



**HAWAII
SMALL BUSINESS
REGULATORY REVIEW
BOARD**

Periodic Review – Evaluation Report

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

December 2010

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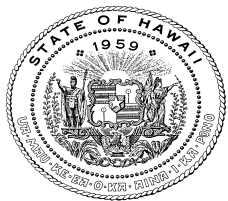
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MESSAGE FROM THE INTERIM DIRECTOR



As the Interim Director of the Department of Business, Economic Development & Tourism, I extend my sincere appreciation to the Small Business Regulatory Review Board members for their hard work, dedication and commitment to the small businesses in Hawaii.

Richard C. Lim
Interim Director



MESSAGE FROM CHAIRPERSON

Neil Abercrombie
Governor

Richard C. Lim
Interim Director, DBEDT

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Sharon L. Pang, Chairperson
December 2010

In January 2009, the Small Business Regulatory Review Board sent letters to eleven State agencies, pursuant to Chapter 201M-7, HRS, “Periodic Review; Evaluation Report.” Our letter explained that, as it was within the Board’s discretion to require a modified version of an evaluation report, we were requesting that the agencies submit to us a list of the top ten (10) administrative rules that received the most complaints from businesses or that resulted in the most citations. As a result, this report reflects responses from eleven agencies.

OVERVIEW

Members of the Small Business Regulatory Review Board are pleased to provide a review and commentary on specific administrative rules, pursuant to the Regulatory Flexibility Act (RFA), Chapter 201M-7, HRS.

[201M-7] Periodic review; evaluation report.

- (a) Each Agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The Agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.
- (b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.
- (c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held

pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.

RULE REVIEW MATRIX

<u>Agency</u>	<u>Number of Rules with Complaints, Concerns or Citations</u>
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	1
2. DEPARTMENT OF AGRICULTURE	1
3. DEPARTMENT OF BUDGET AND FINANCE	
A. FINANCIAL ADMINISTRATION DIVISION	0
B. PUBLIC UTILITIES COMMISSION	2
4. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	0
5. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	2
6. DEPARTMENT OF HEALTH	
A. MEDICAL DIVISION	3
B. ENVIRONMENTAL DIVISION	7
7. DEPARTMENT OF HUMAN SERVICES	0
8. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	0
9. DEPARTMENT OF LAND AND NATURAL RESOURCES	3
10. DEPARTMENT OF TAXATION	0
11. DEPARTMENT OF TRANSPORTATION	10

SUMMARY OF AGENCY RESPONSES

Listed below is the total submission of administrative rules that were provided by eleven Hawaii State Agencies that had the most complaints from businesses or that resulted in the most citations.

Department of Accounting and General Services

1. HAR Chapter 3-124, Subchapter 9 “Small Business Preference Program”

Agency Response: While no complaints were received by businesses, the Agency received some concerns regarding clarification, implementation, and applicability from Hawaii businesses regarding the Small Business Preference Program.

Department of Agriculture

1. HAR Chapter 4-66, “Pesticides”

Agency Response: While no complaints were received by businesses, this rule resulted in 50 citations.

Department of Budget and Finance **Financial Administration Division**

1. HAR Chapter 6-1 – “Public Records: Administrative Procedures: Receiving and Paying Hours”

Agency Response: Adopted in July 1981, this rule does not affect small business.

2. HAR Chapter 6-4, “Special Purpose Revenue Bonds for Health Care Facilities”

Agency Response: Adopted in December 1981, this rule affects small business. The rule ensures that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

3. HAR Chapter 6-10, “Special Purpose Revenue Bonds for Industrial Enterprises”

Agency Response: Adopted in August 1985, this rule affects small business. The rule ensures that applicable businesses/enterprises meet

state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

4. HAR Chapter 6-12, "Special Purpose Revenue Bonds for Manufacturing Enterprises"

Agency Response: Adopted in August 1985, this rule affects small business. The rule ensures that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

5. HAR Chapter 6-13, "Special Purpose Revenue Bonds for Processing Enterprises"

Agency Response: Adopted in August 1985, this rule affects small business. The rule ensures that applicable businesses/exemptions meet state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

6. HAR Chapter 6-16, "Special Purpose Revenue Bonds for Early Childhood Education and Care Facilities"

Agency Response: Adopted in August March 2005, this rule affects small business. The rule ensures that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

7. HAR Chapter 6-17, "Special Purpose Revenue Bonds for Not-for-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, Colleges, and Universities"

Agency Response: Adopted in March 2005, this rule affects small business. The rule ensures that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. No complaints were received and no citations were given.

Public Utility Commission

1. HAR Chapter 6-62 – "Motor Carrier Rules and Classification of Property and Passenger Carriers"

Agency Response: Pursuant to HARS Chapter 271, the rules are necessary to administer, execute and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS § 271-1. The Public Utilities Commission has a total of ten (10) administrative rules under its jurisdiction. Of those ten administrative rules, violations have

resulted in the majority of citations issued under the Commission's administrative rule authority. These citations have primarily fallen under the following categories:

- a. HAR Chapter 6-62.3 – Operating without a certificate of public convenience and necessity
- b. HAR Chapter 6-62.1, et seq. – Unlawful operation
- c. HAR Chapter 6-62.8, et seq. – Insurance violations
- d. HAR Chapter 6-62.18 – Leasing requirements violation
- e. HAR Chapter 6-62.26 – Failure to respond to requests for information
- f. HAR Chapter 6-62.31 – Passenger carrier exceeding seating capacity authority

1. HAR Chapter 6-63 – “Motor Carrier Tariffs and Schedules”

Agency Response: As required by HRS Chapter 271, these rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicle, specifically those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. The Public Utilities Commission has a total of ten (10) administrative rules under its jurisdiction. Of those ten administrative rules, violations have resulted in the majority of citations issued under the Commission's administrative rule authority; as follows:

- a. HAR Chapter 6-63.3 – Operating without a published tariff

Department of Business, Economic Development & Tourism

Agency Response: All responses received from DBEDT's divisions indicated no complaints from businesses or that resulted in citations.

Department of Commerce and Consumer Affairs

1. HAR Chapter 16-38 – “Securities”

Agency Response: The rule requires investment advisers to obtain errors and omission insurance. The rule was repealed on June 30, 2008, with the repeal of the underlying statute (Chapter 485, HRS), and is now under HAR Chapter 16-39. Since the repeal, the Department has not received similar complaints.

2. HAR Chapter 16-182-1 – “Nor Rules Combat or Similar Contest”

Agency Response: This rule requires that applications for “no rules combat” matches include a report from a licensed physician stating that contestants are in satisfactory physical and mental health to participate in the match. One complaint was received indicting that it is difficult for out-of-state contestants to be examined by Hawaii-licensed physicians prior to the match. Once promoters became familiar with the new requirement, the Department has not received similar complaints.

Department of Health
Medical Division

1. HAR Chapter 11-90, “Assisted Living Facilities”
2. HAR Chapter 11-97, “Home Health Agencies”
3. HAR Chapter 11-100, “Adult Residential Care Homes”

Agency Response: No specific information was provided.

Environmental Division

1. HAR Chapter 11-23, “Underground Injection Control”
2. HAR Chapter 11-28, “Underground Storage Tanks”
3. HAR Chapter 11-55, “Water Pollution Control”
4. HAR Chapter 11-58, “Solid Waste Management Control”
5. HAR Chapter 11-60, “Air Pollution Control”
6. HAR Chapter 11-62, “Wastewater Systems”
7. HAR Chapter 11-282, “Deposit Beverage Container Recycling”

Agency Response: No specific information was provided.

Department of Human Services

Agency Response: All responses received from DBEDT’s divisions indicated no complaints from businesses or that resulted in citations.

Department of Labor and Industrial Relations

Agency Response: All responses received from DLIR’s divisions indicated no complaints from businesses or that resulted in citations.

Department of Land and Natural Resources

1. HAR Chapter 13-74-20 – “Commercial Marine License”
2. HAR Chapter 13-168-12, – “Well Construction and Pump Installation Permit”
3. HAR Chapter 13-221-46 – “Business Operations Permit”

Agency Response: No specific information was provided.

Department of Taxation

Agency Response: All responses received from DOT’s divisions indicated no complaints from businesses or that resulted in citations.

Department of Transportation

1. HAR Chapter 19-14- “Public Conduct at Public Airports”
2. HAR Chapter 19-15.1 - “Operation of Motor Vehicles at Public Airports”
3. HAR Chapter 19-20.1 - “Commercial Services at Public Airports”
4. HAR Chapter 19-38.1, “On-Demand Taxi Service at Public Airports”
5. HAR Chapter 19-43 - “Motor Vehicles”
6. HAR Chapter 19-44 - “Rules Relating to Services and Procedures, Charges, Tolls and Fees”
7. HAR Chapter 19-102 - “Fee Schedule for the Issuance of a Permit to Perform work on State Highways
8. HAR Chapter 19-104, “The Movement by Permit of Oversize and Overweight Vehicles”
9. HAR Chapter 19-133.2, “Periodic Inspection of Vehicles”
10. HAR Chapter 19-133.5, “Suspension or Revocation of an Official Inspection State or Inspector’s Certification”

Agency Response: No specific information was provided.

EXHIBIT I



SMALL BUSINESS REGULATORY REVIEW BOARD

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January 12, 2009

Linda Lingle
Governor

Theodore E. Liu
Director, DBEDT

Mark K. Anderson
Deputy Director, DBEDT

Members

Lynne Woods
Chairperson

Sharon L. Pang
Discussion Leader (Medical)

Michael C. L. Yee
Discussion Leader (Environmental)

Daniel Lee
Member

Daniel O'Connell
Member

Charles Au
Member

Kyle Cook
Member

Frank E. Sackey
Member

Peter Yukimura
Member

Daniel S. O'Connell
Member

Dr. Chiyoie L. Fukino
Director
Department of Health
P. O. Box 3379
Honolulu, HI 96813

Subject: 201M-7 Periodic Review; Evaluation Report

Dear Director Fukino:

On behalf of the Small Business Regulatory Review Board, I am respectfully informing you that pursuant to the Regulatory Flexibility Act, §201M-7, HRS, the following information is required:

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

The Review Board appreciates that for some agencies providing this information may be a huge endeavor. Therefore, because it is within this Board's discretion to require a modified version of an evaluation report, the Board is requesting that your Agency, in a good faith effort, provide for both the health and environmental divisions the following:

- A list of the top ten (10) administrative rules under your jurisdiction that have received the most complaints or concerns from businesses or that have resulted in the most citations.

The Review Board is requesting this information by June 30, 2009. Please submit the requested information to Ms. Dori Palovovich, Business Advocate, DBEDT, 250 South Hotel Street, Honolulu, HI, 96813. Thank you for your anticipated response and assistance.

Sincerely,

Lynne Woods
Chairperson

cc: The Honorable Linda Lingle
Sharon L. Pang, Review Board Discussion Leader (Medical)
Michael C. L. Yee, Review Board Discussion Leader (Environmental)

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