT
IMPROVEMENTS

ATTACHMENT B – MINOR STREETS

Minor Streets Planned for Future Improvements

Primary Urban Center (PUC) Area

Street Name	Termini (From/To)
Ahiahhi St.	Pohaku St./End
Ahui St.	Keawe St./300 feet north
Akau Ln.	Hikina Ln./End
Akepo Ln.	Dillingham Blvd./King St.
Akina St.	Puuhale Rd./Self Ln.
Ala Kimo Dr.	Nuuanu Pali Dr./End
Ala Moana Park Roadway	Ala Moana Blvd./500 feet south
Alani Dr.	Woodlawn Dr./Paty Dr.
Alani St.	Kapalama Ave./Pohaku St.
Amelia St.	School St./End
Andrews Ln.	Lusitana St./End
Apio Ln.	Judd St./Drainage Channel
Auahi St.	South St./Cooke St.
Auld Ln.	King St./Olomea St.-Halona St./Laa Ln.
Austin Ln.	Lopez Ln./End
Bannister St.	King St./Laumaka St.
Barron Ln.	School St./End
Bates St.	Nuuanu Ave./Waolani Stream
Beaumont Woods Pl.	Paty Dr./800 feet north
Borges Ln.	Kunawai Ln./Liliha St.
Boyd Ln.	Lusitana St./End
Bush Ln.	Lusitana St./End

Street Name	Termini (From/To)
Cartwright Rd.	Paoakalani Ave./Kawahulu Ave.
Chamberlain St.	Nakiu Pl./End
Charles St.	Kawahulu Ave./6 th Ave.
Cleghorn St.	Kapili St./Kapuni St.
Clement Ln.	Wilder Ave./Metcalf St.
Coelho Way	Burbank St./Pali Hwy.
Cooke St.	Ilalo St./Ala Moana Blvd.
Coolidge St.	Isenberg St./200 feet north
Cummins St.	Queen St./Waimanu St.
Diamond Head Cr.	Monsarrat Ave./Diamond Head Rd.
Drier St.	Kapiolani Blvd./Waimanu St.
Dow St.	Laimi Rd./End
Elsie Ln.	King St./Young St.
Emerson St.	Green St./End
Emmeluth Ln.	Lanakila Ave./Iao Ln.
Ernest St.	Lunalilo St./Green St.
Eu Ln.	Hikina Ln./End
Evelyn Ln.	Wilder Ave./Dole St.
Factory St.	Stanley St./King St.
Farmers Rd.	Kealaolu Ave.
Gretchen Ln.	Robinson Ln./End
Gulick Ave.	Hiki St./End
Halekauwila St.	Keawe St./Ward Ave.
Hala St.	Kapalama St./Kuakini Extension
Halona Pl.	Halona St./End
Hani Ln.	Pulaa Ln./Kaili St.
Harding Ave.	21st Ave./Luawai St.
Harvey Ln.	King St./End
Hausten St.	Kapiolani Blvd./King St.
Henry St.	Laimi Rd./End
Hialoa Ln.	Nuuanu Ave./End
High St.	Laimi Rd./End
Hiilani St.	Tantalus Dr./End
Hikina Ln.	King St./Kokea St.
Hillcrest St.	Skyline Dr./Kamalii St.
Hiram Ln.	Liliha St./End
Hoapili Ln.	King St./End
Hoawa Ln.	King St./Beretania St.
Hoku Ave.	Ekaha Ave./700 feet east

Street Name	Termini (From/To)
Holelua Pl.	Waipa Ln./End
Holokahana Ln.	Liliha St./End
Hone Ln.	Entire Length
Hoolulu St.	Kapahulu Ave./6th Ave.
Huli St.	Kuakini St./Huna Ave.
Huna St.	Kuakini St./End
Hunnewell St.	Metcalf St./250 feet north of Vancouver Dr.
Hunter St.	Kapahulu Ave./Winam Ave.
Iao Ln.	Halona St./Palama St.
Iaukea St.	Cul-de-sac
Ilalo St.	Keawe St./Ohe St.
Iliahi Ln.	Nuuanu Ave./End
Ilima Dr.	Puna St./Alewa Dr.
Io Ln.	Lanakila Ave./300 feet west
Io Rd.	Judd St./End
Iwilei Rd.	Pacific St./Kuwili St.
Ilaniwai St.	Cooke St./100 feet west of Ward Ave.
Jack Ln.	Pali Hwy./End
Judd Hillside Rd.	Manoa Rd./Puualii Pl.
Kaaha St.	University Ave./Kapiolani Blvd.
Kaala Way	Kamehameha Ave./Oahu Ave.
Kaaloa St.	Kaaha St./50 feet south
Kaauwai Pl.	Halona St./End
Kahaloa Dr.	East Manoa Rd./Kahaloa Pl.
Kahauiki St.	Kamehameha IV Rd./Kamehameha IV Rd.
Kahoaloha Ln.	Beretania St./Kaaha St.
Kahuna Ln.	Beretania St./Nakookoo St.
Kaipuu St.	Cul-de-sac
Kaiulani Ave.	Kuhio Ave./Ala Wai Blvd.
Kalama Rd.	Hiu St./End
Kalamaku St.	Cul-de-sac
Kalawahine Pl.	Mott-Smith Dr./End
Kalei Rd.	Waialae Ave./500 feet north
Kalia Rd.	Lewers St./End
Kalihi St.	Huea Pl./End
Kaluhikai Ln.	Kuakini St./End
Kamehameha IV Rd.	Lunalilo Fwy./Kahauiki St.; Pio Pl./School St.
Kama Ln.	King St./End
Kamaile St.	Pensacola St./Piikoi St.

Street Name	Termini (From/To)
Kamaka Ln.	Lanikila Ave./End
Kamalii St.	Hillcrest St./Makanani Dr.
Kamani St.	Pohukaina St./Kawaihao St.
Kanakanui St.	Hart St./Kanakanui
Kaneloa Rd.	Paoakalani Ave./Wai Nani Way
Kanoa St.	Peterson Ln./Palama St.
Kanoelani Rd.	Hiu St./End
Kapaakea Ln.	Kuilei St./End
Kapaloala Pl.	Pauoa Rd./Pauoa Rd.
Kauhane St.	Cul-de-sac
Kauila Ln.	Nuuanu Ave./Pali Hwy.
Kaumualii St.	Laumaka St./Puuhale Rd.
Kawaihao St.	South St./Kamakee St.
Kawaiiki Pl.	Sing Loy Ln./End
Keaeloa Ln.	Jack Ln./End
Keawe St.	Ilalo St./Ahui St.
Keeaumoku Pl.	Keeaumoku St./End
Keeaumoku St.	Leiloke Dr./Keeaumoku Pl.
Kelikoi St.	Keawe St./Ohe St.
Kemole Ln.	King St./Beretania St.
Keopua St.	Cul-de-sac
Kiheii Pl.	Kapahulu Ave./End
Koa Ave.	Uluniu Ave./Liliuokalani
Koko Head Ave.	Sierra Dr./500 feet south
Kona St.	Kamakee St./Piikoi St.
Kopke St.	Stanley St./King St.; King St./Pacheco St.
Koula St.	Auahi St./Halekauwila St.
Krauss St.	Cul-de-sac
Kuakini Extension	Lanakila Ave./Hala Dr.
Kuakini St.	Lusitana St./Pali Hwy.
Kuilei Ln.	Kapaakea Ln./Kapiolani Blvd.
Kuipaakea Ln.	Halona St./End
Kula St.	Lolena St./300 feet north of Kealakai St.
La-I Rd.	Palolo/End
Laa Ln.	Auld Ln./250 feet west
Ladd Ln.	Lusitana St./End
Laimi Rd.	Pali Hwy./High
Lakimela Ln.	Peterson Ln./Palama St.
Lanakila Ave.	Io Ln./Wong

Street Name	Termini (From/To)
Laniloa Rd.	Pacific Heights Rd./End
Laniuma Rd.	Hiu St./End
Laola Pl.	Pacific Heights Rd./End
Laukoa Pl.	Laola Pl./Laouha Pl.
Leilehua Ln.	School St./150 feet north
Lemon Rd.	Paoakalani Ave./Kawahulu Ave.
Lewalani Dr.	Mott-Smith Dr./Nehoa St.
Liholiho St.	Lunalilo St./Heulu St.
Liliuokalani Ave.	Kalakaua Ave./Cleghorn St.
Lilo Pl.	Cul-de-sac
Long Ln.	King St./Olomea St.
Lopez Ln.	Palama St./End
Lowell Pl.	Kokea St./End
Luna Pl.	Cul-de-sac
Maemae Ln.	100 feet north Kawananakoa Pl./Maemae Elem. School
Mahiai St.	Date St./Nahaku Pl.
Makalapua Pl.	Halona St./End
Makiki Heights Dr.	Mott-Smith Dr./Makiki St.
Manele St.	Cul-de-sac
Mao Ln.	King St./Olomea St.
Mapu Ln.	Liliha St./End
Matzie Ln.	Auld Ln./End
Mauna Pl.	Cul-de-sac
Maunawai Pl.	Kapiolani Blvd./End
McCandless Ln.	Auld Ln./End
McGrew Ln./Mutual Ln.	School St./End
McKinley St.	Vancouver Dr./200 feet north
Menehune Ln.	Date St./End
Merchant St.	Nuuanu Ave./Bethel St.
Milo Ln.	Pali Hwy./Lusitana St.
Mokauea St.	Nimitz Hwy./King St.
Mokihana St.	Kapahulu Ave./Mooheau Ave.
Momolio St.	Palama St./School St.
Moreira St.	Kalamaku St./End
Morris Ln.	King St./End
Mott-Smith Dr.	Lewalani Dr./Nehoa St.
Mountain View Dr.	Liliuokalani Ave./End
Myrtle St.	Magnolia Pl./La-I Rd.
Nakiu Pl.	Metcalf St./End

Street Name	Termini (From/To)
Nakookoo St.	Kahuna Ln./Kahoaloha Ln.
Nanihale Rd.	Woodlawn Dr./600 feet north
Naopala Ln.	King St./Akina St.
Nehe Ln.	Lusitana St./End
Nene St.	Pinkham St./Gulick Ave.
Noble Ln.	Auld Ln./End
Ohe St.	Ala Moana Blvd./Keawe St.
Ohelo Ln.	Lusitana St./End
Old Palama St.	School St./Iao Ln.
Old Pali Pl.	Old Pali Rd./End
Oliver St.	Wilder Ave./Dole St.
Olomana Ln.	Pacific St./End
Olona Ln.	Holokahana Ln./End
Omilo Ln.	Kamehameha IV Rd./Horner St.
Oo Lane	Holokahana Ln./End
Pacheco St.	Pinkham St./Gulick Ave.
Pacific St.	Iwilei Rd./Nimitz Hwy.
Pahoa Ave.	3rd Ave./Kikeke Ave.
Pala St.	Ihe St./End
Palama St.	King St./Vineyard Blvd.
Palamea Ln.	Mao Ln./End
Paliuli St.	Kapahulu Ave./Mooheau Ave.
Panui St.	Liliha St./End
Park St.	Laimi Rd./Puiwa Rd.
Paty Dr.	Alani Dr./Lelehune Pl.
Pawaina St.	Paumaka Pl./300 feet south
Peterson Ln.	King St./Lakimela Ln.
Philip St.	Punahou St./Manalo St.
Pilalani Pl.	Mott-Smith Dr./End
Pinkham St.	Nene St./H-1
Poha Ln.	King St./Beretania St.
Pohaku Pl.	School St./Pohaku St.
Pohaku St.	Hala Dr./End
Prince Edward St.	Uluniu Ave./Liliuokalani Ave.
Pua Ln.	Vineyard Blvd./End
Pualani Way	Paoakalani Ave./AinakeaWay
Puanani Ln.	Richard Ln./End
Puhala Rise	Woodlawn Dr./Alani Dr.
Puiwa Ln.	Puiwa Rd./End

Street Name	Termini (From/To)
Puiwa Rd.	Pali Hwy./Puiwa Ln.
Pulaa Ln.	King St./Hani Ln.
Puuhale Rd.	Dillingham Blvd./Akina St.
Puuhue Place	Puuhue/Kapua Ln.
Private Lanes off Judd St. (TMK 1-7-38: 64, 65, 31)	Judd St./End
Private Lanes off Kuakini St. (TMK 2-2-01: 133, 136)	Kuakini St./Kunawai Ln.
Private Lanes off Lanikila Ave. (TMK 1-7-41: 36)	Lanikila Ave./End
Private Lane off Pauoa Rd. (TMK 2-2-16: 48)	Pauoa Rd./End
Private Road off Alewa Dr. (TMK 1-8-34: 81, 45)	Alewa Dr./End
Private Road off Halona St. (TMK 1-6-06: 105)	Halona St./End
Private Road off Kohou St. (TMK 1-6-05: 33)	Kohou St./End
Private Road off Old Pali Rd. (TMK 1-9-09: 53)	Old Pali Rd./End
Richard Ln.	King St./H-1
Robello Ln.	King St./End
Robinson Ln.	Nuuanu Ave./Gretchen Ln.
Round Top Dr.	Aina Lani Pl./3,000 feet north
San Antonio Ave.	Lusitana St./Prospect St.
Seaview Rise	Woodlawn Dr./Paty Dr.
Self Ln.	King St./Kalihi St.
Sereno Ln.	Kuakini St./End
Sing Loy Ln.	Old Palama St./End
Spencer St.	Alapai St./Wilder Ave.
Stanley St.	Bannister St./Puuhale Rd.
Star Rd.	Booth Rd./40 feet east
Stillman Ln.	School St./End
Tantalus Dr.	6,000 feet to 7,000 north of reservoir
Tusitala St.	Kaiulani Ave./Kapili St.; Liliuokalani Ave./End
Vancouver Dr.	McKinley St./University Ave.
Waikoae Rd.	Amelia St./Martin St.
Wailani Rd.	Pacific Heights Rd./End
Waimanu St.	Ward Ave./Kamakee St.

Street Name	Termini (From/To)
Waiomao Rd.	Puunoa Rd./End
Waipa Ln.	Waipa St./Vineyard Blvd.; Vineyard Blvd./End
Waipuna Rise	Woodlawn Dr./Alani Dr.
Waterhouse St.	Bannister St./Puuhale Rd.
Wilcox Ln.	Bannister St./Puuhale Rd.
Williams St.	Kapahulu Ave./Winam Ave.
Wolter Ln.	King St./Palamea Ln.
Wong Ln.	Auld Ln./Lanakila Ave.
Woodlawn Dr.	Kahaloa Dr./Alani Dr.
Young St.	Isenberg St./McCully St.
1st Ave.	Waiialae Ave./300 feet south
3rd Ave.	Kaimuki Ave./Pahoa Ave.
4th Ave.	Winam Ave./Pahoa Ave.
5th Ave.	Kaimuki Ave./Pahoa Ave.

Ewa Area

Street Name	Termini (From/To)
Aikanaka Rd.	Papipi Rd./Ft. Weaver Rd.
Kimopelekane Rd.	Makule Rd./Ft. Weaver Rd.
Makule Rd.	Pohakupuna Rd./Ft. Weaver Rd.
Pohakupuna Rd.	Papipi Rd./Ft. Weaver Rd.

Central Oahu Area

Street Name	Termini (From/To)
Dole Rd.	California Ave./Eames St.
Hoolulu Rd.	Uluwehi St./Hoomaha St.
Kalie St.	Kalie Pl./California Ave.
Keole Way	Olive Ave./California Ave.
Kilea Pl.	California Ave./Kinipopo St.
Koena Way	Dole Rd./Lihi Way
Lihi Way	California Ave./Koena Way
Ma Way	California Ave./Koena Way
Milikana Pl.	Olive Ave./End
Walker Ave.	Olive Ave./California Ave.

Koolaupoko Area

Street Name	Termini (From/To)
Ahaolelo Rd.	600 feet south of Kahekili Hwy./End
Ahilama Rd.	Mapele Pl./Lamaula Rd.
Ahuimanu Rd.	Kahekili Hwy./Melekula Rd.
Halekou Rd.	Kamehameha Hwy./Mahinui Rd.
Lihiwai Rd.	Kalaheo Ave./Kawailoa Rd.
Luluku Pl.	Luluku Rd./End
Mahinui Rd.	Halekou Rd./Mokulele Dr.
Mapele Pl.	Mapele Rd./Mapele Way
Mapele Rd.	Ahaolelo Rd./End
Pulama Rd.	Kamehameha Hwy./Pulama Pl.
Waikapoki Rd.	Waikalua Rd./Wailele Rd.
Wailehua Rd.	Kamehameha Hwy./Lamaula Rd.

North Shore Area

Street Name	Termini (From/To)
Paalaa Rd.	Kamehameha Hwy./Haleiwa Rd.

Waianae Area

Street Name	Termini (From/To)
Lihue St.	Plantation Rd./End
Lualualei Homestead Rd.	Farrington Hwy./Pokai Bay
McArthur St.	Mill St./Waianae Valley Rd.
Mill St.	Plantation Rd./Valley Rd.
Pokai Bay St.	Waianae Valley Rd/Lualualei Homestead Rd.
St. John's Rd.	Kulaaupuni St./900 feet north
Waianae Valley Rd.	Farrington Hwy./Pokai Bay

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF TRANSPORTATION SERVICES

Repeal of

RULES AND REGULATIONS OF THE DEPARTMENT OF
TRANSPORTATION SERVICES FOR THE ESTABLISHMENT AND
ADMINISTRATION OF RIGHT-OF-WAY WIDTHS AND SETBACK LINES
FOR PLANNED STREET AND TRANSIT IMPROVEMENTS
(January 30, 1986)

XXX XX, 2021

1. City and County of Honolulu Administrative Rules, entitled "Rules and Regulations of the Department Of Transportation Services for the Establishment and Administration of Right-of-Way Widths and Setback Lines for Planned Street and Transit Improvements", is repealed.

2. The repeal of these rules shall take effect ten days after filing with the Office of the City Clerk.

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, and section 1-9.2, Revised Ordinances of Honolulu, which were adopted on XXX XX, 2021, and filed with the Office of the City Clerk.

J. Roger Morton
Director

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

IV. New Business – Before Public Hearing

**F. Discussion and Action on Proposed New
HAR Title 4, Chapter 161.1 Hemp
Production, promulgated by DoAg**

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

Date: 10/13/2021

Department or Agency: Agriculture

Administrative Rule Title and Chapter: Chapter 4-161.1

Chapter Name: Hemp Production

Contact Person/Title: Leonard G. Obaldo, Quality Assurance Division Acting Administrator

E-mail: Leonard.G.Obaldo@hawaii.gov Phone: (808) 832-0705

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.

Interested parties requesting to grow Hawaii-grown industrial hemp and licensed under the USDA Domestic Hemp Production Program. The inspection fee and penalties for violations in the proposed rules may affect small businesses.

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.

Inspection fee of \$50 per hour.

Fines for non-compliance can be up to \$10,000 per violation.

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.

New fee.

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

Inspection fee of \$50/hr; Up to \$10,000 per violation, proposed new fee.

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

Provide disciplinary measures and incentive to comply.

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

Listed violations determine when penalty of up to \$10,000 can be employed by the department to encourage compliance. Inspection fee of \$50/hr is a typical rate charged by agency for other agriculture inspections.

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

The \$50/hr fee can be assessed if inspections need to be performed which cannot be covered within the agency's operational capacities and budget. The fee is in keeping with the rate charged by the agency for other inspections which fall outside of normal work hours or budgeted operational costs. Total monetary value depends on number of inspections which are not covered by operating budget. The agency may collect fines of up to \$10,000 per violation of listed requirements. The money will support the administrative expenses for running the program.

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.

Hawaii hemp growers are now licensed under the USDA Domestic Hemp Production Program where no fees are required to obtain a license as compared to the previous program under Hawaii Industrial Hemp Pilot Program where annual license fee is required.

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

None.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

None.

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

Act 14 Session Laws of Hawaii 2020 required the agency - Hawaii Department of Agriculture (HDOA) - to develop interim rules until final rules are adopted. The agency presented both the proposed interim and final rules in four separate meetings of the Board of Agriculture to discuss its impact on hemp growers and to ask for their testimonies. Small businesses provided written and verbal testimonies on 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.

Small business requested to remove the inspection fee of \$50/hr. This fee cannot be waived because it is needed to defray expenses in administering the hemp program, and can be assessed only if inspections need to be performed which cannot be covered within the agency's operational capacities and budget. The fee is in keeping with the rate charged by the agency for other inspections which fall outside of normal work hours or budgeted operational costs.

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.

Hawaii hemp growers are now licensed under the USDA Domestic Hemp Production Program. The HDOA proposed rule requirement for inspection fee of \$50/hr for monitoring hemp transport and enforcing growth restrictions is more stringent than USDA requirement. The fee will help defray administrative costs of the program.

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.
USDA federal hemp program does not require any fee for its licensing program. HDOA buffer zone restrictions and hemp transport duties require inspection fee due to lack of funds to support state program.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
Under Act 14 Session Laws of Hawaii 2020, HDOA was tasked with monitoring the transportation of hemp and enforcing restrictions regarding the growth of hemp within the State.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

See "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.
The benefit to the state is a minimal revenue of \$50/hr inspection fee and a manageable program given current resources. The inspection fee will be used to defray the administrative costs of the program.
- 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 businesses will have to pay the inspection fee if inspections need to be performed which cannot be covered within the agency's operational capacities and budget. Small businesses subject to this inspection may be adversely affected.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

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

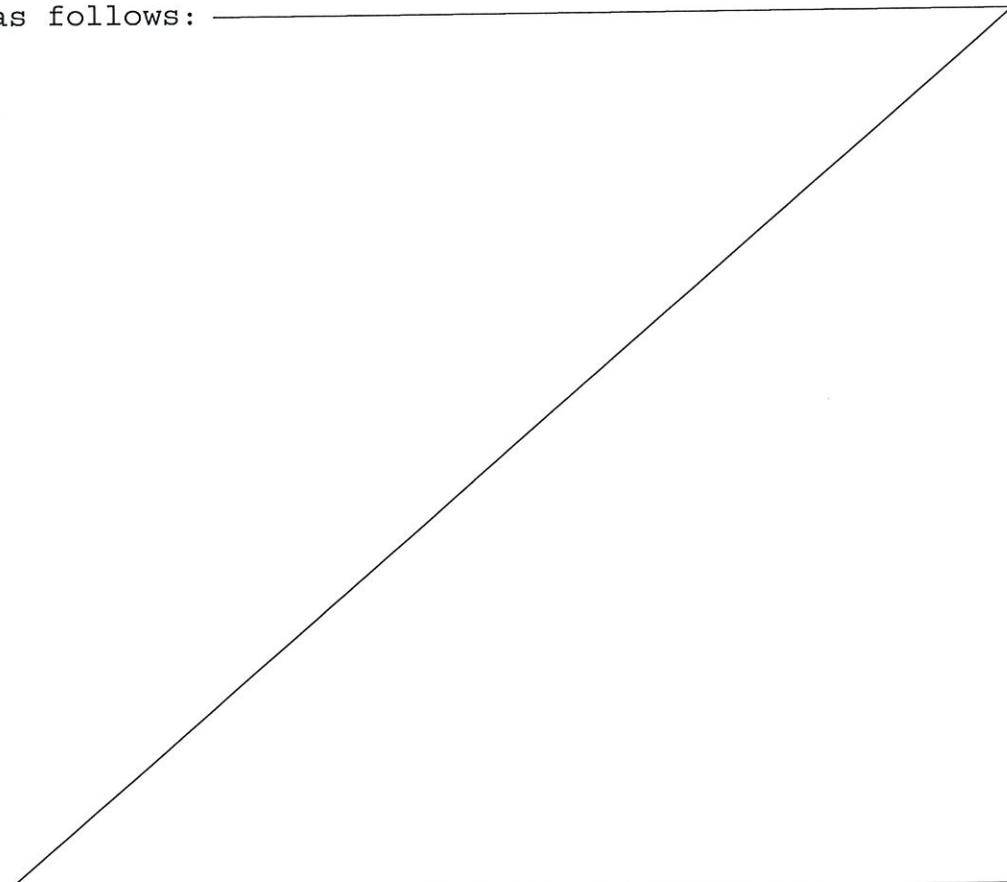
DEPARTMENT OF AGRICULTURE

Repeal of Chapter 4-161 (Interim Rules) and
Adoption of Chapter 4-161.1
Hawaii Administrative Rules

<Date of Adoption>

1. Chapter 4-161, Hawaii Administrative Rules, entitled "HEMP PRODUCTION INTERIM RULES", is repealed.

2. Chapter 4-161.1, Hawaii Administrative Rules, entitled "HEMP PRODUCTION", is adopted to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 161.1

HEMP PRODUCTION

§4-161.1-1	Definitions
§4-161.1-2	Transportation
§4-161.1-3	Nuisance
§4-161.1-4	Inspection
§4-161.1-5	Violations and Penalties

§4-161.1-1 Definitions. As used in this chapter:

"Board" means the board of agriculture or the board's designee.

"Cannabis" means the genus of flowering plants in the family Cannabaceae. For the purposes of this chapter, cannabis means any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

"Chairperson" means the chairperson of the Hawaii board of agriculture.

"Decarboxylated" means the completion of the chemical reaction that converts delta-9 tetrahydrocannabinol's acids (THCA) into delta-9 tetrahydrocannabinol. The decarboxylated value may be calculated using a conversion formula that sums delta-9 tetrahydrocannabinol and eighty-seven and seven tenths (87.7) per cent of THCA.

"Delta-9 tetrahydrocannabinol" or "THC" is the primary psychoactive component of cannabis.

"Department" means the department of agriculture.

"Dry weight basis" means the method of determining the percentage of a chemical in a substance after removing the moisture from the substance.

"Dwelling unit" means a structure which is intended to be used primarily as a place of residence, meets all applicable zoning and building code requirements, and which is one among several individual residences within a single larger structure which has a solid base, exterior walls that encircle the entire structure on all sides, and a roof that protects the interior units from the elements of the weather.

"Entity" means a firm, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a state or local government entity.

"Export" means shipment to any point outside of the state.

"Grow area" means the area authorized to be utilized for hemp production under a license issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

"Harvest" means the termination of the cultivation process at a grow area for usage rather than disposal.

"Hemp" means cannabis and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or by other similarly reliable method. "Hemp" as used in this chapter does not include hemp products.

"Hemp product" shall have the same meaning as in chapter 328G, Hawaii Revised Statutes.

"House" means a structure intended to be used primarily as a place of residence and which meets all

applicable zoning and building code requirements. It must have a solid floor, rigid exterior walls that encircle the entire structure on all sides, and a roof that protects the interior from the elements of the weather.

"Licensee" means a person or entity that has obtained a license to produce hemp in the state of Hawaii, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

"Law enforcement" means any federal, state, or local law enforcement agency or drug suppression unit.

"Person" means an individual.

"Playground" means any public outdoor facility, including any parking lot appurtenant thereto, that is intended for recreation, with any portion thereof containing three or more separate apparatus intended for the recreation of children, including but not limited to sliding boards, swing sets, and teeterboards.

"Post-decarboxylation" means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis.

"Processor" means a person or entity with a valid certificate of registration issued by the department of health allowing them to legally process hemp to manufacture a hemp product in the state.

"Produce" or "production" refers to the propagation or cultivation of hemp.

"Residential structure" means a structure that contains one or more individual dwelling units intended for usage as a residence, and which meets all applicable zoning and building code requirements. Residential apartment shall have the same meaning as residential structure.

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, high school, or university.

"State" means the State of Hawaii.

"USDA" means the United States Department of Agriculture. [Eff:] (Auth: HRS §141-43) (Imp: HRS §§141-42, 141-43)

§4-161.1-2 Transportation. (a) The reporting requirements of this section apply to:

- (1) Harvested hemp flowers and leaves in their raw botanical form, whether wet or dried, which were produced in state by a licensee; and
- (2) Living hemp plants or plant parts which can be used to propagate a new plant, and viable hemp seeds which were produced in state by a licensee.

(b) The reporting requirements of this section do not apply to:

- (1) Mature stalks or mature stalk material if the stalk material has been stripped of leaves and flowers with only a de minimus amount of leaves and floral material remaining attached;
- (2) Sterilized hemp seed incapable of germination;
- (3) Rhetted hemp fiber; or
- (4) Hemp products.

(c) Hemp in the forms specified in subsection (a) shall not be transported outside of a licensed grow area except by a person or entity that holds a license to produce hemp issued by the USDA.

(d) A person or entity that has a license to produce hemp issued by the USDA may transport hemp in the forms specified in subsection (a) outside of a licensed grow area, provided that:

- (1) The hemp is transported to an authorized processor within the state;
- (2) The hemp is transported to a licensed grow area within the state; or
- (3) The hemp is exported.

(e) Any hemp to be transported shall have passed all compliance testing required by the USDA and comply with all other applicable state or federal laws or

regulations, including those found in chapter 4-72, Hawaii Administrative Rules.

(f) Any hemp to be exported shall comply with all applicable state or federal laws and regulations relating to exportation, including the laws of the state or country that the hemp is being exported to.

(g) No hemp in the forms specified in subsection (a) shall be transported outside of a licensed grow area unless a licensee files a transportation report with the department at least three business days prior to the intended transportation date.

(h) The transportation report shall be in a form and submitted in a manner prescribed by the department and shall contain the following:

- (1) The licensee's name and USDA hemp producer license number;
- (2) Date of transportation;
- (3) Method of transportation;
- (4) Identification of the person transporting the hemp;
- (5) Address of the grow area that the hemp is to be removed from;
- (6) Address the hemp is to be transported to with contact information for recipient;
- (7) Kind and quantity of packages, or if in bulk the total quantity of hemp to be transported;
- (8) Documentation confirming the specific hemp to be transported has passed all compliance testing required by the USDA; and
- (9) Any additional information or documentation required by the department or law enforcement.

(i) During any transportation of hemp, the licensee or employee of the licensee shall carry with them a copy of the transportation report, the licensee's USDA hemp production license, and any other documentation required to be included with the transportation report by the department or law enforcement.

(j) Licensees shall complete and submit to the department all required reports and statements

relative to the licensee's transportation of hemp at least three business days prior to the intended transportation date. A failure to timely complete and submit any required report may result in the penalties set forth in section 4-161.1-5.

(k) Licensees shall allow the department or law enforcement to inspect and sample harvested hemp cargoes prior to and during transport, including at ports of origin or arrival.

(l) Licensees shall comply with any direction of the chairperson with respect to the transportation of hemp when the circumstances require.

[Eff:] (Auth: HRS §141-43) (Imp: HRS §§141-42, 141-43)

§4-161.1-3 Nuisance. (a) Hemp shall not be grown within 500 feet of a preexisting playground, childcare facility, or school; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;
- (2) Whose licensed area to grow hemp under the state industrial hemp pilot program is within 500 feet of a preexisting playground, childcare facility, or school; and
- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of real property with a preexisting playground, childcare facility, or school.

(b) Hemp shall not be grown within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the licensee; provided that this restriction shall not apply to a person or entity:

- (1) That was licensed to grow hemp under the state industrial hemp pilot program prior to August 27, 2020;

- (2) Whose licensed area to grow hemp under the state industrial hemp pilot program is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the licensee; and
- (3) Who is growing hemp under a license to produce hemp issued by the USDA in the same area approved under their industrial hemp pilot program license that is within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the licensee.

(c) Hemp shall not be grown in any house, dwelling unit, residential apartment, or other residential structure.

(d) Hemp shall not be grown outside of a state agricultural district.

(e) Licensees shall comply with all applicable regulations, including nuisance regulations, environmental regulations, and county land usage ordinances.

(f) Upon notice from the regulatory agency with primary enforcement authority over nuisance, environmental, or land usage regulations, as applicable, that a licensee who was previously licensed to grow hemp under the state industrial hemp pilot program is not in compliance with nuisance, environmental, or land usage regulations, the department may issue a notice of violation and assess fines for the violation in accordance with section 4-161.1-5. [Eff: _____] (Auth: HRS §141-43)
(Imp: HRS §§141-42, 141-43)

§4-161.1-4 Inspection. (a) All licensees shall allow federal, state, and county law enforcement authorities to inspect the records, growing area, equipment, facilities, and areas incident to the production or transportation of hemp to verify compliance with the requirements of this chapter.

inspection required or maintained pursuant to this chapter." [Eff: _____] (Auth: HRS §141-43) (Imp: HRS §§141-42, 141-43)

3. The repeal of chapter 4-161 (Interim Rules) and the adoption of chapter 4-161.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing is a copy of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Phyllis Shimabukuro-Geiser
PHYLLIS SHIMABUKURO-GEISER
Chairperson
Board of Agriculture

APPROVED AS TO FORM:

Margaret Kna
Deputy Attorney General

V. Administrative Matters

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