



**HAWAII  
SMALL BUSINESS  
REGULATORY REVIEW  
BOARD**

**Review of Agency Submitted  
Administrative Rules**

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

**December 2012**

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## MESSAGE FROM THE DIRECTOR



On behalf of the Department of Business, Economic Development & Tourism, I continue to extend my sincere appreciation to the Small Business Regulatory Review Board members for their dedication and hard work.

In July 2012, Governor Abercrombie signed into law Act 241, Session Laws of Hawaii. Among other changes, Act 241 amended Section 201M-5, Hawaii Revised Statutes (HRS), to provide for more specific membership requirements for the SBRRB thereby changing the process for nominating persons for appointment to this board. The change resulted in the repeal of the existing SBRRB members, which convened its last board meeting in June 2012.

At the time this report was printed, the member nominating process was not complete. Subsequently, a sufficient number of members were appointed to constitute quorum. While the new board members met in December 2012, they declined to formally approve the report due to their personal unfamiliarity with the contents of the report. As a result, the information contained in this report was prepared by DBEDT; every effort has been made to include only a compilation of the information received from State agencies in response to the SBRRB's request pursuant to Section 201M-7 HRS, of the Hawaii Small Business Regulatory Flexibility Act.

Richard C. Lim  
Director

# OVERVIEW

In February 2012, the SBRRB requested from the State agencies a list of existing administrative rules that affect small business, a report describing the specific public purpose or interest for adopting the respective rules, and any other reasons to justify the rules' continued implementation for the period of June 2003 through June 2011, pursuant to the Regulatory Flexibility Act, Chapter 201M-7, Section (a), Hawaii Revised Statutes. The information in this report is a compilation of the responses and justifications received from the State agencies.

## **[201M-7] Periodic review; evaluation**

(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.

(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.

## ADMINISTRATIVE RULE REVIEW MATRIX

State Agency	Number of Rules
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	20
2. DEPARTMENT OF AGRICULTURE	43
3. DEPARTMENT OF THE ATTORNEY GENERAL	1
4. DEPARTMENT. OF BUDGET AND FINANCE	
FINANCIAL ADMINISTRATION DIVISION	7
PUBLIC UTILITIES COMMISSION	17
5. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	7
6. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	63
7. DEPARTMENT OF EDUCATION	3
8. DEPARTMENT OF HEALTH	
MEDICAL DIVISON	24
ENVIRONMENTAL DIVISION	47
10. DEPARTMENT OF HUMAN SERVICES	14
11. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	24
12. DEPARTMENT OF LAND AND NATURAL RESOURCES	78
13. DEPARTMENT OF TAXATION	0
14. DEPARTMENT OF TRANSPORTATION	31
15. UNIVERSITY OF HAWAII	1
<b>Total</b>	<b>380</b>

# LISTING OF RULES REVIEWED

Below is a listing of administrative rules submitted by the following State agencies.

## ***Department of Accounting and General Services***

### **Campaign Spending Commission**

1. HAR Title 3 Chapter 160-8 - Independent expenditure; defined
2. HAR Title 3 Chapter 160-31 – Contributions; limits for persons
3. HAR Title 3 Chapter 160-34 – Contributions by limited liability companies
4. HAR Title 3 Chapter 160-35 – Contributions by limited partnerships, limited liability partnerships, or limited liability limited partnership
5. HAR Title 3 Chapter 160-36 – Contributions by a sole proprietor
6. HAR Title 3 Chapter 160-37 – Contributions by a state or county contractor prohibited
7. HAR Title 3 Chapter 160-38 – False name contributions prohibited

### **State Procurement Office**

8. HAR Title 3 Chapter 120 – General Provisions
9. HAR Title 3 Chapter 121 – Procurement Organization
10. HAR Title 3 Chapter 124 – Preferences
11. HAR Title 3 Chapter 126 – Legal and Contractual Remedies
12. HAR Title 3 Chapter 122 – Source Selection and Contract Formation
13. HAR Title 3 Chapter 125 – Modifications and Terminations of Contracts
14. HAR Title 3 Chapter 128 – Governmental Relations and Cooperative Purchasing
15. HAR Title 3 Chapter 131 – Compliance

### **State Building Code Council**

16. HAR Title 3 Chapter 180 – State Building Code
17. HAR Title 3 Chapter 181 – State Energy Conservation Code
18. HAR Title 3 Chapter 182 – State Electrical Code
19. HAR Title 3 Chapter 183 – State Plumbing Code

### **State Foundation on Culture and Arts**

20. HAR Title 3 Chapter 111-28 – Hawaii State Art Museum

## ***Department of Agriculture***

### **Administration**

1. HAR Title 4 Chapter 1– Board of Agriculture – Rules of Practice and Procedure

## **Agriculture Loan Division**

2. HAR Title 4 Chapter 8 – Agricultural Loan Program Rules
3. HAR Title 4 Chapter 9 – The Aquaculture Loan Program

## **Division of Animal Industry**

4. HAR Title 4 Chapter 16 – Cattle, Sheep and Goats
5. HAR Title 4 Chapter 17 - Swine
6. HAR Title 4 Chapter 9 – Subchapter 6, West Nile Virus Import Requirements for Birds and Poultry
7. HAR Title 4 Chapter 20 – Non-domestic Animals
8. HAR Title 4 Chapter 21 – Vaccines, Microorganisms, and Parasites
9. HAR Title 4 Chapter 22 – Reporting of Animal Diseases
10. HAR Title 4 Chapter 23 – Horses
11. HAR Title 4 Chapter 27- Brands
12. HAR Title 4 Chapter 29 - Dogs, Cats, and Other Carnivores
13. HAR Title 4 Chapter 170 - Aquaculture Development Special Fund

## **Division of Marketing and Consumer Services**

14. HAR Title 4 Chapter 41 – Standards for Fresh Fruits and Vegetables
15. HAR Title 4 Chapter 42 – Standards for Hawaii-Grown Flowers and Foliage
16. HAR Title 4 Chapter 44 – Standards for Processed Products
17. HAR Title 4 Chapter 45 – Feed
18. HAR Title 4 Chapter 46 – Standards for Shell Eggs
19. HAR Title 4 Chapter 48 – Rules Regulating Dealer in Farm Products
20. HAR Title 4 Chapter 54 – Industry and Product Promotion Program
21. HAR Title 4 Chapter 60 – Milk Control Rules

## **Division of Plant Industry**

22. HAR Title 4 Chapter 66 - Pesticides
23. HAR Title 4 Chapter 67 - Seed Rules
24. HAR Title 4 Chapter 68 - Noxious Weed Rules
25. HAR Title 4 Chapter 69A - Pests for Control or Eradication
26. HAR Title 4 Chapter 70 – Plant and Non-Domestic Animal Quarantine Plant Import Rules
27. HAR Title 4 Chapter 71 – Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules
28. HAR Title 4 Chapter 71A – Plant and Non-Domestic Animal Quarantine Microorganism Import Rules



29. HAR Title 4 Chapter 72 – Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules
30. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules

### **Division of Measurement Standards**

31. HAR Title 4 Chapter 86 – Brake Fluids, Coolants, Petroleum Products and After-Market Additives
32. HAR Title 4 Chapter 87 – Voluntary Registration of Service Persons or Service Agencies
33. HAR Title 4 Chapter 89 – Measuremasters
34. HAR Title 4 Chapter 91 – Unit Pricing of Consumer Commodities
35. HAR Title 4 Chapter 93 – Packaging and Labeling
36. HAR Title 4 Chapter 94 – Method of Sale of Commodities
37. HAR Title 4 Chapter 96 – Schedule and Fees for Licensing Devices Susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification
38. HAR Title 4 Chapter 101 - Weighing and Measuring Devices

### **Quality Assurance Division**

39. HAR Title 4 Chapter 135 - Seals of Quality
40. HAR Title 4 Chapter 143 – Standards of Coffee

### **Division Agricultural Resource Management**

41. HAR Title 4 Chapter 153 – Agricultural Park Program Rules
42. HAR Title 4 Chapter 157 – Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems
43. HAR Title 4 Chapter 158 – Non Agricultural Park Lands Program Rules

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

1. HAR Title 5 Chapter 11 – Notaries Public

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

### **Financial Administration Division**

1. HAR Title 6 Chapter 1 – Public Records; Administrative Procedures; Receiving and Paying Hours
2. HAR Title 6 Chapter 4 - Special Purpose Revenue Bonds for Health Care Facilities

3. HAR Title 6 Chapter 10 - Special Purpose of Revenue Bonds for Industrial Enterprises
4. HAR Title 6 Chapter 12 – Special Purpose Revenue Bonds for Manufacturing Enterprises
5. HAR Title 6 Chapter 13 – Special Purpose Revenue Bonds for Processing Enterprises
6. HAR Title 6 Chapter 16 – Special Purpose Revenue Bonds for Early childhood Education and Care Facilities
7. HAR Title 6 Chapter 17 – Special Purpose Revenue Bonds for Not-for-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, Colleges and Universities

### **Public Utilities Commission**

1. HAR Title 6 Chapter 60 – Standards for Electric and Gas Services in the State of Hawaii
2. HAR Title 6 Chapter 61 – Rules of Practice and Procedure before the Public Utilities Commission
3. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers
4. HAR Title 6 Chapter 62-8 GO 5 - Repeal of General Order No. 5 – Uniform System of Accounts for Motor Carriers
5. HAR Title 6 Chapter 62-8 Insurance Requirements
6. HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules
7. HAR Title 6 Chapter 65 – Water Carriers
8. HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers
9. HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines
10. HAR Title 6 Chapter 74 – Standards for Small Power Production and Cogeneration
11. HAR Title 6 Chapter 76 – Shared Tenant Service
12. HAR Title 6 Chapter 77 – Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards
13. HAR Title 6 Chapter 79 – Aggregator and Operator Service
14. HAR Title 6 Chapter 80 – Competition in Telecommunications Services
15. HAR Title 6 Chapter 81 – Universal Service Fund
16. HAR Title 6 Chapter 82 – Pay Telephone Service
17. HAR Title 6 Chapter 83 – Hawaii One Call Center Subsurface Installation Damage Prevention Program

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

1. HAR Title 15 Chapter 2 – Hawaii Capital Loan Program
2. HAR Title 15 Chapter 3 – Capital Access Program”
3. HAR Title 15 Chapter 4 – Disaster Commercial and Personal Loan Program

4. HAR Title 15 Chapter 5 – Hawaii Innovation Development Program
5. HAR Title 15 Chapter 6 – Enterprise Zones

### **Land Use Commission**

6. HAR Title 15 Chapter 15 – Land Use Commission Rules

### **Hawaii Community Development Authority**

7. HAR Title 15 Chapter 32 – Hawaii Small Business Innovation Research Grant Program

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

### **Insurance Division**

1. HAR Title 16 Chapter 5 – Mass Merchandizing of [Motor Vehicle] Insurance
2. HAR Title 16 Chapter 6 – Credit Life and Credit Disability Insurance
3. HAR Title 16 Chapter 7 – Hawaii Medical Malpractice Underwriting Plan
4. HAR Title 16 Chapter 16 – Mental Health, Alcohol, and Drug Abuse Treatment Insurance Benefits
5. HAR Title 16 Chapter 23 – Motor Vehicle Insurance Law
6. HAR Title 16 Chapter 171 – Miscellaneous Insurance Rules
7. HAR Title 16 Chapter 178 – Administrative Special Mortgage Recording Fee Guidelines

### **Division of Financial Institutions**

8. HAR Title 16 Chapter 24 – Money Transmitters
9. HAR Title 16 Chapter 25 – Application Procedure Relating to Hawaii Financial Institutions
10. HAR Title 16 Chapter 26 – Examination and Off-Site Monitoring of Hawaii Financial Institutions
11. HAR Title 16 Chapter 27 – Supervisory and Enforcement Action Relating to Hawaii Financial Institutions
12. HAR Title 16 Chapter 28 – Escrow Depositories
13. Chapter 16-31 – Credit Unions

### **Business Registration Division**

14. HAR Title 16 Chapter 36 – Practice and Procedure of the Business Registration Division
15. HAR Title 16 Chapter 37 – Rules Under the Franchise Investment Law
16. HAR Title 16 Chapter 39 – Securities

## Professional and Vocational Licensing Division

17. HAR Title 16 Chapter 53 – Fees Relating to Boards and Commissions
18. HAR Title 16 Chapter 71 – Certified Public Accountants and Public Accountants
19. HAR Title 16 Chapter 72 – Acupuncture Practitioners
20. HAR Title 16 Chapter 73 – Barbers
21. HAR Title 16 Chapter 74 – Boxing
22. HAR Title 16 Chapter 75 – Cemeteries and Funeral Trusts
23. HAR Title 16 Chapter 76 – Chiropractors
24. HAR Title 16 Chapter 77 – Contractors
25. HAR Title 16 Chapter 78 – Cosmetology
26. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists
27. HAR Title 16 Chapter 80 – Electricians and Plumbers
28. HAR Title 16 Chapter 81 – Elevator Mechanics
29. HAR Title 16 Chapter 83 – Hearing Aid Dealers and Fitters
30. HAR Title 16 Chapter 84 – Massage Therapy
31. HAR Title 16 Chapter 85 – Medical Examiners
32. HAR Title 16 Chapter 86 – Motor Vehicle Dealers and Salesmen
33. HAR Title 16 Chapter 87 – Motor Vehicle Repair Dealers and Mechanics
34. HAR Title 16 Chapter 88 – Naturopaths
35. HAR Title 16 Chapter 89 – Nurses
36. HAR Title 16 Chapter 89A – Nurse Aides
37. HAR Title 16 Chapter 89B – Diversion Program
38. HAR Title 16 Chapter 89C – Advanced Practice Registered Nurse-Prescriptive Authority
39. HAR Title 16 Chapter 90 – Nursing Home Administrators
40. HAR Title 16 Chapter 91 – Dispensing Opticians
41. HAR Title 16 Chapter 92 – Optometrists
42. HAR Title 16 Chapter 93 – Osteopaths
43. HAR Title 16 Chapter 94 – Pest Control Operators
44. HAR Title 16 Chapter 95 – Pharmacists and Pharmacies
45. HAR Title 16 Chapter 96 – Pilotage
46. HAR Title 16 Chapter 97 – Private Detectives and Guards
47. HAR Title 16 Chapter 98 – Psychologists
48. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons
49. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists
50. HAR Title 16 Chapter 101 – Veterinarians
51. HAR Title 16 Chapter 104 – Uniform Land Sales Practices
52. HAR Title 16 Chapter 106 – Timesharing
53. HAR Title 16 Chapter 107 – Horizontal Property Regimes
54. HAR Title 16 Chapter 108 – Commercial Employment Agencies
55. HAR Title 16 Chapter 110 – Physical Therapy
56. HAR Title 16 Chapter 112 – Collection Agencies
57. HAR Title 16 Chapter 113 – Electrologists
58. HAR Title 16 Chapter 114 – Real Estate Appraisers

- 59. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects
- 60. HAR Title 16 Chapter 116 – Travel Agencies
- 61. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks

### **Office of Consumer Protection**

- 62. HAR Title 16 Chapter 303 – Office of Consumer Protection, Unfair or Deceptive Practices in Advertising

### **Regulated Industries Complaints Office**

- 63. HAR Title 16 Chapter 181 – Motor Vehicle Express Warranty Enforcement (Lemon Law)

## ***Department of Education***

- 1. HAR Title 8 Chapter 27 – Transportation of Students
- 2. HAR Title 8 Chapter 39 – Use of School Buildings, Facilities, and Grounds
- 3. HAR Title 8 Chapter 101 – Licensing of Private Trade, Vocational, and Technical Schools

## ***Department of Health***

### **Medical**

#### **Food and Drug Branch**

- 4. HAR Title 11 Chapter 29 – Food and Food Products
- 5. HAR Title 11 Chapter 33 – Hawaii Drug Formulary of Equivalent Drug Products
- 6. HAR Title 11 Chapter 35 – Shellfish Sanitation
- 7. HAR Title 11 Chapter 36 – Sale of Prophylactics Through Vending Machines

#### **Office of Health Care Assurance**

- 8. HAR Title 11 Chapter 79 – Licensing Dietitians
- 9. HAR Title 11 Chapter 89 – Developmental Disabilities Domiciliary Homes
- 10. HAR Title 11 Chapter 90 – Assisted Living Facility
- 11. HAR Title 11 Chapter 93 – Broad Service Hospitals and Critical Access Hospitals
- 12. HAR Title 11 Chapter 94.1 – Skilled Nursing / Intermediate Care Facilities
- 13. HAR Title 11 Chapter 95 – Freestanding Surgical Outpatient (FSOF) or Ambulatory Surgical Centers
- 14. HAR Title 11 Chapter 96 – Freestanding Adult Day Health Centers
- 15. HAR Title 11 Chapter 97 – Home Health Agencies

16. HAR Title 11 Chapter 98 – Special Treatment Facilities/Therapeutic Living Programs
17. HAR Title 11 chapter 99 – Intermediate Care Facilities for the Mentally Retarded
18. HAR Title 11 Chapter 100.1 – Adult Residential Care Homes (includes Expanded ARCH)
19. HAR Title 11 Chapter 104.1 – Management and Disposal of Infectious Waste
20. HAR Title 11 Chapter 110.1 – Clinical Laboratories and Laboratory Personnel

### **State Laboratories Division**

21. HAR title 11 Chapter 113 – Substance Abuse Testing by Laboratories

### **Tobacco Settlement Project/Healthy Hawaii Initiative – Chronic Disease Management & Control Branch**

22. HAR Title 11 Chapter 81 – Smoking in Public Places

### **Alcohol and Drug Abuse Division**

23. HAR Title 11 Chapter 117.1 – Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Co-Occurring Disorders Professional Diplomate

### **Communicable Disease Division**

24. HAR Title 11 Chapter 156 – Communicable Diseases

### **Disease Outbreak Control Division**

25. HAR Title 11 Chapter 157 – Examination and Immunization

### **Disability and Communication Access Board**

26. HAR Title 11 Chapter 218 – Communication Access Services for Persons who are Deaf, Hard of Hearing and Deaf-Blind
27. HAR Title 11 Chapter 219 – Parking for Persons with Disabilities

### **Environmental**

### **Hazard Evaluation and Emergency Response Branch**

1. HAR Title 11 Chapter 5 – Environmentally-Related Illness and Injury Reporting
2. HAR Title Chapter 451 – State Contingency Plan
3. HAR Title 11 Chapter 453 – Hawaii Emergency Planning and Community Right-to-Know-Act

## **Sanitation Branch**

4. HAR Title 11 Chapter 10 – Swimming Pools
5. HAR Title 11 Chapter 11 – Sanitation
6. HAR Title 11 Chapter 12 – Food Service and Food Establishment Sanitation Code
7. HAR Title 11 Chapter 15 – Milk
8. HAR Title 11 Chapter 17 – Tattoo Artists
9. HAR Title 11 Chapter 18 – Licensing of Sanitarians
10. HAR Title 11 Chapter 22 – Mortuaries, Cemeteries, Embalmers, Undertakers & Mortuary Authorities

## **Safe Drinking Branch**

11. HAR Title 11 Chapter 19 – Emergency Plan for Safe Drinking Water
12. HAR Title 11 Chapter 20 – Rules Relating to Public Water Systems
13. HAR Title 11 Chapter 21 – Cross-Connection & Backflow Control
14. HAR Title 11 Chapter 23 – Underground Injection Control
15. HAR Title 11 Chapter 25 – Rules Relating to Certification of Public Water System Operators

## **Vector Control Branch**

16. HAR Title 11 Chapter 26 – Vector Control

## **Clean Water Branch**

17. HAR Title 11 Chapter 54 – Water Quality Standards
18. HAR Title 11 Chapter 55 – Water Pollution Control

## **Clean Air Branch**

19. HAR Title 11 Chapter 59 – Ambient Air Quality Standards
20. HAR Title 11 Chapter 60.1 – Air Pollution Control

## **Wastewater Branch**

21. HAR Title 11 Chapter 61 – Mandatory Certification of Wastewater Treatment Plants
22. HAR Title 11 Chapter 62 – Waste Water Systems

## **Noise, Radiation and Indoor Air Quality Branch**

23. HAR Title 11 Chapter 39 – Air Conditioning & Ventilating
24. HAR Title 11 Chapter 40 – Community Noise Control

25. HAR Title 11 Chapter 44 – Radiologic Technology Board Radiologic Technology Rules
26. HAR Title 11 Chapter 45 – Radiation Control
27. HAR Title 11 Chapter 501 – Asbestos Requirements
28. HAR Title 11 Chapter 502 – Asbestos Containing Materials in Schools
29. HAR Title 11 Chapter 503 – Fees for Asbestos Removal
30. HAR Title 11 Chapter 504 – Asbestos Abatement Certification Program

## **Solid and Hazardous Waste Branch**

31. HAR Title 11 Chapter 58.1 – Solid Waste Management Control
32. HAR Title 11 Chapter 68 – Litter Control
33. HAR Title 11 Chapter 260 – Hazardous Waste Management General Provisions
34. HAR Title 11 Chapter 261 – Hazardous Waste Management Identification & Listing of Hazardous Waste
35. HAR Title 11 Chapter 262 – Hazardous Waste Management Standards Applicable to Generators of Hazardous Waste
36. HAR Title 11 Chapter 263 – Hazardous Waste Management Standards Applicable to Transporters of Hazardous Waste
37. HAR Title 11 Chapter 264 – Hazardous Waste Management Standards for Owners & Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities
38. HAR Title 11 Chapter 265 – Hazardous Waste Management Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities
39. HAR Title 11 Chapter 266 – Hazardous Waste Management Standards for the Management of Specific Hazardous Wastes & Specific Types of Hazardous Waste Management Facilities
40. HAR Title 11 Chapter 268 – Hazardous Waste Management Land Disposal Restrictions
41. HAR Title 11 Chapter 270 – Hazardous Waste Management State Administered Permits: The Hazardous Waste Permit Program
42. HAR Title 11 Chapter 271 – Hazardous Waste Management Procedures for Decision Making
43. HAR Title 11 Chapter 273 – Hazardous Waste Management Standards for Universal Waste Management
44. HAR Title 11 Chapter 279 – Standards for the Management of Used Oil
45. HAR Title 11 Chapter 280 – Hazardous Waste Management Public Information
46. HAR Title 11 Chapter 281 – Underground Storage Tanks (USTs)
47. HAR Title 11 Chapter 282 – Deposit Beverage Container Program

## ***Department of Human Services***

1. HAR Title 17 Chapter 402 – Services to the Blind and Visually Handicapped
2. HAR Title 17 Chapter 891.1 – Registration of Family Child Care Homes



3. HAR Title 17 Chapter 892.1 – Licensing of Group Child Care Centers and Group Child Care Homes
4. HAR Title 17 Chapter 893 – Licensing of Child-Placing Organizations
5. HAR Title 17 Chapter 894 – Licensing of Child-Caring Institutions
6. HAR Title 17 Chapter 895 – Licensing of Infant and Toddler Child Care Centers
7. HAR Title 17 Chapter 896 – Licensing of Before and After School Child Care Facilities
8. HAR Title 17 Chapter 1417 – Adult Day Care Services
9. HAR Title 17 Chapter 1418 – Adult Foster Care Services
10. HAR Title 17 Chapter 1419 – Chore Services for Community Long-Term Care Programs
11. HAR Title 17 Chapter 1424 – Licensing of Adult Day Care Center
12. HAR Title 17 Chapter 1739 – Authorization, Payment, and Claims in the Fee for Service Medical Assistance Program
13. HAR Title 17 Chapter 1739.1 – Authorization, Payment, and Claims in the Fee for Service Medical Assistance-General Provisions for Reimbursement
14. HAR Title 17 Chapter 1740 – Reimbursement of Federally Qualified Health Centers

## ***Department of Labor and Industrial Relations***

### **Unemployment Insurance Division**

1. HAR Title 12 Chapter 5 – Employment Security

### **Employment Security Appeals Referees Office**

2. HAR Title 12 Chapter 12-5-93 – Benefits Appeals
3. HAR Title 12 Subtitle 8 – Hawaii Occupational Safety and Health Division

### **Disability Compensation Division**

4. HAR Title 12 Chapter 10 – Workers' Compensation
5. HAR Title 12 Chapter 11 – Temporary Disability Insurance
6. HAR Title 12 Chapter 12 – Prepaid Health Care
7. HAR Title 12 Chapter 14 – Rehabilitation
8. HAR Title 12 Chapter 15 – Medical Fee Schedule

### **Wage Standards Division**

9. HAR Title 12 Chapter 20 – Wage and Hour
10. HAR Chapter Title 12 Chapter 21 – The Administration and Enforcement of the Payment of Wages and Other Compensation Law

11. HAR Title 12 Chapter 22 – Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes
12. HAR Title 12 Chapter 24 – Relating to Unlawful Suspension or Discharge Under Part III, Chapter 378, Hawaii Revised Statutes
13. HAR Title 12 Chapter 25 – Child Labor
14. HAR Title 12 Chapter 26 – Lie Detector Tests

### **Workforce Development Division**

15. HAR Title 12 Chapter 6 – Employment and Training fund Program (ETF)
16. HAR Title 12 Chapter 30 – Apprenticeship Programs
17. HAR Title 12 Chapter 31 – A State Plan for Equal Employment Opportunity in Apprenticeship Programs
18. HAR Title 12 Chapter 506 – Plant Closing Notification and Dislocated Worker Allowance

### **Hawaii Labor Relations Board**

19. HAR Title 12 Chapter 41 – Hawaii Labor Relations Board (Employment)

### **State Fire Council**

20. HAR Title 12 Chapter 44 – State Fire Council
21. HAR Title 12 Chapter 45.1 – State Fire Code

### **Civil Rights Commission**

22. HAR Title 12 Chapter 46 – Civil Rights Commission (HCRC)

### **Hoisting Machine Operators Advisory Board**

23. HAR Title 12 Chapter 48 – Hoisting Machine Operators Advisory Board

### **Labor and Industrial Relations Appeals Board**

24. HAR Title 12 Chapter 47 – Labor and Industrial Relations Appeal Board Rules of Practice and Procedure

## ***Department of Land and Natural Resources***

### **Division of Conveyances**

1. HAR Title 13 Chapter 16 – Rules Relating to Conveyances

## Division of Aquatic Resources

2. HAR Title 13 Chapter 29 – Kealakekua Bay Marine Life Conservation District, Hawaii
3. HAR Title 13 Chapter 31 – Molokini Shoal Marine Life Conservation District, Maui
4. HAR Title 13 Chapter 32 – Honolulu-Mokuleia Marine Life Conservation District, Hawaii
5. HAR Title 13 Chapter 33 – Lapakahi Marine Life Conservation District, Hawaii
6. HAR Title 13 Chapter 34 – Pupukea Marine Life Conservation District, Oahu
7. HAR Title 13 Chapter 35 – Wailea Bay Marine Life Conservation District, Hawaii
8. HAR Title 13 Chapter 36 – Waikiki Marine Life Conservation District, Oahu
9. HAR Title 13 Chapter 37 – Old Kona Airport Marine Life Conservation District, Hawaii
10. HAR Title 13 Chapter 38 – Waiopae Tidepools Marine Life Conservation District, Hawaii
11. HAR Title 13 Chapter 48 – Waikiki-Diamond Head Shoreline Fisheries Management Area, Oahu
12. HAR Title 13 Chapter 49 – Hanamaulu Bay and Ahukini Recreation Pier Fisheries Management Area, Kauai
13. HAR Title 13 Chapter 49.5 – Port Allen Fisheries Management Area, Kauai
14. HAR Title 13 Chapter 49.6 – Nawiliwili Harbor Fisheries Management Area, Kauai
15. HAR Title 13 Chapter 50 – Waimea Bay and Waimea Recreational Pier, Kauai
16. HAR Title 13 Chapter 51 – Kahului Harbor, Maui
17. HAR Title 13 Chapter 52 – Kailua Bay, Hawaii
18. HAR Title 13 Chapter 54 – Pauka Bay and Pauka Reef, Hawaii
19. HAR Title 13 Chapter 55 – Kawaihae Harbor, Hawaii
20. HAR Title 13 Chapter 56 – Kawaihae Harbor, Hawaii
21. HAR Title 13 Chapter 57 – Keahou Bay Hawaii
22. HAR Title 13 Chapter 60 – Kiholo Bay, Hawaii
23. HAR Title 13 Chapter 60.3 – West Hawaii Regional Fisheries Management Area, Hawaii
24. HAR Title 13 Chapter 61 – Nuuanu Freshwater Fish Refuge, Oahu
25. HAR Title 13 Chapter 62 – Wahiawa Public Fishing Area, Oahu
26. HAR Title 13 Chapter 64 – Kokee Public Fishing Area, Kauai
27. HAR Title 13 Chapter 73 – Fish Aggregating Devices
28. HAR Title 13 Chapter 74 – Licenses and Permits
29. HAR Title 13 Chapter 75 – Use of Certain Fishing Gears
30. HAR Title 13 Chapter 83 – Shellfishes
31. HAR Title 13 Chapter 84 – Samoan Crab
32. HAR Title 13 Chapter 85 – Clam
33. HAR Title 13 Chapter 89 – Spiny Lobster or Ula
34. HAR Title 13 Chapter 90 – Nehu for Family Consumption
35. HAR Title 13 Chapter 92 – Opihi
36. HAR Title 13 Chapter 93 – Limu
37. HAR Title 13 Chapter 94 – Bottomfish Management
38. HAR Title 13 Chapter 95 – Regulated Species

- 39. HAR Title 13 Chapter 99 – Introduced Freshwater Fishes
- 40. HAR Title 13 Chapter 100 – O’opu and Hinana

### **Division of Forestry & Wildlife**

- 41. HAR Title 13 Chapter 103 – Alakai Wilderness Preserve, Island of Kauai
- 42. HAR Title 13 Chapter 104 – Activities within Forest Reserves
- 43. HAR Title 13 Chapter 105 – Closed (restricted) Watersheds
- 44. HAR Title 13 Chapter 107 – Threatened and Endangered Plants
- 45. HAR Title 13 Chapter 121 – Hunting
- 46. HAR Title 13 Chapter 122 – Game Bird Hunting, Field Trials and Commercial Shooting Preserves
- 47. HAR Title 13 Chapter 123 – Game Mammal Hunting
- 48. HAR Title 13 Chapter 124 – Indigenous, Endangered, Threatened and Injurious Wildlife, and Introduced Wild Birds
- 49. HAR Title 13 Chapter 126 – Rules Regulating Wildlife Sanctuaries
- 50. HAR Title 13 Chapter 130 – Trail and Access Program
- 51. HAR Title 13 Chapter 209 - Activities within Natural Area Reserves

### **Division of State Parks**

- 52. HAR Title 13 Chapter 146 – Hawaii State Park System

### **Commission on Water Resource Management**

- 53. HAR Title 13 Chapter 167 – Rules of Practice and Procedure for the Commission on Water Resource Management
- 54. HAR Title 13 Chapter 168 – Water Use, Wells, and Stream Diversion Works
- 55. HAR Title 13 Chapter 169 – Protection of Instream Uses of Water
- 56. HAR Title 13 Chapter 170 – Hawaii Water Plan
- 57. HAR Title 13 Chapter 171 – Designation and Regulation of Water Management Areas

### **Engineering Division**

- 58. HAR Title 13 Chapter 13 – Designation and Regulation of Geothermal Resources Subzones
- 59. HAR Title 13 Chapter 183 – Rules on Leasing and Drilling of Geothermal Resources
- 60. HAR Title 13 Chapter 185 – Rules of Practice and Procedure for Geothermal and Cable System Development Permitting
- 61. HAR Title 13 Chapter 190.1 Dams and Reservoirs

### **Land Division**

- 62. HAR Title 13 Chapter 1 - Rules of Practice and Procedure

- 63. HAR Title 13 Chapter 5 – Conservation District
- 64. HAR Title 13 Chapter 219 – Fee
- 65. HAR Title 13 Chapter 220 – Public Auction
- 66. HAR Title 13 Chapter 221 – Unencumbered Public Lands
- 67. HAR Title 13 Chapter 222 – Shoreline Certifications
- 68. HAR Title 13 Chapter 223 – Urban Historic Preservation and Restoration

## **Historic Preservation Division**

- 69. HAR Title 13 Chapter 197 – Hawaii Historic Places Review Board
- 70. HAR Title 13 Chapter 198 – Hawaii and National Register of Historic Places Programs
- 71. HAR Title 13 Chapter 300 – Rules of Practice and Procedure Relating to Burial Sites and Human Remains

## **Division of Boating and Ocean Recreation**

- 72. HAR Title 13 Chapter 230 – General Provisions
- 73. HAR Title 13 Chapter 231 – Operations of Boats, Small Boat Harbors, and Permits
- 74. HAR Title 13 Chapter 234 – Fees and Charges
- 75. HAR Title 13 Chapter 244 – Rules of the Road, Local, and Special Rules
- 76. HAR Title 13 Chapter 251 – Waikiki and Kaanapali Ocean Waters
- 77. HAR Title 13 Chapter 255 – Waikiki Beach
- 78. HAR Title 13 Chapter 256 – Ocean Recreation Management Rules

## ***Department of Taxation***

As of the date of the printing of this report, the Department of Taxation had not responded to the Review Board's request.

## ***Department of Transportation***

### **Administration Division**

- 1. HAR Title 19 Chapter 1 – Practice and Procedure
- 2. HAR Title 19 Chapter 2 – Participation in the Federal Minority Business Enterprise Programs
- 3. HAR Title 19 Chapter 6 – Service Charge for Delinquent Accounts at the Department of Transportation

### **Airports Division**

- 1. HAR Title 19 Chapter 13 – Aircraft Operations at Public Airports
- 2. HAR Title 19-15.1 – Operation of Motor Vehicles at Public Airports

3. HAR Title 19-16.1 – Airport System Fees and Charges Applicable to Non-Signatory Carriers
4. HAR Title 19 Chapter 20.1 – Commercial Services at Public Airports
5. HAR Title 19 Chapter 33 – Control of Hazardous Materials & Waste at Public Airports
6. HAR Title 19 Chapter 34 – Tour Aircraft Operations at Public Airports
7. HAR Title 19 Chapter 37 – Fuel Handling Procedures at Public Airports
8. HAR Title 19 Chapter 38.1 – “On-Demand Taxi Service at Public Airports

## **Harbors Division**

9. HAR Title 19 Chapter 41 – Rules Relating to General Provision
10. HAR Title 19 Chapter 42 – Vessels and Harbor Controls
11. HAR Title 19 Chapter 43 – Motor Vehicles
12. HAR Title 19 Chapter 44 – Rules Relating to Services and Procedures, Tolls and Fees

## **Highways Division**

13. HAR Title 19 Chapter 101 – Movement of Overweight Vehicles Along and Upon Hana Highway (FAS 360) Between Kailua Village and Hana
14. HAR Title 19 Chapter 102 – Fee Schedule for the Issuance of a Permit to work on State Highways
15. HAR Title 19 Chapter 104 – The Movement by Permit of Oversize and Overweight Vehicles
16. HAR Title 19 Chapter 105 – Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways
17. HAR Title 19 Chapter 121 – Traffic Records
18. HAR Title 19 Chapter 123 – Statewide Motorcycle, Moped and Motor Scooter Education Courses and Licensing Skill Test Waiver
19. HAR Title 19 Chapter 124 – Protection Devices for Motorcycle and Motor Scooter Operators and Passengers
20. HAR Title 19 Chapter 128 – Design, Placement, and Maintenance of Traffic Control Devices
21. HAR Title 19 Chapter 129 – Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways
22. HAR Title 19 Chapter 132 – Approval and Revocation of Approval for the Display, Sale and Use of Vehicle Equipment
23. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles
24. HAR Title 19 Chapter 133.5 – Suspension or Revocation of an Official Inspection Station or Inspectors Certification
25. HAR Title 19 Chapter 135 – Periodic Safety Inspection of Mopeds
26. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations
27. HAR Title 19 Chapter 143 – Pupil Transportation Safety
28. HAR Title 19 Chapter 145 – Hazardous Materials Regulations

## ***University of Hawaii***

1. HAR Title 20 Chapter 15 – Agricultural Diagnostic Services User Fees

# AGENCY JUSTIFICATIONS

Below is a justification for the listed administrative rules submitted by the State agencies.

## ***Department of Accounting and General Services***

### **Campaign Spending Commission**

- 1. HAR Title 3 Chapter 160-8 - Independent expenditure; defined**  
Justification – The rule provides guidance on independent expenditures. This rule is needed because persons, including small businesses, need to know when their expenditures on behalf of a candidate will not be considered independent and thus will count as a contribution to the candidate.
- 2. HAR Title 3 Chapter 160-31 – Contributions; limits for persons**  
Justification – This rule establishes contribution limits for persons, including the aggregation of contributions from entities that are controlled by other entities or individuals. This rule is needed because persons need to be aware of the campaign spending law applicable to campaign contributions.
- 3. HAR Title 3 Chapter 160-34 – Contributions by limited liability companies**  
Justification – This rule describes how contributions made by limited liability companies are treated. This Rule is needed because limited liability companies need to be award of the campaign spending law applicable to their contributions.
- 4. HAR Title 3 Chapter 160-35 – Contributions by limited partnerships, limited liability partnerships, or limited liability limited partnership**  
Justification – This rule describes how contributions made by limited partnerships are treated. This rule is needed because limited partnerships need to be award of the campaign spending law applicable to their contributions.
- 5. HAR Title 3 Chapter 160-36 – Contributions by a sole proprietor**  
Justification – This rule describes how contributions made by sole proprietorships are treated. This rule is needed because sole proprietorships need to be award of the campaign spending law applicable to their contributions.
- 6. HAR Title 3 Chapter 160-37 – Contributions by a state or county contractor prohibited**  
Justification – This rule describes how the statute prohibiting contributions from state and county contractors apply to the individuals of the state or county contractor. This rule is needed because individuals associated with state or county contractors need to be award of the campaign spending law applicable to their contributions.



- 7. HAR Title 3 Chapter 160-38 – False name contributions prohibited**  
Justification – This rule prohibits the making of a contribution in the name of another person. This rule is needed because it gives examples of the false name contributions.

## **State Procurement Office**

- 8. HAR Title 3 Chapter 120 – General Provisions**  
Justification – This chapter provides the purpose of the rules, definitions, applicability, procurements exempt from HRS chapter 103D and its procedures pertaining to the Hawaii public procurement code. Continue implementation necessary to allow for provisions, processes, authority to conduct procurement.
- 9. HAR Title 3 Chapter 121 – Procurement Organization**  
Justification – This chapter establishes the procurement rule-making authority and duties for the Procurement Policy Board (PPB); authority and duties of the chief procurement officers; delegation authority and duties; procurement advisory council and other advisory groups; and rule-making proceedings and declaratory rulings for the PPB. Continue implementation to provide the required authority and duties to conduct procurement.
- 10. HAR Title 3 Chapter 122 – Source Selection and Contract Formation**  
Justification – The purpose of this rule is to provide procurement officers with authority to conduct procurement transactions by fair and open competition under varying market conditions in order to satisfy public needs for supplies, services and construction at the most economical prices. Fair and open completion reduces the opportunity for favoritism and inspires public confidence that the contracts are awarded equitably and economically. Procurement methods for competitive sealed bidding, competitive sealed proposals, professional services, emergency, sole source and small purchase procurements are authorized for use by procurement officers. Continue implementation necessary to allow for provisions, processes, authority to conduct procurement.
- 11. HAR Title 3 Chapter 124 – Preferences**  
Justification – The purpose of this rule is to implement preference programs for Hawaii products, printing, reciprocal, recycled products, software development businesses, tax equalization, and qualified community rehabilitation programs. Preferences provide an advantage in consideration for award granted to a vendor, contractor or service provider by reason such as vendor's business location, classification, or products. Continue implementation for HRS mandated preferences for applicable solicitations and evaluation of offers.
- 12. HAR Title 3 Chapter 126 – Legal and Contractual Remedies**  
Justification – The purpose of this rule is to provide authority to protest, debar or suspected, resolve contract and breach of contract controversies; determination that solicitation or award violated law; administrative proceeding; judicial review

and action. These processes provide for resolution of solicitation or contractual disputes. Continue implementation necessary to allow for provisions, processes, authority to conduct procurement.

**13. HAR Title 3 Chapter 125 – Modifications and Terminations of Contracts**

Justification – The purpose of this rule is to provide contract clauses for adjustments in price, time of performance, or other contract provisions, as appropriate, such as change orders, modifications of contract provisions, variations in quantities, quantities, suspension of work, liquidated damages, and termination of contract. The contract clauses are required for use in competitive sealed bidding, competitive sealed proposals, and may be used in other contracts. Continue implementation necessary to allow for provisions, processes, and authority to conduct procurement.

**14. HAR Title 3 Chapter 128 – Governmental Relations and Cooperative Purchasing**

Justification – The purpose of this rule is to provide provisions for cooperative purchasing between governmental entities. Cooperative purchasing means procurements conduct by, on or behalf of one or more public procurement units for the benefit of the participating entities. Continue implementation necessary to allow for provisions, processes, authority to conduct procurement.

**15. HAR Title 3 Chapter 131 – Compliance**

Justification – The purpose of this rule is to provide provisions on procurement code of ethics, prohibition on parceling, procurement violations, civil and criminal penalties, corrective action, report of findings and correction actions, and administrative fines. Continue implementation necessary to allow for provisions, processes, authority to conduct procurement.

**State Building Code Council**

**16. HAR Title 3 Chapter 180 – State Building Code**

Justification – The purpose of this new rule is to adopt the State Building Code as required by Section 107-25, HRS. This rule sets forth minimum requirements for the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to buildings or structures, effective April 16, 2010.

**17. HAR Title 3 Chapter 181 – State Energy Conservation Code**

Justification – The purpose of the new rule is to adopt the State Energy Conservation Code as required by Section 107-25, HRS. This rule sets forth minimum requirements for the design and construction of buildings for the effective use of energy and is intended to provide flexibility to allow the use of innovative approaches and techniques to achieve the effective use of energy, effective May 24, 2012.

### **18. HAR Title 3 Chapter 182 – State Electrical Code**

Justification – The purpose of this new rule is to adopt the State Electrical Code as required by Section 107-25, HRS. This rule sets forth minimum requirements for the practical safeguarding of persons and property from hazards arising from the installation and use of electricity not regulated by the Public Utilities Commissions, effective April 16, 2010.

### **19. HAR Title 3 Chapter 183 – State Plumbing Code**

Justification – The purpose of this new rule is to adopt the State Plumbing Code as required by Section 107-25, HRS. This rule sets forth minimum requirements for the design, installation, alteration, repair and construction of plumbing and drainage systems, and shall apply to all new construction, relocation, alteration, repair or reconstruction, effective April 16, 2010.

## **State Foundation on Culture and Arts**

### **20. HAR Title 3 Chapter 111-28 – Hawaii State Art Museum**

Justification – The purpose of this new rule is to establish guidelines for the use of facilities for activities at the Hawaii State Art Museum (SFCA), including fees, service charges, and other requirements to be determined by the SFCA Commission, effective September 15, 2003.

## ***Department of Agriculture***

### **Administration**

#### **1. HAR Title 4 Chapter 1 – Board of Agriculture – Rules of Practice and Procedure**

Justification - The rule is necessary because it governs the practice and procedures before the State Board of Agriculture. It provides a framework for public access to information, input into the decision making process, and a vehicle for appeal as set forth in HRS, Chapter 91 and 92, HRS.

### **Agriculture Loan Division**

#### **2. HAR Title 4 Chapter 8 – Agricultural Loan Program Rules**

Justification – The rule was adopted under Chapter 155, HRS. The statute provides the broader guidelines that govern each loan program. The purpose of the rule is to provide more specific details that underlay the statutes.

#### **3. HAR Title 4 Chapter 9 – The Aquaculture Loan Program**

Justification – The rule was adopted under Chapter 219, HRS. The statute provides the broader guidelines that govern each loan program. The purpose of the rule is to provide more specific details that underlay the statute.

## Division of Animal Industry

### 4. HAR Title 4 Chapter 16 – Cattle, Sheep and Goats

Justification – The rule was adopted under chapter 142, HRS, to control the importation of disease and pests that affect livestock and poultry. It also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of national and local significance. The presence of such diseases causes production wastage, impedes or prohibits national or international trade, or presents serious public health concerns.

### 5. HAR Title 4 Chapter 17 – Swine

Justification – The rule was adopted under chapter 142, HRS, to control the importation of disease and pests that affect livestock and poultry. It also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of national and local significance. The presence of such diseases causes production wastage, impedes or prohibits national or international trade, or presents serious public health concerns.

### 6. HAR Title 4 Chapter 9 – Subchapter 6, West Nile Virus Import Requirements for Birds and Poultry

Justification – The rule was adopted under chapter 142, HRS, to control the importation of disease and pests that affect livestock and poultry. It also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of national and local significance. The presence of such diseases causes production wastage, impedes or prohibits national or international trade, or presents serious public health concerns.

### 7. HAR Title 4 Chapter 20 - Non-domestic Animals

Justification – The rule was adopted under chapter 142, HRS, to control the importation of disease and pests that affect livestock and poultry. It also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of national and local significance. The presence of such diseases causes production wastage, impedes or prohibits national or international trade, or presents serious public health concerns.

### 8. HAR Title 4 Chapter 21 - Vaccines, Microorganisms, and Parasites

Justification – This rule has minimal impact on small business. It controls the importation of microorganisms and parasites that are detrimental to livestock and poultry and, in some cases, injurious to men. In addition, importation of vaccines that potentially interfere with the diagnosis or surveillance of regulated disease is controlled.

### 9. HAR Title 4 Chapter 22 – Reporting of Animal Diseases

Justification – This rule has minimal impact on small business. It requires the Division of Animal Industry to maintain a list of diseases, which has a significant

detrimental effect on livestock and poultry. Practicing veterinarians are required to report such disease to the division when diagnosed.

**10. HAR Title 4 Chapter 23 – Horses**

Justification – This rule was adopted under chapter 142, HRS, to control the importation of disease and pests that affect livestock and poultry. It also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of national and local significance. The presence of such diseases causes production wastage, impedes or prohibits national or international trade, or presents serious public health concerns.

**11. HAR Title 4 Chapter 27 – Brands**

Justification – This rule has minimal impact on small business. The rule requires the Division of Animal Industry to maintain a catalog of all registered livestock brands to register every five years.

**12. HAR Title 4 Chapter 29 – Dogs, Cats, and Other Carnivores**

Justification – This rule has minimal impact on small business. The rule minimizes the chances that rabies will be introduced into Hawaii by the movement of dogs, cats, and other carnivores.

**13. HAR Title 4 Chapter 170 - Aquaculture Development Special Fund**

Justification – Rules establish a schedule of fees for aquaculture services.

**Division of Marketing and Consumer Services**

**14. HAR Title 4 Chapter 41 – Standards for Fresh Fruits and Vegetables**

Justification – This rule was adopted under Chapter 147, HRS, to establish standards for local fresh fruits and vegetables for quality control and common industry communication. The rule sets minimum export requirements as well as advertising requirements. It also allows grade to be optionally, used but product must meet labeled and advertised grade, to prevent misuse of fraud. Minimum export requirements help to maintain quality image of Hawaii products in export markets.

**15. HAR Title 4 Chapter 42 – Standards for Hawaii-Grown Flowers and Foliage**

Justification – This rule was adopted under Chapter 147, HRS, to establish standards for local flowers and foliage for quality control and common industry communication. It sets minimum export requirements. Minimum export requirements help to maintain quality image of Hawaii products in export markets.

**16. HAR Title 4 Chapter 44 – Standards for Processed Products**

Justification – This rule was adopted under Chapter 147, HRS, to establish standards for local processed products for quality control and common industry communication. It sets minimum export requirements. Minimum export

requirements help to maintain quality image of Hawaii products in export markets.

**17. HAR Title 4 Chapter 45 – Feed**

Justification – This rule was adopted under Chapter 144, HRS, to require registration of feed, certification, and fee analysis: Tonnage fees are assessed to cover costs to check feed for adulteration and proper label and label guarantee. Protect local fee users by checking incoming and locally produced feed, especially from suspicious foreign sites, for adulteration and improper labeling. It prevents adulterated feed from entering the food chain. It assures buyers that label guarantees are accurate, which is especially important when they formulate leading rations.

**18. HAR Title 4 Chapter 46 – Standards for Shell Eggs**

Justification – This rule was adopted under Chapter 147, HRS, to establish standards for local eggs for quality control and common industry communication. It establishes requirements and enforcement for proper grade, size, and labeling temperature to assure consumer protection. It also establishes requirements for importing of eggs, to assure distinction of imports from local eggs. It protects consumers by minimizing hazards common in eggs such as bacterial contamination and salmonella at retail outlets. It supports the local egg industry by assuring that the mainland eggs are properly marked and distinctive from the higher priced local eggs.

**19. HAR Title 4 Chapter 48 – Rules for Regulating Dealer in Farm Products**

Justification – This rule was adopted under Chapter 145, HRS, to issue licenses to dealers in farm produce, and assure fair treatment and timely payment to producers. It protects producers against dealers if they feel payment or transaction was not fair or timely.

**20. HAR Title 4 Chapter 54 – Industry and Product Promotion Program**

Justification – This rule provides the framework to guide the department in implementing promotional activities and defines the parameters as to the qualifications of applications, criteria of evaluation, and the obligations of parties involved.

**21. HAR Title 4 Chapter 60 – Milk Control Rules**

Justification – This rule was adopted under Chapter 157, HRS, to ensure a stable supply of reasonably priced milk in the state by establishing production quotas and setting minimum farm prices, to assure fairness to producers and maximum utilization of milk. Milk is highly perishable and must be closely monitored to assure maximum utilization. Producers must be assured fair prices that are competitive and yet allow them to maintain their herds and dairies properly.

## Division of Plant Industry

### **22. HAR Title 4 Chapter 66 – Pesticides**

Justification – This was adopted under Chapter 149A, HRS, to implement a pesticide regulatory program consisting of licensing pesticide products, certifying a pesticide regulatory program consisting of licensing pesticide products, certifying pesticide applicators competency, and an enforcement program to assure pesticide products are not adulterated or misbranded and that pesticide use is consistent with the labeling. This rule also protects human health and the environment for unreasonable adverse affects from pesticides.

### **23. HAR Title 4 Chapter 67 – Seed Rules**

Justification – This rule was adopted under Chapter 150, HRS, to provide “truth in labeling” for customers buying seeds from vendors. It also provides a standard for percent termination. Small businesses must comply with the standards or remove seeds from sale.

### **24. HAR Title 4 Chapter 68 – Noxious Weed Rules**

Justification – This rule adopted under Chapter 152, HRS, to develop and implement control and eradication programs against weeds that are designated as noxious weeds. It establishes criteria for the designation, control, or eradication of noxious weeds by the department. The rule may impact small businesses when the noxious weed is also considered a desirable plant, such as an ornamental plant, and available for retail sale.

### **25. HAR Title 4 Chapter 69A – Pests for Control or Eradication**

Justification – This rule was adopted under Chapter 141 and 152, HRS, to develop and implement control or eradication programs against insects, mites, plant pathogens, and other arthropod pests that would be difficult for the public to initiate on their own. A recent example is the eradication of the banana bunchy top virus (BBTV) by destroying all banana plants in a given area.

### **26. HAR Title 4 Chapter 70 – Plant and Non-Domestic Animal Quarantine Plant Import Rules**

Justification – This rule was adopted to implement the requirements of Chapter 150A, HRS, by restricting or prohibiting the importation of specific plants to minimize the risk of introduction and establishment of insects, diseases, and other pests that would be highly detrimental to Hawaii’s agriculture, horticulture, silviculture, and natural resources.

### **27. HAR Title 4 Chapter 71 – Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules**

Justification – This rule was adopted to implement the requirements of Chapter 150A, HRS, by restricting or prohibiting the importation of specific non-domestic animals that are detrimental or potentially harmful to Hawaii’s animal and public

health, agriculture, aquaculture, horticulture, silviculture and natural resources.

**28. HAR Title 4 Chapter 71A – Plant and Non-Domestic Animal Quarantine Microorganism Import Rules**

Justification – This rule was adopted to implement the requirements of Chapter 150A, HRS, by restricting or prohibiting the importation of specific microorganisms that are detrimental or potentially harmful to Hawaii’s animal and public health, agriculture, aquaculture, horticulture, silviculture and natural resources.

**29. Title 4 Chapter 72 – “Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules**

Justification – This rule was adopted to implement the requirements of Chapter 150A, HRS, by restricting or prohibiting the inter-island and intra-island transportation of plant pests and their plant or commodity hosts to prevent the spread of establishment of pests that are detrimental or potentially harmful to Hawaii’s animal and public health, agriculture, aquaculture, horticulture, silviculture, and natural resources.

**30. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules**

Justification – This rule was adopted to implement the requirements of Chapter 150A, HRS, by aiding the Hawaii nursery industry by providing for export plant and plant products inspectional and disinfestations treatment services that meet the requirements of the state or county destinations.

**Division of Measurement Standards**

**31. HAR Title 4 Chapter 86 – Brake Fluids, Coolants, Petroleum Products, and After-Market Additives**

Justification – This rule was adopted under Chapter 486-37, HRS, to ensure that commodities such as brake fluid, coolant, gasoline, and other additives meet specific physical requirements, and is delivered through devices that can be checked and made to measure accurately.

**32. HAR Title 4 Chapter 4-87 – Voluntary Registration of Service Persons or Service Agencies**

Justification – This rule was adopted under Chapter 487-37, HRS, to ensure that businesses selling, installing, and calibrating commercial devices register with the State of Hawaii, Measurement Standards Branch. This rule ensures equity in the marketplace by requiring that all field tool standards be calibrated annually.

**33. HAR Title 4 Chapter 89 – Measure Masters**



Justification - This rule was adopted under Chapter 480-132, HRS, to ensure that every individual involved in public weighing for a fee is trained, tested, and licensed by the State of Hawaii, Measurement Standards Branch.

**34. HAR Title 4 Chapter 91 – Unit Pricing of Consumer Commodities**

Justification - This rule was adopted under Chapter 486-30, HRS, to ensure that all consumer commodities offered for sale in the State are priced according to specified unit and that price displayed for the consumer information.

**35. HAR Title 4 Chapter 4-93 – Packaging and Labeling**

Justification - This rule was adopted under Chapter 486-120, HRS, to ensure that consumer commodities offered for sale in the state are correctly labeled as to their content identification, unit amount, and responsible business. This rule also defines specific identification regarding the Department of Agriculture’s logo, “Island Fresh.”

**36. HAR Title 4 Chapter 94 – Method of Sale of Commodities**

Justification – This rule was adopted under Chapter 400-110, HRS, to define a fair and consistent method for businesses to offer consumer commodities for sale in the State. This rule also sets the guidelines and requirement for posting the octane rating on retail gasoline dispensers. This ensures that the octane rating is posted and that the gasoline meets or exceeds the posted octane rating.

**37. HAR Title 4 Chapter 96 – Schedule and Fees for Licensing Devices Susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification**

Justification - This rule was adopted under Chapter 486-37, HRS, to define a schedule of fees for licensing devices susceptible of commercial usage, measuring devices and measurement standards for testing or certification.

**38. HAR Title 4 Chapter 101 – Weighing and Measuring Devices**

Justification - This rule was adopted under Chapter 406-7, HRS, to ensure that all commercial devices used to weigh and measure consumer commodities in the State meet National Type Evaluation Protocol. This ensures equity in the market place and a good business environment.

## **Quality Assurance Division**

**39. HAR Title 4 Chapter 135 – Seals of Quality**

Justification - This rule was adopted under Chapter 148-63, HRS, to establish a standard seal of quality that will be applied to Hawaii-grown, Hawaii-made fresh or processed agricultural products to identify them as a genuine Hawaii agricultural product. Continued implementation is justified by the increase in the number of member participants in the Seal of Quality Program from the original 12 members in 2006 to the current 54 members.

**40. HAR Title 4 Chapter 143 – Standards for Coffee**

Justification - This rule was adopted under Chapter 147, FIRS, to mandate the certification of green coffee beans, to assure quality and origin to buyers. This requirement came about after the Kona Kai scandal in Berkeley, CA, in 1996, where foreign coffee was sold as higher priced Kona coffee. The rule requires positive lot identification, and certification provides an extra measure of assurance of origin and quality to buyers.

**41. HAR Title 4 Chapter 153 – Agricultural Park Program Rules**

Justification - This rule is authorized pursuant to Chapter 166, HRS. The statute and program rules were developed to address the need for the development and expansion of diversified agriculture on former mono-crop plantations.

**42. HAR Title 4 Chapter 157 – Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems**

Justification - This rule was authorized pursuant to Chapter 167, HRS. The statute and rules provide the basis for the division's mission to provide reliable sources of irrigation water and infrastructure.

**43. HAR Title 4 Chapter 158 – Non Agricultural Park Lands Program Rules**

Justification - This rule was authorized pursuant to Chapter 166E, HRS. The statute and program rules were developed to address the need for the development and expansion of diversified agriculture on State agriculture lands.

***Department of the Attorney General***

**1. HAR Title 5 Chapter 11 – Notaries Public**

Justification – The public purpose for adopting these rules is to formalize the informal existing policies and practices of the Notary Public Office within the Department of the Attorney General relating to the initial granting of a notary public commission and the regulation of existing notaries public including disciplinary action for notarial misconduct. These rules continue to be necessary to facilitate the enforcement of Chapter 456, Hawaii Revised Statutes.

***Department of Budget and Finance***

**Financial Administration Division**

**1. HAR Title 6 Chapter 1 – Public Records; Administrative Procedures; Receiving and Paying Hours**

Justification - The rules were established in 1981 and amended in 1993. No changes have been made to these rules since June 30, 2002.

**2. HAR Title 6 Chapter 4 - Special Purpose Revenue Bonds for Health Care Facilities**

Justification - The rules are required by Part II, Chapter 39A, HRS, relating to the issuance of special purpose bonds to assist non-for-profit corporations that provide health care facilities to the general public. The rules were established in 1981. No changes have been made to these rules since June 30, 2003.

**3. HAR Title 6 Chapter 10 - Special Purpose Revenue Bonds for Industrial Enterprises**

Justification - The rules are required by Part V, chapter 39A, HRS, relating to special purpose revenue bonds for industrial enterprises. They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 1985. No changes have been made to these rules since June 30, 2003.

**4. HAR Title 6 Chapter 12 - Special Purpose Revenue Bonds for Manufacturing Enterprises**

Justification - The rules are required by Part III, Chapter 39A, HRS, relating to special purpose revenue bonds for manufacturing enterprises. The rules ensure that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. The rules were established in 1985. No changes have been made to these rules since June 30, 2003.

**5. HAR Title 6 Chapter 13 - Special Purpose Revenue Bonds for Processing Enterprises**

Justification - The rules are required by Part IV, Chapter 39A, HRS, relating to special purpose revenue bonds for processing enterprises. They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 1985. No changes have been made to these rules since June 30, 2003.

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

Justification - The rules are required by Part VII, Chapter 39A, HRS, relating to special purpose revenue bonds for early childhood education and care facilities. They ensure that applicable businesses/enterprises meet state and/or Federal requirements for tax exemptions granted. The rules were established in 2005.

A new chapter was added in March 2005 to comply with Legislative authorization for Budget & Finance to issue special purpose revenue bonds' framework under the these bonds can be issued for this purpose.

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

Justification - The rules are required by Part VII, Chapter 39A, HRS, relating to special purpose revenue bonds for not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities.

They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 2005.

A new chapter was added in March 2005 to comply with Legislative authorization for Budget & Finance to issue special purpose revenue bonds for the new constitutional and statutory authorization. Rules are necessary to provide framework under which special purpose revenue bonds can be issued for this purpose.

## **Public Utilities Commission**

### **8. HAR Title 6 Chapter 60 – Standards for Electric and Gas Services in the State of Hawaii**

Justification – Pursuant to the Federal Public Utilities Regulatory Act of 1978, these rules are necessary to formulate uniform requirements for electric and gas utilities operating within the State of Hawaii.

### **9. HAR Title 6 Chapter 61 – Rules of Practice and Procedure Before the Public Utilities Commission**

Justification – As a quasi-judicial agency and pursuant to HRS Chapter 91, 269, 271, and 271G, this rule is necessary to govern the practice and procedure before the Commission to ensure that all proceedings are just, speedy, and efficient.

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

Justification – Pursuant to HRS Chapter 271, this rule is necessary to administer, execute and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS §271-1.

### **11. HAR Title 6 Chapter 62-8 GO 5 - Repeal of General Order No. 5 – Uniform System of Accounts for Motor Carriers**

Justification – These repealed and amended rules are necessary to allow property and passenger carriers to provide the Commission with annual financial reports using updated accounting principles, as the previous rules preserved outdated accounting principles.

### **12. HAR Title 6 Chapter 62-8 Insurance Requirements**

Justification – This amendment to Chapter 62 requires motor carriers to provide security in the form of liability insurance for the protection of the public.

### **13. HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules**

Justification – As required by HRS Chapter 271, this rule is 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.

**14. HAR Title 6 Chapter 65 – Water Carriers**

Justification – As required by HRS Chapter 271G, this rule is necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers.

**15. HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**

Justification – As required in various provisions set forth under HRS Chapter 91, 269, 271 and 271G, this rule is necessary to govern violations of the regulatory laws under the Commission’s jurisdiction. It further prescribes procedures for investigation alleged violations or suspected violations of regulatory laws and for issuing citations to and imposing sanctions on any person violating, allegedly violating, suspected of violating the regulatory laws.

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

Justification – These rules are necessary to ensure the adequacy and reliability of service and safety of the general public and all who engage in the installation, operation and the maintenance of the lines. These rules also adopt the National Electrical Safety Code to provide current industry standards regarding public utility service in the State of Hawaii.

**17. HAR Title 6 Chapter 74 – Standards for Small Power Production and Cogeneration**

Justification – These rules are necessary to provide qualifying criteria to become a qualifying small power production facility and a qualifying cogeneration facility to comply with the Federal Public Regulatory Policies act of 1978.

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

Justification – Consistent with the intent of HRS §269-16.9, these rules are necessary to prescribe procedures and standards governing share tenant service in Hawaii. As defined under HAR §6-76.1-3, “shared tenant service” means telecommunications service provided through centralized or common switching on a resale or shred basis to end users who are occupants or tenants of units in a building or a complex of buildings described in HAR §6-76.1-21.

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

Justification – Pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331), these rules are necessary to prescribe minimum safety requirements for pipeline facilities and the transportation of gas, within the limits of the outer continental shelf.

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

Justification – As required under HRS §269-16.8, these rules are necessary to prescribe procedures and standards governing aggregator and operator services in Hawaii. As defined under HRS §269-16.8(a), “aggregator” means every person or entity that is not a telecommunications carrier, who in the transient course of its business, including but not limited to a hotel, motel, hospital, or university, that provides operator-assisted services through access to an operator service provider. “Operator service” means a service provided by a telecommunications company to assist a customer to complete a telephone call.

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

Justification – As mandated by Act 225, Session Laws of Hawaii 1995, the Commission’s telecommunications infrastructure docket (Docket No. 7702), the Federal Telecommunications Act of 1996, these rules are necessary to adopt standards and procedures governing the implementation of the universal service fund for the State.

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

Justification – As mandated by Act 225, Session Laws of Hawaii 1995, and the Federal Telecommunications Act of 1996, these rules are necessary to adopt standards and procedures governing the implementation of the universal service fund for the State.

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

Justification – Consistent with Act 225, Session Laws of Hawaii 1995, and the Federal Telecommunications Act of 1996, these rules are necessary to adopt procedures and standards for pay telephone service that will foster competition in the provisioning of pay telephone service, ensure the payment service that will foster competition to providers of pay telephone service, and protect the interest of users of pay telephones.

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

Justification – These rules are necessary to monitor and enforce the requirements of HRS, Chapter 269E “One Call Center; Advance Warning to Excavators.” The rules describe the responsibilities excavators, underground facility operators (i.e., water, gas and electric companies), the Hawaii One Call Center system, and the Commission to protect underground utilities to avoid injury or death.

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

**1. HAR Title 15 Chapter 2 – Hawaii Capital Loan Program**

Justification – The State fund that provides monies for this loan program is expected to continue maintaining existing loans until July 1, 2004, when the revolving loan fund will be repealed as a result of budget constraints. The rules

provide details outlining implementation of the loan program to Hawaii small business that otherwise might not receive financing. Program yields more than \$1 million annually in income. The rules will remain in effect as existing loans continue to be serviced.

2. **HAR Title 15 Chapter 3 – Capital Access Program**

Justification – The Capital Access Program still exists but is inactive because funding for the program is through the Hawaii Capital Loan Program’s revolving loan fund which was repealed effective July 1, 2004.

3. **HAR Title 15 Chapter 4 –Disaster Commercial and Personal Loan Program**

Justification – The administrative rules are necessary to assist businesses and individuals should a declared disaster occur.

4. **HAR Title 15 Chapter 5 – Hawaii Innovation Development Program**

Justification – Administrative rule was repealed effective July 1, 2003 with the repeal of the revolving loan fund component of the Hawaii Capital Loan Program.

5. **HAR Title 15 Chapter 6 – Enterprise Zones**

Justification – This administrative rule is necessary as it provides rules and procedures governing the administration and implementation of the program that are not included in the statute. The program provides financial assistance for community-based economic development activities and community-based enterprises.

## **Land Use Commission**

6. **HAR Title 15 Chapter 15 – Land Use Commission Rules**

Justification – While these rules do not target business specifically, the rules provide an overall frame word of land use management whereby all land in Hawaii are classified in one of four districts. The rules are necessary because the primary role of the Land Use Commission is to ensure that areas of state concern are addressed and considered in the land use decision-making process. Much, if not all of the actions of the Commission, are conducted as a quasi-judicial process. Thus, the Commission’s rules are necessary to ensure that the due process rights of parties appearing before the Commission are observed and maintained.

## **High Technology Development Corporation (HTDC)**

7. **HAR Title 15 Chapter 32 – Hawaii Small Business Innovation Research Grant Program**

Justification – HTDC promotes the federal Small Business Innovation Research (SBIR) program as a means to help Hawaii companies obtain critical early-stage seed financing for their research projects. The rules are necessary in order to continue with the SBIR program due to its success, which has proven to

stimulate Hawaii's economic development and create and sustain new jobs. Further for every state dollar invested in the program, more than \$11.00 in federal funds has been returned.

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

### **Insurance Division**

1. **HAR Title 16 Chapter 5 – Mass Merchandizing of [Motor Vehicle] Insurance**  
Justification – This chapter provides guidelines for the implementation of insurance sales to a group of employees of an employer. The adoption of rules is mandated by statute and it has not been amended since its adoption in 1981.
2. **HAR Title 16 Chapter 6 – Credit Life and Credit Disability Insurance**  
Justification – This chapter is intended to protect the interests of debtors and the general public by regulating the rates, policy forms, and transaction of credit life and credit disability insurance. The last amendment to this chapter occurred in 1988.
3. **HAR Title 16 Chapter 7 – Hawaii Medical Malpractice Underwriting Plan**  
Justification – This chapter supports the requirement for a contingent medical malpractice underwriting plan. The Insurance Commissioner activates the plan if medical malpractice insurance is not readily available to the majority of physicians and hospitals. This chapter has not been amended after its adoption in 1981.
4. **HAR Title 16 Chapter 16 – Mental Health, Alcohol, and Drug Abuse Treatment Insurance Benefits**  
Justification – The purposes of this chapter are to establish guidelines for determining when mental health and substance abuse treatment services are eligible for reimbursement, to establish an appeals process, and to create criteria for determining when a health maintenance organization meets the conditions and requirements of Hawaii Revised Statutes, section 431M-5. These rules affect all individual and group health and hospital insurance plans. This chapter has not been amended since its adoption in 1991.
5. **HAR Title 16 Chapter 23 – Motor Vehicle Insurance Law**  
Justification – This chapter is necessary for continued implementation and effective regulation of the motor vehicle insurance industry. The statute and rules affect insurers, policyholders, and claimants. This chapter is in the process of amendment. The Small Business Regulatory Review Board has reviewed the proposal and it is pending Governor's approval to proceed to public hearing.
6. **HAR Title 16 Chapter 171 – Miscellaneous Insurance Rules**  
Justification – This chapter is concerned with several topics. Only Subchapter 3 Licensing Requirements would affect small business. It prescribed the



requirements for producer licensing, renewal licenses, and continuing education. The rules complement the statute and provide for a comprehensive licensing procedure. This subchapter was amended in 2010.

**7. HAR Title 16 Chapter 178 – Administrative Special Mortgage Recording Fee Guidelines**

Justification – This chapter defines the parameters of the special mortgage-recording fee of the Hawaii Hurricane Relief Fund (HHRF) pursuant to section 431P-16, HRS. This is a fee of .001 on all mortgages other than refinancing mortgages filed with the bureau of conveyances. Since HHRF has been discontinued, the HHRF board has suspended the fee. As long as the fee is suspended there is no impact on small business. However, the Board may implement the fee again if a hurricane or other market problem causes a hurricane property insurance scarcity that requires HHRF to restart. Chapter 16-178, HAR, treats small business equally as against large businesses or individuals. It is beneficial to retain the chapter in the rules because it caps the fee at \$15,000 and provides important clarification on the calculation of the fee and the types of documents to which it applies. The last amendments were adopted in 1998.

## **Division of Financial Institutions**

**8. HAR Title 16 Chapter 24 – Money Transmitters**

Justification – This chapter was adopted and is necessary for the continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**9. HAR Title 16 Chapter 25 – Application Procedure Relating to Hawaii Financial Institutions**

Justification – This chapter was adopted and is necessary for continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**10. HAR Title 16 Chapter 26 – Examination and Off-Site Monitoring of Hawaii Financial Institutions**

Justification – This chapter was adopted and is necessary for continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**11. HAR Title 16 Chapter 27 – Supervisory and Enforcement Action Relating to Hawaii Financial Institutions**

Justification – This chapter was adopted and is necessary for continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**12. HAR Title 16 Chapter 28 – Escrow Depositories**

Justification – This chapter was adopted and is necessary for continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**13. Chapter 16-31 – Credit Unions**

Justification – This chapter was adopted and is necessary for continued implementation in response to federal and state requirements and to promote effective regulation of the industry.

**Business Registration Division**

**14. HAR Title 16 Chapter 36 – Practice and Procedure of the Business Registration Division**

Justification – This chapter is necessary to facilitate the registration of new business entities in Hawaii.

**15. HAR Title 16 Chapter 37 – Rules Under the Franchise Investment Law**

Justification – This chapter is necessary to facilitate the filing of franchise offering circulars in compliance with the statutory information filing requirements for all franchises doing business in Hawaii.

**16. HAR Title 16 Chapter 39 – Securities**

Justification – This chapter is necessary to facilitate licensing of securities broker-dealers and their sales agents, investment advisers and their representatives, to identify the information required to be kept by these businesses, and to provide for forms and procedures for registration of securities offerings to raise capital.

**Professional and Vocational Licensing Division**

**17. HAR Title 16 Chapter 53 – Fees Relating to Boards and Commissions**

Justification – The purpose and continued implementation of this chapter is to implement licensing and regulation fees of professions under the department's regulatory authority.

**18. HAR Title 16 Chapter 71 – Certified Public Accountants and Public Accountants**

Justification – The purpose of this chapter is to implement licensing and regulation of certified public accounts and public accountants under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement registration and regulation of acupuncture practitioners under the department's regulatory authority. The rules are still needed because they facilitate registration and enforcement.

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

Justification - The purpose of this chapter is to implement registration and regulation of the barbering industry under the department's regulatory authority. The rules are still needed because they facilitate registration and enforcement.

**21. HAR Title 16 Chapter 74 – Boxing**

Justification – The purpose of this chapter rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**22. HAR Title 16 Chapter 75 – Cemeteries and Funeral Trusts**

Justification – The purpose of this chapter is to implement licensing and regulation of the cemetery and funeral trust industries under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**23. HAR Title 16 Chapter 76 – Chiropractors**

Justification – The purpose of this chapter is to implement licensing and regulation of chiropractors under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**24. HAR Title 16 Chapter 77 – Contractors**

Justification – The purpose of this chapter is to implement licensing and regulation of contracts under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**25. HAR Title 16 Chapter 78 – Cosmetology**

Justification – The purpose of this chapter is to implement licensing and regulation of the cosmetology industry under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**26. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists**

Justification – The purpose of this chapter is to implement licensing and regulation of dentists and dental hygienists under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**27. HAR Title 16 Chapter 80 – Electricians and Plumbers**

Justification – The purpose of this chapter is to implement licensing and regulation of electricians and plumbers under the department's regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**28. HAR Title 16 Chapter 81 – Elevator Mechanics**

Justification – The purpose of this chapter is to implement licensing and regulation of elevator mechanics under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of hearing aid dealers and fitters under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of the massage industry under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**31. HAR Title 16 Chapter 85 – Medical Examiners**

Justification – The purpose of this chapter is to implement licensing and regulation of medical examiners, podiatrists, physician assistants, and emergency medical service personnel under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of motor vehicle dealers and salespersons under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**34. HAR Title 16 Chapter 88 – Naturopaths**

Justification – The purpose of this chapter is to implement licensing and regulation of naturopathic physicians under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**35. HAR Title 16 Chapter 89 – Nurses**

Justification – The purpose of this chapter is to implement licensing and regulation of nurses under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**36. HAR Title 16 Chapter 89A – Nurse Aides**

Justification – The purpose of this chapter is to implement licensing and regulation of nurse aides under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**37. HAR Title 16 Chapter 89B – Diversion Program**

Justification – The purpose of this chapter is to establish the requirements for program approval and maintenance of a diversion program for the chemically dependent nurse who may voluntarily enter into a negotiated settlement with the regulated industries complaints office subject to approval and order of the board of nursing and acceptance by the diversion program; thus, the rules are still needed.

**38. HAR Title 16 Chapter 89C – Advanced Practice Registered Nurse- Prescriptive Authority**

Justification – The purpose of this chapter is to implement licensing and regulation of advanced practice registered nurses with prescriptive authority under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**39. HAR Title 16 Chapter 90 – Nursing Home Administrators**

Justification – The purpose of this chapter is to implement licensing and regulation of nursing home administrators under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**40. HAR Title 16 Chapter 91 – Dispensing Opticians**

Justification – The purpose of this chapter is to implement licensing and regulation of opticians under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**41. HAR Title 16 Chapter 92 – Optometrists**

Justification – The purpose of this chapter is to implement licensing and regulation of optometrists under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**42. HAR Title 16 Chapter 93 – Osteopaths**

Justification – The purpose of this chapter is to implement licensing and regulation of osteopathic physicians under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of pest control operators under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**44. HAR Title 16 Chapter 95 – Pharmacists and Pharmacies**

Justification – The purpose of this chapter is to implement licensing and regulation of pharmacists and pharmacies under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of port pilots under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of private detective and guards under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**47. HAR Title 16 Chapter 98 – Psychologists**

Justification – The purpose of this chapter is to implement licensing and regulation of psychologists under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of real estate brokers and salespersons under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of speech pathologists and audiologists under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of veterinarians under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**51. HAR Title 16 Chapter 104 – Uniform Land Sales Practices**

Justification – This chapter is intended to clarify and implement chapter 484, HRS, to the end that the provisions may best be effectuated and the public interest most effectively served; thus, the rules are still needed.

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

Justification – This chapter is intended to clarify and implement chapter 514-E, HRS, to the end that the provisions may be effectuated and the public interest most effectively served; thus, the rules are still needed.

**53. HAR Title 16 Chapter 107 – Horizontal Property Regimes**

Justification – The purpose of this chapter is intended to clarify and implement chapter 514A, HRS, to the end that the provisions may best be effectuated and the public interest most effectively served; thus, the rules are still needed.

**54. HAR Title 16 Chapter 108 – Commercial Employment Agencies**

Justification – The purpose of this chapter is to implement licensing and regulation of commercial employment agencies under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of physical therapists under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**56. HAR Title 16 Chapter 112 – Collection Agencies**

Justification – The purpose of this chapter is to implement licensing and regulation of collection agencies under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**57. HAR Title 16 Chapter 113 – Electrologists**

Justification – The purpose of this chapter is to implement licensing and regulation of electrologists under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of real estate appraisers under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of engineers, architects, surveyors, and landscape architects under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

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

Justification – The purpose of this chapter is to implement licensing and regulation of travel agencies under the department’s regulatory authority. The rules are still needed because they facilitate licensing and enforcement.

**61. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks**

Justification – The purpose of this chapter is to implement registration and regulation of activity providers and activity desks under the department’s regulatory authority. The rules are still needed because they facilitate registration and enforcement.

**Office of Consumer Protection**

**62. HAR Title 16 Chapter 303 – Unfair or Deceptive Practices in Advertising**

Justification – The purpose of this chapter is to “assist businesses and consumers by (1) defining acts which violate section 480-2; (2) protecting consumers from unscrupulous individuals engaging in unfair acts or practices and (3) encouraging the development and perpetuation of fair consumer sales practices.” These rules are still needed because they facilitate enforcement.

**Regulated Industries Complaints Office**

**63. HAR Title 16 Chapter 181 – Motor Vehicle Express Warranty Enforcement (Lemon Law)**

Justification – The purpose of this chapter is to implement licensing and regulation of Hawaii’s Lemon Law under the department’s regulatory authority. These rules have been enacted pursuant to rule-making and are necessary to facilitate the Lemon Law Program.

***Department of Education***

1. HAR Title 8 Chapter 27 – Transportation of Students

Justification – This chapter impacts small business in that student transportation services are being provided under contracts with various bus transportation companies in the State. The chapter is necessary to be continued under the authority of existing §302A-406, HRS, and to continue to provide transportation services to eligible public school students.

On June 15, 2009, the Department of Education (DOE) amended this chapter. The purposes for the amendments were to allow the DOE to increase the fare more quickly, to reduce the costs of running the business system, and to comply with various federal laws. While these amendments would directly affect students, we do not believe that the amendments created material impacts on small business.

2. HAR Title 8 Chapter 39 – Use of School Buildings, Facilities, and Grounds

Justification - This chapter mandates that all public school buildings, facilities, and grounds made available for public and community use when the activities do not interfere with the normal operations of the school. Profit and non-profit organizations may apply for the use of the school buildings, facilities, and



grounds. The chapter is necessary to be continued to implement the statutory licensing requirement of the existing §302A-1148, HRS.

3. **HAR Title 8 Chapter 101 – Licensing of Private Trade, Vocational, and Technical Schools**  
Justification - This chapter was adopted to implement the licensing requirement of §302A-425, HRS, whereby all private trade, vocational, and technical schools operating within the state must first secure a license from the DOE in accordance with law and the administrative rule of the agency. The chapter is needed to continue to implement the statutory licensing requirement of the existing §302A-425, HRS.

## ***Department of Health***

### **Medical**

#### **Food and Drug Branch**

1. **HAR Title 11 Chapter 29 – Food and Food Products**  
Justification – The rule is necessary as it provides standards for definition, labeling and storage of foods. They also allow for the adoption of the U.S. Food & Drug Administration regulations, as stated through HRS §§321, 321-9, 321-10, 321-11, 328-8, 328-13, 328-91.1 and 328-21.
2. **HAR Title 11 Chapter 33 – Hawaii Drug Formulary of Equivalent Drug Products**  
Justification – The rule is necessary as it establishes and maintains a Hawaii drug formulary of equivalent drug products, as stated through HRS §328-96.
3. **HAR Title 11 Chapter 35 – Shellfish Sanitation**  
Justification – The rule is necessary as it establishes sanitary controls for the shellfish industry. These provisions apply to the growing area and all aspects of harvesting, processing, packaging, storing, and distribution of shellfish, as stated through HRS §§321-9, 321-10, and 321-11.
4. **HAR Title 11 Chapter 36 – Sale of Prophylactics Through Vending Machines**  
Justification – The rule is necessary as it establishes rules for controlling the sale of prophylactics through vending machines, as stated through HRS §§321-9, 321-10, 321-11, 321-115, and 328-21.

#### **Office of Health Care Assurance**

5. **HAR Title 11 Chapter 79 – Licensing Dietitians**  
Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with

county building, fire, and zoning requirements, as well as sanitation requirements.

**6. HAR Title 11 Chapter 89 – Developmental Disabilities Domiciliary Homes**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**7. HAR Title 11 Chapter 90 – Assisted Living Facility**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**8. HAR Title 11 Chapter 93 – Broad Service Hospitals and Critical Access Hospitals**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**9. HAR Title 11 Chapter 94.1 – Skilled Nursing / Intermediate Care Facilities**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**10. HAR Title 11 Chapter 95 – Freestanding Surgical Outpatient (FSOF) or Ambulatory Surgical Centers**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**11. HAR Title 11 Chapter 96 – Freestanding Adult Day Health Centers**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**12. HAR Title 11 Chapter 97 – Home Health Agencies**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**13. HAR Title 11 Chapter 98 – Special Treatment Facilities/Therapeutic Living Programs**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**14. HAR Title 11 chapter 99 – Intermediate Care Facilities for the Mentally Retarded**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**15. HAR Title 11 Chapter 100.1 – Adult Residential Care Homes (includes Expanded ARCH)**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**16. HAR Title 11 Chapter 104.1 – Management and Disposal of Infectious Waste**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with

county building, fire, and zoning requirements, as well as sanitation requirements.

**17.HAR Title 11 Chapter 110.1 – Clinical Laboratories and Laboratory Personnel**

Justification – The rule is developed to ensure the health, safety, and welfare of all individuals receiving care and services from the various agencies and/or facilities. The rule is necessary because it looks at the care being provided, staffing and qualifications of such, physical structure to ensure compliance with county building, fire, and zoning requirements, as well as sanitation requirements.

**State Laboratories Division**

**18.HAR title 11 Chapter 113 – Substance Abuse Testing by Laboratories**

Justification – The rule is required by statute HRS §329B. This is developed to ensure that the appropriate and uniform abuse test procedures are employed throughout the State. The rule is necessary because it protects the privacy rights of persons who are tested for substance abuse in the workplace. It also ensures that the results of substance abuse tests are reliable and accurate.

**Tobacco Settlement Project/Healthy Hawaii Initiative – Chronic Disease Management & Control Branch**

**19.HAR Title 11 Chapter 81 – Smoking in Public Places**

Justification – The rule is required by statute, HRS §328J-11(b) to protect employees and the public from exposure to smoke in enclosed and partially enclosed workplaces and public places. Smoking is permitted outside of 20 feet from entrances, exits, operable windows, and air intake ducts. The U.S. Surgeon General has determined that secondhand smoke presents a significant health risk to adults and children for which there is no safe level of exposure. The Hawaii adult smoking rate is very low (14.5%), most businesses have been smoke-free when the rule was adopted, and there is no known negative economic impact from this law.

**Alcohol and Drug Abuse Division**

**20.HAR Title 11 Chapter 117.1 – Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Co-Occurring Disorders Professional Diplomate**

Justification – The rule is required by §321-193(10), Hawaii Revised Statutes. The rule is necessary to establish standards for the certification of substance abuse counselors, substance abuse program administrators, prevention specialist, clinical supervisors, criminal justice addictions professionals, and co-occurring disorders professional diplomate.

## **Communicable Disease Division**

### **21. HAR Title 11 Chapter 156 – Communicable Diseases**

Justification – STD and HIV laboratory reporting has some limited impact on commercial laboratories and physicians which are small businesses. The laboratory reporting is electronic and now that the system is developed and in place recurring costs are minimal. Physician reporting allows the Department of Health to identify and contact potentially exposed partners and helps assure adequate and appropriate patient treatment is being provided. STD and HIV disease reporting is necessary for the Department of Health to identify, monitor, prevent and control these two communicable diseases. These are critical public health functions. The information is required for epidemiologic purposes and for reporting to federal agencies and funders. Reporting of STDs and HIV is routine in all other states.

## **Disease Outbreak Control Division**

### **22. HAR Title 11 Chapter 157 – Examination and Immunization**

Justification – This rule, required by HRS §§302A-1162, 321-11, 325-11, and 325-32, establishes pediatric immunization requirements and immunization and examination requirements for school and post-secondary school attendance in the State of Hawaii. The rule serves to ensure high immunization coverage against a broad spectrum of vaccine preventable diseases, thereby potentially reducing the economic and health burdens to the State from primary and secondary medical costs. The resulting immunization coverage should in turn reduce the potential for disease outbreaks/epidemics secondary to vaccine preventable diseases and their associated financial and manpower burdens.

## **Disability and Communication Access Board**

### **23. HAR Title 11 Chapter 218 – Communication Access Services for Persons who are Deaf, Hard of Hearing and Deaf-Blind**

Justification – The rule ensure effective communication access for all activities, services, and programs of local government entities in compliance with the Americans with Disabilities Act and establishes the Hawaii Quality Assurance System to test and credential communication access providers in Hawaii. The rule also contains a recommended fee schedule to compensate effective communication providers based on level of skill.

### **24. HAR Title 11 Chapter 219 – Parking for Persons with Disabilities**

Justification – The rule contains requirements for signage and design of accessible parking stalls reserved for persons with disabilities. These requirements are consistent with the Americans with Disabilities Act requirements for design. They include specific wording on the signage, and the requirements ensure that parking tickets, which are issued to persons who are illegally parking in the stalls are upheld in court. Appropriate sign and notice to motorists is critical to having valid tickets.

## **Environmental**

### **Hazard Evaluation and Emergency Response Branch**

#### **25. HAR Title 11 Chapter 5 – Environmentally-Related Illness and Injury Reporting**

Justification – The rule is necessary as it provides state requirements for health care professionals and laboratory directors to report to the department, the diagnosis of any person afflicted with a designated environmentally related illness or injury as stated through HRS §§321-1, 321-9, and 321-317.

#### **26. HAR Title Chapter 451 – State Contingency Plan**

Justification – The rule is necessary as it is federally required.

#### **27. HAR Title 11 Chapter 453 – Hawaii Emergency Planning and Community Right-to-Know-Act**

Justification – The rule is necessary for the implementation of the Hawaii Emergency Planning and Community-Right-to-Know Act. The rules are to administer and enforce the reporting requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) and regulations for emergency planning notification, material safety data sheets, chemical lists, emergency and hazardous chemical inventory forms, and toxic chemical release forms and to supplement the federal statute and regulations in the interest of protecting the health and safety of the citizens of Hawaii.

## **Sanitation Branch**

#### **28. HAR Title 11 Chapter 10 – Swimming Pools**

Justification – The rule is necessary as it sets the minimum requirements for the protection of public health in respect to public swimming pools, as stated through HRS §§321-10, and 321-11.

#### **29. HAR Title 11 Chapter 11 – Sanitation**

Justification – The rule is necessary as it provides minimum requirements so that public health, human welfare and safety hazards will be minimized. This rule applies to barber shops and beauty parlors, public laundries, livestock, poultry and stables, garbage and swill, vegetables, natural bathing places, minimum sanitary facilities, vector control, burial places, transportation of bodies, public

funerals, funeral and sanitation in funeral establishments, and embalming and embalmers, as stated through HRS §321-11.

**30. HAR Title 11 Chapter 12 – Food Service and Food Establishment Sanitation Code**

Justification – The rule is necessary as it provides minimum requirements for the protection of the life, health, safety, and welfare of the general public, and applies to all food establishments, or portions thereof, used, designed or intended to be used as a food establishment or food operation within the State, as stated through HRS §321-11.

**31. HAR Title 11 Chapter 15 – Milk**

Justification – The rule is necessary as it regulates the production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of milk and milk products, the inspection of dairy herds, dairy farms, and milk plants, the issuing and revocation of permits to milk producers, haulers, and distributors, and fixing of penalties, as stated through HRS §321-11.

**32. HAR Title 11 Chapter 17 – Tattoo Artists**

Justification – The rule is necessary as it sets forth minimum requirements for the safety and protection of public health by regulating tattoo artists, as stated through HRS §§321-10, and 321-13.

**33. HAR Title 11 Chapter 18 – Licensing of Sanitarians**

Justification – The rule is necessary as it ensures no person shall practice as a registered sanitarian in the state or offer the person's services or engage in employment as a registered sanitarian unless the person is the holder of a current sanitarian license, as stated through HRS §321-10 and 321-13.

**34. HAR Title 11 Chapter 22 – Mortuaries, Cemeteries, Embalmers, Undertakers & Mortuary Authorities**

Justification – The rule is necessary as it provides minimum standards relating to the practice of embalming to the business of an undertaker, and to the sanitary condition of places where such business or practice is conducted, as stated through HRS §469-2.

**Safe Drinking Branch**

**35. HAR Title 11 Chapter 19 – Emergency Plan for Safe Drinking Water**

Justification – The rule is necessary as it is federally required.

**36. HAR Title 11 Chapter 20 – Rules Relating to Public Water Systems**

Justification – The rule is necessary as it is federally required.

**37. HAR Title 11 Chapter 21 – Cross-Connection & Backflow Control**

Justification – The rule is necessary as it ensures that the public water supplies will be protected from contamination through cross-connections in the distribution system.

**38. HAR Title 11 Chapter 23 – Underground Injection Control**

Justification – The rule is necessary as it is similar to federal rules and it ensures that underground sources of drinking water are protected from the disposal of wastes through injection wells.

**39. HAR Title 11 Chapter 25 – Rules Relating to Certification of Public Water System Operators**

Justification – The rule is necessary as it is federally required.

**Vector Control Branch**

**40. HAR Title 11 Chapter 26 – Vector Control**

Justification – This rule is necessary as it establishes standards for inspection and abatement of vectors, as stated through HRS §§321-9, and 321-10.

**Clean Water Branch**

**41. HAR Title 11 Chapter 54 – Water Quality Standards**

Justification – The rule is necessary as it is federally required.

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

Justification – The rule is necessary as it is federally required.

**Clean Air Branch**

**43. HAR Title 11 Chapter 59 – Ambient Air Quality Standards**

Justification – The rule is necessary as it is federally required.

**44. HAR Title 11 Chapter 60.1 – Air Pollution Control**

Justification – The rule is necessary as it is federally required.

**Wastewater Branch**

**45. HAR Title 11 Chapter 61 – Mandatory Certification of Wastewater Treatment Plants**

Justification – The rule is necessary as it is federally required.

**46. HAR Title 11 Chapter 62 – Waste Water Systems**

Justification – The rule is necessary as it ensures disposal of wastewater from wastewater treatment works and individual wastewater systems, does not contaminate or pollute any drinking water or potential drinking water supply, or the waters of any beaches, shores, ponds, lakes, streams, groundwater, or



shellfish growing waters, does not encourage harborage of insects, rodents or other possible vectors, does not give rise to nuisances, does not become a hazard to public health, safety and welfare, contributes to the achievement of wastewater management goals contained in approved county water quality management plans, and reinforces state and county planning policies, as stated through HRS §§321-11, 322-8(a), 342D-1, 342D-2, 342D-4, and 342D-5.

## **Noise, Radiation and Indoor Air Quality Branch**

### **47. HAR Title 11 Chapter 39 – Air Conditioning & Ventilating**

Justification – The rule is necessary as it seeks to assure the adequate and healthful design, construction, installation, and operation of comfort air conditioning and ventilating systems as stated through HRS §§321-9 and 321-11.

### **48. HAR Title 11 Chapter 40 – Community Noise Control**

Justification – This rule is necessary as it defines maximum permissible sound levels, and provide for prevention, control, and abatement of noise pollution in the state, to prevent the significant degradation of the environment and quality of life, as stated through HRS §§342F-3, and 342F-31.

### **49. HAR Title 11 Chapter 44 – Radiologic Technology Board Radiologic Technology Rules**

Justification – The rule is necessary as it establishes minimum state standards of education, training and experience for persons who apply x-rays, cobalt 60, or electrons to human beings, as stated through HRS §466J-2.

### **50. HAR Title 11 Chapter 45 – Radiation Control**

Justification – The rule is necessary as it sets minimum standards for all persons and facilities who receive, possess, use, transfer, own, or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services as stated through HRS §§321-10, 321-11, and 321-71.

### **51. HAR Title 11 Chapter 501 – Asbestos Requirements**

Justification – The rule is necessary as it is federally required.

### **52. HAR Title 11 Chapter 502 – Asbestos Containing Materials in Schools**

Justification – The rule is necessary as it is federally required.

### **53. HAR Title 11 Chapter 503 – Fees for Asbestos Removal**

Justification – The rule is necessary as it is federally required.

### **54. HAR Title 11 Chapter 504 – Asbestos Abatement Certification Program**

Justification – The rule is necessary as it is federally required.

## **Solid and Hazardous Waste Branch**

**55. HAR Title 11 Chapter 58.1 – Solid Waste Management Control**

Justification – The rule is necessary as it establishes minimum standards governing design, construction, installation, operation, and maintenance of solid waste disposal, recycling, reclamation, and transfer systems, as stated through HRS §§321-11, 342G-3, 342G-13, 342H-3, 342H-18, and 342N-3.

**56. HAR Title 11 Chapter 68 – Litter Control**

Justification – The rule is necessary as it reduces litter by setting minimum requirements for the number of litter receptacles for various places of public use, establish requirements for the design, construction and maintenance of litter receptacles, clarify the prohibitions on littering, and determine responsibility of owners and lessees of real property to maintain frontage in a litter-free state, as stated through HRS §339-2.

**57. HAR Title 11 Chapter 260 – Hazardous Water Management General Provisions**

Justification – The rule is necessary as it is federally required.

**58. HAR Title 11 Chapter 261 – Hazardous Waste Management Identification & Listing of Hazardous Waste**

Justification – The rule is necessary as it is federally required.

**59. HAR Title 11 Chapter 262 – Hazardous Waste Management Standards Applicable to Generators of Hazardous Waste**

Justification – The rule is necessary as it is federally required.

**60. HAR Title 11 Chapter 263 – Hazardous Waste Management Standards Applicable to Transporters of Hazardous Waste**

Justification – The rule is necessary as it is federally required.

**61. HAR Title 11 Chapter 264 – Hazardous Waste Management Standards for Owners & Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities**

Justification – The rule is necessary as it is federally required.

**62. HAR Title 11 Chapter 265 – Hazardous Waste Management Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities**

Justification – The rule is necessary as it is federally required.

**63. HAR Title 11 Chapter 266 – Hazardous Waste Management Standards for the Management of Specific Hazardous Wastes & Specific Types of Hazardous Waste Management Facilities**

Justification – The rule is necessary as it is federally required.

**64. HAR Title 11 Chapter 268 – Hazardous Waste Management Land Disposal Restrictions**

Justification – The rule is necessary as it is federally required.

**65. HAR Title 11 Chapter 270 – Hazardous Waste Management State Administered Permits: The Hazardous Waste Permit Program**

Justification – The rule is necessary as it is federally required.

**66. HAR Title 11 Chapter 271 – Hazardous Waste Management Procedures for Decision Making**

Justification – The rule is necessary as it is federally required.

**67. HAR Title 11 Chapter 273 – Hazardous Waste Management Standards for Universal Waste Management**

Justification – The rule is necessary as it is federally required.

**68. HAR Title 11 Chapter 279 – Standards for the Management of Used Oil**

Justification – The rule is necessary as it is federally required.

**69. HAR Title 11 Chapter 280 – Hazardous Waste Management Public Information**

Justification – The rule is necessary as it is federally required.

**70. HAR Title 11 Chapter 281 – Underground Storage Tanks (USTs)**

Justification – The rule is necessary as it is federally required.

**71. HAR Title 11 Chapter 282 – Deposit Beverage Container Program**

Justification – The rule is necessary as it is federally required.

## ***Department of Human Services***

**1. HAR Title 17 Chapter 402 – Services to the Blind and Visually Handicapped**

Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.

**2. HAR Title 17 Chapter 891.1 – Registration of Family Child Care Homes**

Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.

**3. HAR Title 17 Chapter 892.1 – Licensing of Group Child Care Centers and Group Child Care Homes**

Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.

- 4. HAR Title 17 Chapter 893 – Licensing of Child-Placing Organizations**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 5. HAR Title 17 Chapter 894 – Licensing of Child-Caring Institutions**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. This rule was repealed and replaced by HAR Title 17 Chapter 1627 on December 9, 2010. The statute that underlies this rule is still in existence.
- 6. HAR Title 17 Chapter 895 – Licensing of Infant and Toddler Child Care Centers**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 7. HAR Title 17 Chapter 896 – Licensing of Before and After School Child Care Facilities**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 8. HAR Title 17 Chapter 1417 – Adult Day Care Services**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 9. HAR Title 17 1418 – Adult Foster Care Services**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 10. HAR Title 17 Chapter 1419 – Chore Services for Community Long-Term Care Programs**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 11. HAR Title 17 Chapter 1424 – Licensing of Adult Day Care Center**  
Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.
- 12. HAR Title 17 Chapter 1739 – Authorization, Payment, and Claims in the Fee for Service Medical Assistance Program**

Justification - The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.

**13. HAR Title 17 Chapter 1739.1 – Authorization, Payment, and Claims in the Fee for Service Medical Assistance – General Provisions for Reimbursement**

Justification – The purpose for adopting this rule is to implement the authorizing statute. The statute that underlies this rule is still in existence. No change has been made to the rule since June 30, 2003.

**14. HAR Title 17 Chapter 1740 – Reimbursement of Federally Qualified Health Centers**

Justification - The purpose for adopting this rule is to implement the authorizing statute. This rule was repealed and replaced by HAR Title 17 Chapter 1740.1 on November 20, 2003. The statute that underlies this rule is still in existence.

## ***Department of Labor and Industrial Relations***

### **Unemployment Insurance Division**

**1. HAR Title 12 Chapter 5 – Employment Security**

Justification – The rule is needed to comply with Federal Unemployment Tax (Sections 3302, 3303, 3304, 3305, 3306, 3309, and Social Security Act (Sections 301-304, and Sections 901-908). The State Unemployment Insurance program is founded on a federal-state cooperative system, which permits federal offset credits for employers on their FUTA taxes, provided the state is in compliance with federal Unemployment Insurance statutes. Employers can receive a credit of up to 5.4% from the 6.2% FUTA tax for each employee on their payroll (savings of \$56 per employee per year.)

The State Unemployment Insurance program is 100% federally-funded. Should Hawaii be found in non-compliance with Social Act provisions, federal administrative grants to operate the unemployment program in this State would be terminated. All Unemployment Insurance offices would be shut down, precluding unemployed workers from filing claims for unemployment insurance compensation, although employers would still be required to pay the full 6.2% FUTA tax. To continue the unemployment insurance program, State general funds would have to be appropriated for that purpose – approximately \$12 - \$15 million annually.

Amendments to this chapter have not imposed any new, direct or indirect costs for small businesses. The rules merely serve to clarify existing practices and are not intended to alter department rulings.

#### Section 12-5-1- Definitions

Justification – Amended definitions: 1) “Base period” in accordance with the provisions of Act 219 that was approved by the Governor on 7-02-03; 2) “Full-time” to clarify the use of the term; 3) “Physician” to clarify the persons associated with that term; and 4) “Week” to correction the subsection cited.

The change to the base period definition is necessary due to the enactment of the alternate base period. The definitions for full-time and physician are added to eliminate confusions on what is acceptable and what is not.

#### Section 12-5-2 – Master and servant relationship

Justification – Amended to clarify the ABC test and its application. This section is added so employers would have a better indication of what factors are considered in rendering coverage determinations by the department.

#### Section 12-5-17(g) and (h) – Reports

Justification – Amended to change the reference from the first four of the last five completed quarters as provided in Act 219; and to provide for obtaining wage and separation information from the employer by means other than mail, such as telephone, fax, or electronic mail in order to meet timeliness standards set by the USDOL.

The changes to (g) are made to accommodate the law change and the current office practice of using the telephone, facsimile machine or electronic mail to obtain required information faster in order to meet USDOL criteria for benefit payment promptness. Section 15-5-17(h) is amended to provide that the department will make a determination on available information furnished by the individual if the employer fails to submit a low earnings report within an allotted time. The change to (h) is made to provide timely payments on partial or part-total claims where lack of earnings verification from employers caused prolonged delays.

#### Section 12-5-23(b)(2) – Noncharges for Benefits

Justification – Amended to clarify that a non-charge for benefits would also include an individual who “could have” continued working the same hours as in the based period. The change is made to address situations where a part-time employee voluntarily elects to work fewer hours for an employer and then files a claim for UI benefits. Without this change, the employer is not relieved from benefit charges even though it was the claimant who altered conditions to work few hours.

#### Section 12-5-31(b) – Registration

Justification – Amended to clarify that an individual who relocates to another labor market must register for work in the new locality and to waive registration for individuals who are temporarily suspended for five weeks or less. The amendment also clarifies that an individual who fails to register for work within the seven days deadline is ineligible for benefits beginning with the week of the

application for benefits and ends prior to the week in which the claimant registers for work.

This change is made to ensure that claimants who relocate from one island to another are re-registered for work in the new area since the employment offices only service the claimants on their respective islands. The other change is made to ensure consistency in late work registration issues as there was a conflict in ruling between the UI Division and the Appeals Office over the week in which the entire week and the UI Division did not.

#### Section 12-5-35 – Availability

Justification – Amended to establish eligibility requirements on availability for work search and to clarify that recipients of temporary partial or temporary total disability under any state’s workers’ compensation law are not considered able and available for work. The addition of (c) is made to require 3 work contacts each week. The addition of (e) is made to correct the inequity of an individual receiving income from two wage replacement programs.

#### Section 12-5-39(a)(7) – Denial of benefits to employees of educational institutions and government agencies during specific periods

Justification – Amended to delete “profit making” and “preschools” from the definition of “institution of education” and to add in the definition contained in the federal manual for draft legislation. Section 12-5-39(c)(6) is amended to delete “between terms” in the last sentence as the paragraph deals with “within terms” denial. Section 12-5-39(d)(1) is amended to make grammatical changes in text. The changes to (a) (7) were made due to questions arising as to whether these types of organizations were to be included as educational institutions or not. According to clarification from USDOL National Office, Congress did not address this question when legislation to deny educational employees was passed. Changes to (c) (6) and (d) (1) are self-explanatory.

#### Section 12-5-47(c) – Voluntary separation

Justification – Amended to add another reason to the list of good cause for leaving employment for any circumstance in which domestic or sexual violence causes an individual to separate from employment for the safety of the individual or the individual’s minor child. This change was made in support of legislation introduced in 2003 (but failed to pass) for the victims of domestic violence. This new amendment does not change current policies in the department which already allows personal good cause where an individual quits for domestic violence reasons.

#### Section 12-5-5-81(b)(e)(f)(g)(i)(j) – Filing of claims

Justification – Amended to allow backdating of new claims where good cause is established by the claimant. Section 12-5-81(d) is amended to clarify that the applicant shall present identification only “upon request” since most claimants no longer report in person and file claims over the telephone instead. Section 12-5-

81(e) is amended to include a disqualification provision so that the denial includes the week that the individual fails to provide relevant information and continuing until the conditions are met. Section 12-581(f) is amended to clarify that subsections (a) and (b) also apply to additional claims in the same manner as it already applies to reopen unemployment to extend beyond four consecutive weeks under limited circumstances where the individual is still under obligation to perform services for the employer and has a reasonable return to work date. Section 12-5-81(i) is amended to include that the department also requires an individual to call or to provide additional information to an office of the unemployment insurance division as instructed by the department; and to provide that failure to attend a worker profiling orientation session would disqualify an individual from the week of non-compliance. Section 12-5-81(j) is also amended to include the failure to call or provide additional information.

The changes to (b) and (f) were made to support local office practices of backdating claims under conditions that were clearly not the fault of the claimant. The change to (d) was necessary since the majority of claims are now taken over the telephone. The changes to (e) and (j) clarify the conditions for disqualification and include situations where the claimant fails to respond to a call from the department requesting more information. The change to (g) also supports local office practices of extending partial claims where the employer will recall employees. The change to (i) resolves a conflict that developed over a disqualification for non-attendance at a worker profiling orientation session. The Regional Office failed one decision during a review because the orientation session was not considered part of the re-employment services.

#### Section 12-5-89(a) – Determinations

Justification – Amended to provide that a claim can be withdrawn if only the waiting period has been served but no benefits paid and that any determinations rendered on a claim that is withdrawn is not voided and requalification would apply to the weekly benefit amount of the new claim.

This change makes it clearer that a claim can be withdrawn if benefits have not been paid regardless of whether a waiting period has been filed. The intent is to permit a claimant to pursue a new claim under more favorable conditions such as a higher weekly benefit amount by canceling an old claim which was never used. The proposed amendment also clarifies that disqualifications already rendered would not be voided by the withdrawal of the claim. So if a claimant is disqualified for quitting and did not file any claim certifications, the claim could be withdrawn but the disqualification would still stand and the claimant would have to meet requalification conditions to be eligible for benefits again.

#### Section 12-5-129 – Application

Justification – Amended to include the addition of new regulations relating to interstate overpayment recovery as provided in the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA). This change resulted from



Hawaii's participation in IRORA (Interstate Reciprocal Overpayment Recovery Arrangement) under which states can recover overpayments from each other.

Section 12-5-133 – Definitions

Justification – Amended to add definitions relating to interstate overpayment recovery as provided in IRORA. This change resulted from Hawaii's participation in IRORA (Interstate Reciprocal Overpayment Recovery Arrangement) under which states can recover overpayments from each other.

Section 12-5-151- Recovery of overpayment under the Interstate Reciprocal Overpayment Recovery Arrangement; responsibilities of participating states

Justification – Added to clarify the recovery of state or federal benefit overpayments as provided under IRORA. This change resulted from Hawaii's participation in IRORA (Interstate Reciprocal Overpayment Recovery Arrangement) under which states can recover overpayments from each other.

## **Employment Security Appeals Referees Office**

### **2. HAR Title 12 Section 12-5-93 – Benefits Appeals**

Justification – Requirement of this rule, in part, provides that the director of labor and industrial relations shall adopt reasonable regulations governing the manner of filing appeals and the conduct of hearings and appeals. Additionally, the rules regarding benefit appeals are an important service to the public because of valuable information that it provides to individuals and all businesses about a process they generally are not familiar with. The rules apply equally to all appeal participants. Continued implementation is necessary to continue this public service and comply with HAR 383-39.

### **3. HAR Title 12 Subtitle 8 – Hawaii Occupational Safety and Health Division**

Justification – Almost all of the rules that HIOSH has affect small business. The only ones that do not are the shipyard, (Part 5) long shoring (Part 7) and marine terminals (Part 6) that apply only to public sector employees. HIOSH has separated the standards into three groups to distinguish between which standards are an identical adoption of the federal standard, standards that are unique to Hawaii, are the Boiler and Elevator standards. All of the HIOSH Standards have origins dating back to 1974 when the program was first created following the 1972 Act that created the division. Since 1974, the standards have undergone amendments aimed at bringing the standards more up-to-date with the technology of the industries that are covered by the standards and amendments that had to be implemented due to federal rule changes. HIOSH must continue to implement the federal rule changes as part of the OSHA requirement to be “as effective as” the federal program which is a requirement for a state plan.

In order for a state plan to be “as effective as” the federal program, the state must at the minimum adopt the identical standard that the federal program

releases as a final rule. The state has made minor revisions in some cases to conform to prior state industrial safety rules or for clarity. Most of the updates are federally initiated since OSHA has staff dedicated specifically for the development and review of standards that includes its impact to employees and employers. The OSHA program develops and implements standards according to research data that identifies high hazard industries as well as what types of injuries are being suffered by employees.

## **Disability Compensation Division**

### **4. HAR Title 12 Chapter 10 – Workers’ Compensation**

Justification – These rules apply to all employers big and small and operate to administer Chapter 386, Hawaii Revised Statutes.

#### Section 12-10-65 – Deposition

Justification – This section was repealed and is currently included in subsection 386-86(e), HRS.

#### Section 12-10-66 – Subpoenas

Justification – This section was repealed and currently included in subsection 386-86(f), HRS.

#### Section 12-10-69(b) – Attorney’s fees

Justification – This section was deleted and currently included in subsection 386-94, HRS.

#### Section 12-10-94 – Self-insurance; application; duration; cancellation; revocation

Justification – This section was repealed and currently included in subsection 386-121, HRS.

### **5. HAR Title 12 Chapter 11 – Temporary Disability Insurance**

Justification – These rules apply to all employers big and small and operate to administer Chapter 392, Hawaii Revised Statutes. There have been no rule amendments since the last report.

### **6. HAR Title 12 Chapter 12 – Prepaid Health Care**

Justification – These rules apply to all employers big and small and operate to administer Chapter 392, Hawaii Revised Statutes.

#### Section 12-12-60 – Health care contractors

Justification – This rule amendment more appropriately identified the information needed, and deleted subsections (b), (c), and (d) due to the ERISA exemption.

#### Section 12-12-61 – Employers

Justification – This rule was repealed in its entirety as it was made invalid by the ERISA preemption.

Section 12-12-63 – Other employer reports

Justification – This rule amendment lessened the paperwork for employers by removing the mandatory annual filing of exemption forms (Form HC-5) except upon request by the director.

**7. HAR Title 12 Chapter 14 – Rehabilitation**

Justification – These rules apply to all employers big and small and operate to administer the Workers Compensation Law, Chapter 386, Hawaii Revised Statutes.

Section 12-14-1 - Definitions

Justification – Definition of “Suitable gainful employment,” “vocational rehabilitation plan,” or “plan,” and “vocational rehabilitation services” or “services” were amended and are now defined in section 386-1, HRS.

Section 12-14-4 - Initial evaluation required prior to submittal of vocational rehabilitation plan

Justification – Repealed and currently included in subsection 386-25 (d), HRS.

Section 12-14-5 - Criteria for an approved vocational rehabilitation plan

Justification – Repealed and currently included in subsections 386-25(e) through 386-25 (J), HRS.

Section 12-14-36 – Termination of right to vocational rehabilitation

Justification – Deleted the provision that an employee who has already received a permanent partial disability award had waived their rights to vocational rehabilitation. In response to the Hawaii Supreme Court decision in Capua v. Weyerhaeuser, 117 Haw. 439, 448, 184 P.3d 191, 200 (2008), which held that the director exceeded the bounds of rule-making authority in promulgating the provision of section 12-14-36. Note – this section was not amended because of Act 11.

Section 12-14-48 - Criteria for an approved vocational rehabilitation plan

Justification – Repealed and currently included in subsections 386-25(n) through 386-25(o), HRS.

**8. HAR Title 12 Chapter 15 – Medical Fee Schedule**

Justification – These rules apply to all employers big and small and operate to administer the Workers Compensation Law, Chapter 386, Hawaii Revised Statutes.

Section 12-15-1 – Definitions

Justification – Amends the definition of “Provider of service” and “Therapist.” To require any professional treating injured workers to be licensed, certified, or registered, and to recognize the National Board of Certification in Occupational therapy as the certifying organization for occupational therapist; revised the

definition of Therapist to mean a duly licensed physical therapist or a duly registered occupational therapist, who renders therapy prescribed by a physician. “Attending physician” and new definitions of “Emergency medical services,” “Guide” or “Guidelines” are all defined in section 386-1, HRS. Justification to comply with the definitions in section 386-1, HRS, as codified by Act 11 and to update the definition of “Therapist.”

Section 12-15-36 – Assistants to providers of service

Justification – Establishes a reimbursement rate of 60% of authorizing fees for occupational therapist assistants. Amended on 2-28-11, and requires physical therapist and occupational therapist assistants to complete a program accredited in their profession and to meet qualifications or their certifying organizations. Justification to require assistants treating injured workers to meet requirements of the appropriate certifying organization.

Section 12-15-50(c) – Emergency treatment

Justification – Deleted. Justification to comply with definition of emergency medical services in Section 386-1, HRS, as codified in Act 11.

Section 12-15-52 – Anesthesia services

Justification – Allows for reimbursement for the certified registered nurse anesthetist. Justification recognizes that the certified registered nurse anesthetist can provide service under this section.

Section 12-15-55 – Drugs, supplies and materials

Justification – Allows providers to be reimbursed up to forty-percent of the wholesale cost of all equipment and supplies. Justification brings reimbursements to providers in line with the current rule of allowing prescription drugs to be reimbursed at average wholesale price plus forty-percent; amended on 2-28-11 to not allow shipping charges as a separate reimbursable charge. Shipping charges to be included in the allowed cost plus forty-percent charge. Justification to make clear providers cannot make a separate charge for shipping.

Section 12-15-80 – Reports of Providers of Service

Justification – Changed “health care provider” to “provider of service.” The rule requires all providers, including non-physicians, to comply with Chapter 386, HRS, and its related rules.

Section 12-15-90 – Workers’ Compensation Medical Fee Schedule

Justification – Changed the effective date of the fee schedule and added, deleted or modified codes and its unit value in the supplemental fee schedule known as Exhibit A. Pursuant to section 386-21(c), HRS, requires the director to update the schedules every three years or annually, as required.

## **Wage Standards Division**

### **9. HAR Title 12 Chapter 20 – Wage and Hour**

Justification – This rule is necessary as it relates to minimum wage and overtime; includes procedures for the employment of student workers, student learners, and handicapped clients in sheltered workshops at special minimum rates, and defines individuals excluded from the requirements of the law.

**10. HAR Chapter Title 12 Chapter 21 – The Administration and Enforcement of the Payment of Wages and Other Compensation Law**

Justification – This rule is necessary as it relates to paydays, exceptions to semimonthly paydays, and illegal deductions. It also defines individuals excluded from the services of the department.

**11. HAR Title 12 Chapter 22 – Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes**

Justification – This rule is necessary as it relates to prevailing wages and hours on state and county public works construction projects. It also clarifies terms used in the statute and prescribes methodology to be used by the department in determining prevailing wages.

**12. HAR Title 12 Chapter 24 – Relating to Unlawful Suspension or Discharge Under Part III, Chapter 378, Hawaii Revised Statutes**

Justification – This rule is necessary as it relates to unlawful termination due to a work-related injury. It also includes procedures for filing and hearing of complaints.

**13. HAR Title 12 Chapter 25 – Child Labor**

Justification – This rule is necessary as it relates to the employment of minors under eighteen years old. It also identifies hazardous occupations and includes procedures for minors engaged in pineapple, coffee harvesting, and theatrical employment.

**14. HAR Title 12 Chapter 26 – Lie Detector Tests**

Justification – This rule is necessary as it relates to the use of lie detector tests as a condition of employment.

## **Workforce Development Division**

**15. HAR Title 12 Chapter 6 – Employment and Training fund Program (ETF)**

Justification – The rules are necessary to implement Act 68 (Session Laws of Hawaii 1991) codified as Chapter 383-128, FIRS. The department is the authorized agency to oversee the ETF program. Pursuant to Chapter 91, FIRS, the department adopted on May 4, 1992, a set of administrative rules, which provide a framework to carry out its legislative intent and to establish basic operating procedures for the program.

**16. HAR Title 12 Chapter 30 – Apprenticeship Programs**

Justification - The rules are necessary as they set forth safeguards regarding the welfare of apprentices, and extend the application of such standards by

prescribing rules concerning the registration of acceptable apprenticeship programs as required by section 372-5, Hawaii Revised Statutes. The rules are based on Federal requirements for registered apprenticeship programs, and apply only to those entities requesting to be apprenticeship program sponsors.

**17. HAR Title 12 Chapter 31 – A State Plan for Equal Employment Opportunity in Apprenticeship Programs**

Justification – The state’s authority to register apprenticeship programs on behalf of the Secretary of U.S. Department of Labor requires, in part, that the state have acceptable apprenticeship laws and regulations. The rules prescribe the guidelines for prohibiting discriminatory practices and implementing affirmative action in apprenticeship programs. The rules are based on federal requirements for equal opportunity in registered apprenticeship program and apply only to those entities requesting to the apprenticeship program sponsors.

**18. HAR Title 12 Chapter 506 – Plant Closing Notification and Dislocated Worker Allowance**

Justification – The purpose of this chapter is to implement Act 377, SLH 1987, which amended Chapter 394B, HRS, relating to dislocated workers. Chapter 394B, HRS, protects employees from the effects of unexpected and sudden lay-offs or terminations which result from closings, partial closings, or relocations due to sale, transfer, merger, and other business takeover or transaction of business interest.

**Title 12, Subtitle 7 Boards  
Hawaii Labor Relations Board**

**19. HAR Title 12 Chapter 41 – Hawaii Labor Relations Board (Employment)**

Justification – The Hawaii Labor Relations Board administers the Hawaii Employment Relations Board Rules of Practice and Procedure, of HAR Title 12, which affects small business insofar as the company employs organized workers. These rules, promulgated pursuant to HRS Chapter 377, Hawaii Employment Relations Act, are necessary because they provide procedures for unfair labor practice proceedings, the determination of collective bargaining units, the selection of exclusive representatives, declaratory rulings, and rule-making. The rules are promulgated by the National Labor Relations Board setting forth filing requirements and procedures governing hearings and other proceedings.

**State Fire Council**

**20. HAR Title 12 Chapter 44 – State Fire Council**

Justification – Implements appeals process to decisions of State Fire Council.

**21. HAR Title 12 Chapter 45.1 – State Fire Code**

Justification – The purpose of this chapter is to adopt the state fire code as required by Chapter 132, Hawaii Revised Statutes. This chapter amends certain

provisions of the 1997 edition of the Uniform Fire Code. The code and the rules set forth minimum requirements relative to the protection of persons and property from fire loss. The rules are necessary for the protection of persons and property from fire loss.

## **Civil Rights Commission**

### **22. HAR Title 12 Chapter 46 – Civil Rights Commission (HCRC)**

Justification – The 1988 Legislature in Act 219, Sessions Law Hawaii 1988 established the HCRC to provide a uniform procedure for the enforcement of the state’s laws dealing with employment, housing and public accommodations discrimination. The civil rights law authorized the HCRC to adopt rules in accordance with IRS Chapter 91. Pursuant to FIRS Chapter 378, Part I, the HCRC has jurisdiction over employers of one or more employees. Amendments made to Chapter 46 have been to comply with federal law changes and are not more stringent than those mandated by the ADA and the EEOC regulations interpreting the ADA.

#### Section 12-46-181 – General Provisions

Justification – Amended to reflect that Acts 30 and 139 were passed in 2009 and 2010 respectively to minimally conform to state law to the ADA and to direct the HCRC to amend its administrative rules accordingly. It also reflects the shift in focus in the analysis and determination of disability discrimination cases. The following amendments were made because the legislature mandated the rule amendments to minimally conform state law to the federal ADA. Therefore, HCRC did not consider any methods to reduce the impact on small business and did not involve small business in the development of the proposed rule amendments.

#### Section 12-46-182 – Definitions

Justification – “Being regarded as having such an impairment” was amended so that it no longer requires a showing that an employer perceived the person to be substantially limited in a major life activity. Therefore, an applicant or employee who is subjected to a prohibited action because of any actual or perceived impairment that is not transitory and minor will meet the “regarded as” definition of disability.

“Disability” is amended to reflect the above-mentioned change in the “regarded as” prong of the definition. “Major life activities” was expanded to include two non-exhaustive lists covering basic activities that most people in the general population can perform as well as major bodily functions. “Physical or mental impairment” is expanded to include certain impairments listed in the ADA and EEOC regulations that were not in the rules and to clarify that pregnancy-related impairments that substantially limit a major life activity or are covered under the “record” or “regarded as” prongs may be disabilities.

“Qualified” is slightly amended to eliminate use of the term “qualified individual with a disability” consistent with the ADAAA and EEOC regulations that eliminate that term. “Reasonable accommodation” is amended to include modifications or adjustments for employees with impairments that no longer substantially limit major life activities to attend follow-up or monitoring appointments. “Substantially limits” is amended to clarify that a limitation need not significantly or severely restrict a major life activity to clarify the terms “condition,” “manner” or “duration” which may be considered. The definition is also amended to include consideration of non-ameliorative effects of mitigating measures, impairments that are episodic or in remission if they would substantially limit a major life activity when active, and multiple impairments that combine to substantially limit a major life activity.

Section 12-46-183 – Discrimination prohibited

Justification - Slightly amended to delete the language “qualified person with a disability” consistent with the ADAAA and EEOC regulations that eliminate that term.

Section 12-46-187 – Standards, criteria, or methods of administration

Justification – Amended to delete the term “qualified person with a disability” and to clarify that a covered entity is not required making a reasonable accommodation to a person who is solely regarded as having a disability.

Section 12-46-192 – Specific activities permitted

Justification – Amended to add the provision clarifying that while religious institutions may give preference in employment to individuals of that religion, or may make a selection calculated to promote the religious principles of that institution, these entities may not discriminate on the basis of disability against an individual who meets such religious criteria.

Section 12-46-193 – Defenses

Justification – Amended to include the defense to a person claiming coverage under the “regarded as” definition of disability, which the impairment is or would be transitory and minor.

## **Labor and Industrial Relations Appeals Board**

**1. HAR Title 12 Chapter 47 – Labor and Industrial Relations Appeal Board Rules of Practice and Procedure**

Justification – Rules needed to implement appeals to Workers Compensation Law, Chapter 383, HRS.

## **Hoisting Machine Operators Advisory Board**

**2. HAR Title 12 Chapter 48 – Hoisting Machine Operators Advisory Board**



Justification – The Occupational Safety and Health Division adopted these rules to be in compliance with Section 396-19, Hawaii Revised Statutes. The purpose of these rules is to promulgate safety and health standards, which meet the state laws in providing safe and healthful work places for Hawaii’s workers and to promulgate standards for the safe operation and use of hoisting machines. The rules make it easier for employers to comply with the state’s occupational safety and health standards for the safety and benefit of the workers, employers, and the public.

## ***Department of Land and Natural Resources***

### **Division of Conveyances**

#### **1. HAR Title 13 Chapter 16 – Rules Relating to Conveyances**

Justification – The rules were promulgated to facilitate the recording process and clarify sections of the status for the benefit of the general public. The rules are necessary and useful in expanding and addressing recording concerns in a practical manner and law intended.

### **Division of Aquatic Resources**

#### **2. HAR Title 13 Chapter 29 – Kealakekua Bay Marine Life Conservation District, Hawaii**

Justification – HAR set aside Kealakekua Bay for protecting and conserving its marine resources. Marine resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by the rule. These demonstrated benefits justify its continuance.

#### **3. HAR Title 13 Chapter 31 – Molokini Shoal Marine Life Conservation District, Maui**

Justification – This HAR set aside for protecting and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

#### **4. HAR Title 13 Chapter 32 – Honolua-Mokuleia Marine Life Conservation District, Hawaii**

Justification – This HAR set aside for protection and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

**5. HAR Title 13 Chapter 33 – Lapakahi Marine Life Conservation District, Hawaii**

Justification - This HAR set aside for protection and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

**6. HAR Title 13 Chapter 34 – Pupukea Marine Life Conservation District, Oahu**

Justification – This HAR set aside for protection and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

**7. HAR Title 13 Chapter 35 – Wailea Bay Marine Life Conservation District, Hawaii**

Justification - This HAR set aside for protection and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

**8. HAR Title 13 Chapter 36 – Waikiki Marine Life Conservation District, Oahu**

Justification - This HAR set aside for protection and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuance.

**9. HAR Title 13 Chapter 37 – Old Kona Airport Marine Life Conservation District, Hawaii**

Justification – This HAR set aside a portion of this shoreline’s near shore water for protecting and conserving its marine resources. Aquatic resources of the Bay (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify its continuances.

**10. HAR Title 13 Chapter 38 – Waioape Tidepools Marine Life Conservation District, Hawaii**

Justification – This HAR protects rich coral beds and its associated ecosystem. Aquatic resources of the tide pools (fishes, coral reefs) are protected from take or damage, and serve as a haven for marine life (from fishing). Non-consumptive activities (fish and reef viewing) have benefited significantly by this rule. These demonstrated benefits justify continuances.

**11. HAR Title 13 Chapter 48 – Waikiki-Diamond Head Shoreline Fisheries Management Area, Oahu**

Justification – This HAR set aside a portion of this shoreline’s near shore waters for the purpose of protecting fish stocks (by area closure) and opening the area to limited forms of fishing. This strategy has resulted in at least higher levels of fish abundance and increased opportunities for the public to enjoy recreational fishing. Since recreational fishing is a significant pastime, and this managed area enhances this activity its continuance is justified.

**12. HAR Title 13 Chapter 49 – Hanamaulu Bay and Ahukini Recreation Pier Fisheries Management Area, Kauai**

Justification – This HAR set aside a portion of the Hanamaulu Bay in an effort to reduce conflicts between competing fishing groups – recreational shore fishers and commercial net fishers. Because of this rule, both activities exist and its continuance is justified.

**13. HAR Title 13 Chapter 49.5 – Port Allen Fisheries Management Area, Kauai**

Justification – This HAR set aside a portion of the Port Allen harbor in an effort to reduce conflicts between competing fishing groups – recreational shore fishers and commercial net fishers. Because of this rule, both activities exist and its continuance is justified.

**14. HAR Title 13 Chapter 49.6 – Nawiliwili Harbor Fisheries Management Area, Kauai**

Justification – This HAR set aside a portion of Nawiliwili harbor in an effort to reduce conflicts between competing fishing groups – recreational shore fishers and commercial net fishers. Because of this rule, both activities exist and its continuance is justified.

**15. HAR Title 13 Chapter 50 – Waimea Bay and Waimea Recreational Pier, Kauai**

Justification – This HAR set aside a portion of the Bay and its pier for the purpose of limiting forms and amount of fishing effort. This strategy affords the fishing public more opportunities to enjoy recreational fishing, a significant pastime. As such, its continuance is justified.

**16. HAR Title 13 Chapter 51 – Kahului Harbor, Maui**

Justification – This HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying this strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**17. HAR Title 13 Chapter 52 – Kailua Bay, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**18. HAR Title 13 Chapter 54 – Pauka Bay and Pauka Reef, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**19. HAR Title 13 Chapter 55 – Kawaihae Harbor, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, it is justified.

**20. HAR Title 13 Chapter 56 – Kawaihae Harbor, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduced conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**21. HAR Title 13 Chapter 57 – Keahou Bay Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**22. HAR Title 13 Chapter 60 – Kiholo Bay, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**23. HAR Title 13 Chapter 60.3 – West Hawaii Regional Fisheries Management Area, Hawaii**

Justification – These HAR set aside areas that are popular fishing spots, and have provisions designed to reduce conflicts in fishing gear usage. By applying its strategy, the fishing public has benefited from a more enjoyable experience in fishing and opportunities to fish. Moreover, the same strategy results in sustained fish populations, enabling this favorite pastime to be enjoyed. As such, its continuance is justified.

**24. HAR Title 13 Chapter 61 – Nuuanu Freshwater Fish Refuge, Oahu**

Justification – This HAR establishes areas for recreational fishing opportunities, provide for freshwater game fishing, and are stock enhanced to promote a quality recreational fishing experience. Freshwater fishing is very popular in all three locations. The rules are in place to enhance the experience. As such, its continuance is justified.

**25. HAR Title 13 Chapter 62 – Wahiawa Public Fishing Area, Oahu**

Justification – This HAR establishes areas for recreational fishing opportunities, provide for freshwater game fishing, and are stock enhanced to promote a quality recreational fishing experience. Freshwater fishing is very popular in all three locations. The rules are in place to enhance the experience. As such, its continuance is justified.

**26. HAR Title 13 Chapter 64 – Kokee Public Fishing Area, Kauai**

Justification – This HAR establishes areas for recreational fishing opportunities, provide for freshwater game fishing, and are stock enhanced to promote a quality recreational fishing experience. Freshwater fishing is very popular in all three locations. The rules are in place to enhance the experience. As such, its continuance is justified.

**27. HAR Title 13 Chapter 73 – Fish Aggregating Devices**

Justification – This HAR establishes protective measures for these devices, which are placed in the open sea to attract open water game fishes. Protection is needed to ensure maximum longevity (on site, on station) for these devices, as they are expensive to deploy. Fish Aggregating Devices are very popular with the boating public; as such, its continuance is justified.

**28. HAR Title 13 Chapter 74 – Licenses and Permits**

Justification – This HAR establishes the majority of licensing and permitting relative to fishing and fish products. Licenses and permits for commercial businesses are required to identify who is participating in the fishery, what resources are being taken, and enables the department to monitor the commercial take of marine resources to determine if regulations are needed to keep the resources sustainable. The continuance of the rule is justified.

**29. HAR Title 13 Chapter 75 – Use of Certain Fishing Gears**

Justification – This HAR establishes the majority of regulations relative to the use of fishing gears. Certain kinds of fishing gear have been determined to be not supportive of sound fishing practices. This rule prevents the use of those gears that are detrimental to the long-term economic and biological sustainability of the fishery. The continuance of the rule is justified.

**30. HAR Title 13 Chapter 83 – Shellfishes**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified shellfishes. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**31. HAR Title 13 Chapter 84 – Samoan Crab**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for Samoan crabs. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**32. HAR Title 13 Chapter 85 – Clam**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified clams. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**33. HAR Title 13 Chapter 89 – Spiny Lobster or Ula**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified spiny lobsters. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**34. HAR Title 13 Chapter 90 – Nehu for Family Consumption**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for a marine baitfish known as nehu. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**35. HAR Title 13 Chapter 92 – Opihi**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for marine mollusks known as opihi. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**36. HAR Title 13 Chapter 93 – Limu**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified marine plants. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**37. HAR Title 13 Chapter 94 – Bottomfish Management**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified marine bottom fishes. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**38. HAR Title 13 Chapter 95 – Regulated Species**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for certain aquatic life. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**39. HAR Title 13 Chapter 99 – Introduced Freshwater Fishes**

Justification – This HAR establishes protective measures such as minimum size for take, closed seasons, bag (or catch) limits for identified freshwater game fish species. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

**40. HAR Title 13 Chapter 100 – O'opu and Hinana**

Justification – This HAR establishes protective measures such as limits on the use of nets to take identified freshwater species. Protection measures ensure that species are conserved to be enjoyed by the public. The rules provide an overall enhancement of regulated fish populations as part of the public trust responsibility of government, and as such these protective measures' continuance is justified.

## Division of Forestry & Wildlife

### **41. HAR Title 13 Chapter 103 – Alakai Wilderness Preserve, Island of Kauai**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resourced and public uses are not damaged by unrestricted commercial activities.

### **42. HAR Title 13 Chapter 104 – Activities within Forest Reserves**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resourced and public uses are not damaged by unrestricted commercial activities.

### **43. HAR Title 13 Chapter 105 – Closed (restricted) Watersheds**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resourced and public uses are not damaged by unrestricted commercial activities.

### **44. HAR Title 13 Chapter 107 – Threatened and Endangered Plants**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resourced and public uses are not damaged by unrestricted commercial activities.

### **45. HAR Title 13 Chapter 121 – Hunting**

Justification – Authorizes the department to regulate public hunting, provides for penalties for violations, and authorizes the department to enter into agreements for the establishment and management of public shooting ranges. These rules are necessary to ensure appropriate management of, and public access to, game resources, and to ensure public safety related to hunting.

### **46. HAR Title 13 Chapter 122 – Game Bird Hunting, Field Trials and Commercial Shooting Preserves**

Justification – Permits are needed for shooting preserves on private lands. The major rationale for permits for commercial use is to ensure that natural resources and public uses are not damaged by unrestricted commercial activities.

### **47. HAR Title 13 Chapter 123 – Game Mammal Hunting**

Justification – Licenses are needed for hunting on public and private land. The major rationale for permits for commercial use is to ensure that natural resources and public uses are not damaged by unrestricted commercial activities.

### **48. HAR Title 13 Chapter 124 – Indigenous, Endangered, Threatened and Injurious Wildlife, and Introduced Wild Birds**

Justification – Permits are needed to transport or export Injurious Wild life. The major rationale for permits for commercial use is to ensure that natural resources and public uses are not damaged by unrestricted commercial activities.



Controlling transport of injured wildlife is to prevent the spread of invasive species.

**49. HAR Title 13 Chapter 126 – Rules Regulating Wildlife Sanctuaries**

Justification – Regulates access to and activities within wildlife sanctuaries for the purpose of ensuring appropriate management of wildlife and their habitats within wildlife sanctuaries. The rules provide for permits for commercial use of wildlife sanctuaries in certain cases.

**50. HAR Title 13 Chapter 130 – Trail and Access Program**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resources and public uses are not damaged by unrestricted commercial activities.

**51. HAR Title 13 Chapter 209 - Activities within Natural Area Reserves**

Justification – Permits are needed for commercial use. The major rationale for permits for commercial use is to ensure that natural resources and public uses are not damaged by unrestricted commercial activities.

## **Division of State Parks**

**52. HAR Title 13 Chapter 146 – Hawaii State Park System**

Justification – The purpose of this chapter is to govern the use and protection of the Historical and Natural Resources and ensure the safety of the park visitors in the State Parks. As the rules regulate uses and activities within the parks, businesses, which use or would like to use park resources, are affected by the park rules. Examples of these companies are outdoor recreation companies such as kayak and hiking tour companies, ocean recreation companies conducting scuba diving from park areas, tour companies and various vendors of food and souvenirs who want to conduct business in the parks.

## **Commission on Water Resource Management**

**53. HAR Title 13 Chapter 167 – Rules of Practice and Procedure for the Commission on Water Resource Management**

Justification – This rule is needed as it governs practice and procedure before the commission on Water Resource Management of the state under Chapter 91, HRS, the Constitution and Laws of the United States, and such other related acts as may now or hereinafter be administered by commission. These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

**54. HAR Title 13 Chapter 168 – Water Use, Wells, and Stream Diversion Works**

Justification – This rule is needed to carry out the intent of the State Water Code to assure maximum beneficial use of ground and surface waters of the state, by establishing rules for reporting and gathering meaningful data on all water uses

and sources. The rules in this chapter provide for the declaration and certification of all existing uses of surface and ground water; the registration of all existing wells and existing stream diversion works; the reporting of current uses of surface and ground water; the permitting of wells; the permitting of pump installations and repairs; and the permitting of stream diversion works.

**55. HAR Title 13 Chapter 169 – Protection of Instream Uses of Water**

Justification – This rule is necessary to provide for the establishment of a statewide program to protect, enhance and re-establish where practical, beneficial Instream Uses of Water, including the development and establishment of standards for instream flows and the creation of a permit system to regulate the alteration of stream channels.

**56. HAR Title 13 Chapter 170 – Hawaii Water Plan**

Justification – This rule is necessary as it provides for the establishment of the Hawaii Water Plan, which serves as the guide for developing and implementing a program of comprehensive water resource planning to address the problems of supply and conservation of water.

**57. HAR Title 13 Chapter 171 – Designation and Regulation of Water Management Area”**

Justification – This rule is necessary as it provides for the designation and regulation of hydrologic areas where water resources are being threatened by existing or proposed withdrawals or diversions of water, water quality problems, or serious disputes. It shall be the duty of the commission to designate areas for the purpose of establishing administrative control over withdrawals and diversions of ground and surface water in threatened areas to ensure the most beneficial use, development, or management of the water resources in the interest of the people of the state.

## **Engineering Division**

**58. HAR Title 13 Chapter 13 – Designation and Regulation of Geothermal Resources Subzones**

Justification – This chapter is to be repealed due to the repeal of the enabling statutes, HRS Chapter 205-5.1 to 5.3, by Act 97, SLH 2011.

**59. HAR Title 13 Chapter 183 – Rules on Leasing and Drilling of Geothermal Resources**

Justification – The purpose of this chapter is to establish guidelines and procedures for the leasing of geothermal resources on state or reserved lands and the regulation of all exploration and development activities of geothermal resources in Hawaii. This rule is necessary as it protects natural mineral resources and energy sources, and promotes development and utilization of these resources in a manner consistent with conservation and in furtherance of the self-sufficiency of the state. In addition, this rule was promulgated to protect

the public's health and safety in the development of geothermal resources. This rule does not directly affect small business.

**60. HAR Title 13 Chapter 185 – Rules of Practice and Procedure for Geothermal and Cable System Development Permitting**

Justification – The purpose of this chapter is to establish guidelines and procedures for consolidated Geothermal and Cable system Development Permitting to coordinate and streamline federal, state, and county land use, planning and environmental requirements. This rule is necessary as it protects natural mineral resources and energy sources, and promotes development and utilization of these resources in a manner consistent with conservation and in furtherance of the self-sufficiency of the state. In addition, this rule was promulgated to protect the public's health and safety. This rule does not directly affect small business.

**61. HAR Title 13 Chapter 190.1 - Dams and Reservoirs**

Justification – This rule replaces HAR Title 13, Chapter 190, "Dams and Reservoirs," due to the enactment of the Dam and Reservoir Safety Act of 2007. The purpose of this chapter is to establish rules and other requirements to govern the design, construction, operation, maintenance, enlargement, alteration, repair, and removal of regulated dams, reservoirs, and appurtenant works in the state. This rule was promulgated to protect the public's health and safety in the area of dam safety. This rule does not directly affect small business.

## **Land Division**

**62. HAR Title 13 Chapter 1 - Rules of Practice and Procedure**

Justification – This rule governs practice and procedure before the Land Board, including contested case hearings.

**63. HAR Title 13 Chapter 5 – Conservation District**

Justification – The purpose of this rule is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

**64. HAR Title 13 Chapter 219 – Fees**

Justification – This rule establishes Fees for processing of public documents and records. These fees are charged for private purposes and the rules are needed in order to recoup some of the costs associated with processing of documents.

**65. HAR Title 13 Chapter 220 – Public Auction**

Justification – This rule gives public notice of Public Auctions. The rule is needed to recover advertising costs.

**66. HAR Title 13 Chapter 221 – Unencumbered Public Lands**

Justification – This rule controls public activities and public land. The rule is needed to regulate and control activities on the Unencumbered Lands.

**67. HAR Title 13 Chapter 222 – Shoreline Certifications**

Justification – This rule standardizes the application for Shoreline Certifications. The rule is needed for guidelines and criteria by which they administer fair and consistent implementation of shoreline determinations.

**68. HAR Title 13 Chapter 223 – Urban Historic Preservation and Restoration**

Justification – This rule is necessary as it identifies historic property on public lands in urban areas to lease them under 171 – 36.2, HRS.

## **Historic Preservation Division**

**69. HAR Title 13 Chapter 197 – Hawaii Historic Places Review Board**

Justification – This rule is needed as it establishes practices and procedures for administering Hawaii Historic Places Review Board records and correspondence, adopting and amending the Board’s administrative rules, considering and issuing declaratory rulings and conducting contested case hearings.

The Hawaii Historic Places Review Board is a Governor-appointed board charged with determining which historic properties merit listing on the Hawaii Register of Historic Places. The Board is responsible for maintaining the Hawaii Register and participates in development of the state’s Historic Preservation Plan. Historic properties on the Register are eligible for certain tax incentive programs, and rehabilitation grants. Private owners must give the department 90 days notice of any actions that alter or destroy a registered property. The Hawaii state constitution and legislature have recognized the value of conserving and developing historic and cultural properties in Hawaii. Maintaining this register of historic properties is one means of fulfilling this mandate.

**70. HAR Title 13 Chapter 198 – Hawaii and National Register of Historic Places Programs**

Justification – This rule establishes procedures by which the Review Board determines whether historic properties merit placement on the Hawaii Register of Historic Places and should be recommended for the National Register.

The Hawaii Historic Places Review Board is a Governor-appointed board charged with determining which historic properties merit listing on the Hawaii Register of Historic Places and should be recommended for inclusion in the National Register of Historic Places. The board is responsible for maintaining the Hawaii Register and participates in development of the state’s exemptions, tax incentive programs, and rehabilitation grants. Private owners must give the department 90 days of notice of any actions that alter or destroy a registered property. The Hawaii State constitution and legislature have recognized the value of conserving and developing historic and cultural properties in Hawaii.

Maintaining this register of historic properties is one means of fulfilling this mandate.

#### **71. HAR Title 13 Chapter 300 – Rules of Practice and Procedure Relating to Burial Sites and Human Remains**

Justification – This rule governs the Practice and Procedures by which Burial Sites and Human Remains over 50 years old are treated. These rules support the Legislature’s finding that native Hawaiian and other burial sites are especially vulnerable to disturbance and are often not afforded the dignity or freedom from disturbance they warrant under the law.

The rules are needed as they establish procedures by which five Island burial Councils are organized and operate and by which they determine if previously identified Native Hawaiian Burials are preserved in place or are relocated. Also established are procedures by which the Department treats non-Hawaiian burial sites and all human remains discovered inadvertently in natural settings and within department contexts. Other issues include jurisdictional matters, recognition of lineal and cultural descendants, disclosure of records, amendment of rules, sale of human remains or burial goods and their removal from the State, and administrative appeals.

### **Division of Boating and Ocean Recreation**

#### **72. HAR Title 13 Chapter 230 – General Provisions**

Justification – This rule provides the definitions of terms used in subsequent chapters and sections. The rule is necessary because anyone reading the rules would need to know the definitions contained in the subsequent sections and chapters.

Section 13-230-21 – “Personal Partner”

Justification - Provides the definitions of terms used in subsequent chapters and sections.

#### **73. HAR Title 13 Chapter 231 – Operations of Boats, Small Boat Harbors, and Permits**

Justification – This rule provides the definition of commercial vessels. The bulk of rules that affect small businesses are contained within this chapter. The chapter provides rules on what type of activities are considered commercial, where the commercial vessels may be moored, how many commercial permits may be issued by harbor and small boat ramp, and the limits on the number of berths that commercial permittees may have. Additionally, this rule covers the sale and transferability of commercial as well as the right of the division to conduct audits of commercial permit holders.

Section 13-231-5 – Period of validity and Renewal of Use Permit

Justification – Describes the period of validity and terms of renewal of use permit

Section 13-231-28 – Staying aboard a vessel moored at Ala Wai or Keehi SBH  
Justification – Describes the terms and conditions of staying aboard a vessel at the Ala Wai or Keehi small boat harbor.

Section 13-231-29 – Vessel used as a Vacation Site  
Justification – Describes the terms and conditions of vessels used as a vacation site at the Ala Wai or Keehi small boat harbor.

Section 13-231-72 – Small Inter-island Passenger Vessel Permit  
Justification – Describes conditions in which inter-island passenger vessels may use DLNR harbors.

Section 13-232-43 – Construction or Improvements of Structures  
Justification – Describes what can generally be done without a lease for the boating facilities.

Section 13-233-29 – Eligibility for parking permits; fee per vehicle  
Justification – Describes the terms and conditions for parking permits at small boat harbors.

#### **74. HAR Title 13 Chapter 234 – Fees and Charges**

Justification – The rule provides the fee structure for commercial activities. This includes the fees for the use of small harbors and ramps and includes the fees assessed to cruise ship operators. Without these rules, the Department would not be able to generate fees for the program costs.

Section 13-234-1 – General Statement  
Justification – Describes what the fees go towards and why.

Section 13-234-3 – Mooring Rates  
Justification – Provides the fee structure for harbor activities; promotes ocean recreation and the fishing industry.

Section 13-234-4 – Mooring Rates for Offshore Mooring and Anchoring  
Justification – Provides the fee structure for harbor activities; promotes ocean recreation and the fishing industry.

Section 13-234-5 – Mooring Fees for Vessels Assigned Temporary Mooring or Occupying Moorings without Permission  
Justification – Provides the fee structure for harbor activities; promotes ocean recreation and the fishing industry.

Section 13-234-25 – Fees for Commercial Vessels using State Boating Facilities, Kaneohe Bay Ocean Waters, and Beach of the State  
Justification – Provides the fee structure for harbor activities; promotes ocean recreation and the fishing industry.

Section 13-234-34 – User fee for Recreational Use of State Boat Ramps  
Justification – Provides the fee structure for harbor activities; promotes ocean recreation and the fishing industry.

Section 13-240-5 – Definitions

Justification – Provides the definitions of terms used in subsequent chapters and sections.

Section 13-243.1 – Equipment Required by Vessels on State Waters

Justification – Describes safety equipment required on vessels.

**75. HAR Title 13 Chapter 244 – Rules of the Road, Local, and Special Rules**

Justification – This chapter defines Ocean Recreational Management Areas and its uses for the Waikiki, Kaanapali and Maunaloa Bay. This rule is necessary because it defines areas for specific use, and is used to maintain the health, safety and welfare of the public.

Section 13-245-9 – Diver’s Flag

Justification – Describes safety equipment required by divers.

Section 13-250-5 – Definitions

Justification – Provides the definitions of terms used in subsequent chapters and sections.

**76. HAR Title 13 Chapter 251 – Waikiki and Kaanapali Ocean Waters**

Justification – This chapter outlines specific rules for commercial operations in the Waikiki and Kaanapali Ocean Waters. These rules are necessary because it defines areas for specific use and is used to maintain the health, safety and welfare of the public.

**77. HAR Title 13 Chapter 255 – Waikiki Beach**

Justification – This chapter outlines specific rules for commercial operations in the Waikiki and Kaanapali Ocean Waters. These rules are necessary because it defines areas for specific use and is used to maintain the health, safety and welfare of the public.

**78. HAR Title 13 Chapter 256 – Ocean Recreation Management Rules**

Justification – This rule provides the definition of Ocean Recreation Management Rules within areas statewide, and specifies commercial activities that are permissible in each area. This rule is necessary because it defines areas for specific use and is used to maintain health, safety and welfare of the public.

Section 13-256 – Hanalei Bay and Kaneohe Bay Commercial

Justification – Describes the terms, conditions, and commercial use zones of Hanalei and Kaneohe Bay areas.

Section 13-256-16 – Thrill Craft Operations; General Provisions

Justification – Describes safe practices while on thrill craft

Section 13-256-18 – Commercial Thrill Craft Operations, Commercial High Speed Boating and Water Sledding Operations

Justification – Describes safety and riding zones for commercial thrill craft

Section 13-256-22 – Tow-in Surfing

Justification – Describes general conditions and safety requirements regarding tow-in surfing.

Section 13-256-23 – Oahu Tow-in Surfing Areas

Justification – Describes tow-in surf area and safety requirements.

Section 13-256-24 – Kauai Tow-in Surfing Areas

Justification – Describes tow-in surf area and safety requirements.

Section 13-256-25 – Maui Tow-in surfing Area

Justification – Describes tow-in surf area and safety requirements.

Section 13-256-33 – Priority and Procedures in the Issuance of Commercial Use Permits

Justification – Describes terms and conditions for the issuance of commercial use permits.

Section 13-256-36 – Repealed

Justification – Repealed the use of commercial vessels at the Hanalei and Anini Beach launch ramps per community opposition.

## ***Department of Taxation***

As of the date of the printing of this report, the Department of Taxation had not responded to the Review Board's request.

## ***Department of Transportation***

### **Administration Division**

#### **1. HAR Title 19 Chapter 1 - Practice and Procedure**

Justification - This chapter affects small businesses, private citizens and others. The chapter establishes rules of practice and procedure within the department and describes the policy, organization, office hours and public records of the department. It sets forth contested case procedures which include hearings, appearance before the department, filing of documents, docket, computation of time, amendment of documents and dismissal, retention of documents by the department, public information, decision, substitution of parties, consolidations,



and intervention. The chapter also has procedures for rulemaking. All state agencies are mandated by HRS chapter 91 to adopt, maintain and implement practice and procedure rules.

**2. HAR Title 19 Chapter 2 - Participation in the Federal Minority Business Enterprise Programs**

Justification - This chapter implements Title 49, Code Federal Regulations, Parts 23 and 26. It provides small businesses owned and controlled by minorities and women the opportunity to participate in the department's federally assisted transportation projects and in airport concessions. Failure to do this may result in the termination of the State's financial agreement with the U.S. Department of Transportation and may affect the State's ability to obtain future federal transportation grants.

**3. HAR Title 19 Chapter 6 - Service Charge for Delinquent Accounts at the Department of Transportation**

Justification - This chapter establishes and assesses a \$25 monthly service charge for delinquent accounts of small businesses and others as authorized by HRS sections 171-6(12), 261-12, 264-24 and 266-2. The continued implementation of this chapter is needed to ensure that the department complies with generally accepted accounting principles and standards.

## **Airports Division**

**4. HAR Title 19 Chapter 13 – Aircraft Operations at Public Airports**

Justification – This chapter governs the operation of aircraft at public airports. It applies to aircraft operators which include small businesses. The purpose of this chapter is to ensure safe and orderly aircraft operations at public airports. It includes provisions that cover aircraft operations restrictions; clearance of runways; aircraft maintenance; abandoned or unattended aircraft; removal of aircraft; aircraft accidents; starting, taxing and towing of aircraft; aircraft parking; enforcement; safety of airport tenants, aircraft operators and the general public.

**5. HAR Title 19-15.1 – Operation of Motor Vehicles at Public Airports**

Justification – This chapter requires tenants, contractors, small businesses and the general public who operate motor vehicles on airport property to comply with the provisions of this chapter. These provisions cover applicability statutes, traffic codes and county ordinances; licensing and safety inspection; traffic controls; speed limits; commercial vehicles and other vehicles for hire; parking; airport delivery or service vehicle parking; removal of vehicles on airport roadways; stationary vehicles; and restriction of vehicle operation in airport operational areas. This chapter is needed to ensure the safe, orderly and efficient flow of motor vehicle traffic on airport property.

**6. HAR Title 19-16.1 – Airport System Fees and Charges Applicable to Non-Signatory Carriers**

Justification – This chapter applies to non-signatory carriers, which include small businesses. Non-signatory carriers are those which operate an aircraft without a lease agreement with the department. They include scheduled interisland and overseas carriers, non-scheduled interisland carriers, air tour operators, flight schools and recreational flyers. On the other hand, signatory carriers are entities which have a valid and binding lease agreement with the department. This agreement requires the signatory carriers to underwrite the operating expenses of the airport system in the event of a shortfall. The signatory carriers are primarily the major scheduled passenger and cargo air carriers. In any case, this chapter applies only to non-signatory air carriers. The fees and charges imposed by this chapter are required to cover operating and maintenance costs of all state airports. They are also used to pay fund airport capital improvement projects.

**7. HAR Title 19 Chapter 20.1 - Commercial Services at Public Airports**

Justification - This chapter requires businesses to obtain a permit and pay fees for the privilege of conducting the following types of commercial activities at public airports: aircraft ground handling; baggage pickup and delivery; commercial photography; greeting services for hire; in-flight catering; merchandise delivery; port services; and prearranged ground transportation as authorized by HRS section 261-12. The Airports Division does not receive general funds. It is required by law to operate and maintain the statewide airports system as a self-sufficient enterprise. The division relies on user fees from businesses to help pay for the operation and maintenance of public airports. All businesses that use airport facilities are expected to contribute their fair share to ensure that the statewide airport system is self-sustaining and is efficiently operated and maintained.

**8. HAR Title 19 Chapter 33 - Control of Hazardous Materials & Waste at Public Airports**

Justification - This chapter implements the requirements of Title 49, Code of Federal Regulations Chapter 1 relating to hazardous materials safety at public airports. Everyone, include small businesses, are required to meet the requirements of this chapter in order to comply with federal regulations. Failure to do so may result in a penalty. This chapter and chapter 19-37 impact small businesses which are fixed-base operators (FBO). An FBO is a commercial business which is granted the right by the airport to operate on the airport and to provide aeronautical services such as fueling, repair and maintenance of aircraft, air taxi and charter operations, rental of aircraft, etc. This chapter is needed to protect the health and safety of airport tenants, contractors and the general public. It is also needed to protect the environment.

**9. HAR Title 19 Chapter 34 - Tour Aircraft Operations at Public Airports**

Justification - This chapter implements HRS section 261-12(b). "Tour aircraft operations" means any business operation which offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other

manmade or natural sites within an island of the State, and for the purpose of transporting passengers for tourist-related activities. No tour aircraft operation is permitted at any airport under the State's control without having a permit. This chapter is required to ensure safety, noise control and compliance with FAA regulations and state laws.

**10. HAR Title 19 Chapter 37 - Fuel Handling Procedures at Public Airports**

Justification - The purpose of this chapter is to ensure safe and orderly aircraft fueling operating at public airports. Businesses are required to meet the requirements of this chapter to ensure compliance with applicable federal regulations, national fire codes and industry standards which govern fuel handling at public airports. This chapter is needed to protect the safety of tenants, contractors and the general public.

**11. HAR Title 19 Chapter 38.1 - On-Demand Taxi Service at Public Airports**

Justification - The purpose of this chapter is to regulate the open-access taxi system at public airports and to ensure orderly and reliable taxi service for the travelling public. Applicable taxi operators are required to obtain a permit and pay a fee authorized by HRS section 261-7. The permit is needed to regulate taxi operations at public airports and the fee is needed to help pay for the operation and maintenance of public airports statewide. This permit and fee are required only airports without a taxi concessionaire.

## **Harbors Division**

**12. HAR Title 19 Chapter 41 – Rules Relating to General Provision**

Justification – This chapter governs the state commercial harbors under the jurisdiction of the department. All private installations or construction within commercial harbor boundaries of the State shall also be under the jurisdiction of the State. It applies to all vessels, their owners and agents, and other users (including small businesses) of commercial waterways and facilities under the jurisdiction of the department. The provisions in this chapter covers the scope of the rules; definitions of applicable terms; delegation of authority; implied agreement between the department and harbor users; required reports; liability; standards for vessels, personal property and harbor facilities; storage restrictions and prohibitions; special area to be used only for specific purposes or operations; requests and complaints; and enforcement and penalties.

**13. HAR Title 19 Chapter 42 – Vessels and Harbor Controls**

Justification – This chapter applies to anyone, including small businesses, who engage in activities within commercial harbors. It establishes the authority of the Harbor Master and governs activities involving vessels and harbor facilities. The provisions in this chapter cover the movement, mooring and maintenance of small craft and smaller commercial vessels; navigation within state waterways and applicability of laws and rules; safety, cleanliness and use of facilities; welding and burning operations of piers and wharves and aboard vessels;

dredging, filing and construction; installation of buoys; and construction of structures. This chapter is needed to ensure the safe, orderly and efficient operation and maintenance of commercial harbors.

#### **14. HAR Title 19 Chapter 43 - Motor Vehicles**

Justification - This chapter applies to harbor users including small businesses. It authorizes the collection of parking fees and charges, towing and impounding of vehicles, and it issues permits for operating vehicles. This chapter governs the operation of motor vehicles on commercial harbor property. The provisions in this chapter cover the applicability of statutes, traffic codes and ordinances; jurisdiction of harbor master over vehicles; licensing, safety inspection and insurance; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operations of parking meters; reserved parking zone; parking time limits; parking by permits; and violations. This chapter is needed to ensure the safe, lawful and orderly flow of vehicle traffic on commercial harbor property.

#### **15. HAR Title 19 Chapter 44 – Rules Relating to Services and Procedures, Tolls and Fees**

Justification – This chapter primarily impacts major cargo and passenger carriers such as Matson, Horizon, Young Brothers, etc. Small businesses are also impacted but to a substantially lesser degree. The rules in this chapter establish and assess fees for utilities, mooring and unmooring of vessels, delinquent payments, labor and equipment charges, berthing schedule changes, damage to state property, key deposit, dishonored check services charge, refrigerated shipping device surcharge, dockage, small craft vessels, rental office and storage, rental of parking stalls, wharfage, free time and penalty, and port entry. The Harbors Division does not receive State general funds. It is required by law to operate the Commercial Harbors System as a self-sustaining enterprise. As a result, it must impose and collect fees to cover operating and maintenance costs. The fees also cover the cost of capital improvement projects. Over recent years the costs of operating, maintaining and improving the commercial harbors have increased substantially. Aging harbor facilities are in need of upgrades. Congestion and limited cargo handling space are common place and have highlighted the need.

Several years ago, Harbors Division worked with the Hawaii Harbors User Group (a non-profit maritime transportation group) to develop a system-wide Harbors Modernization Plan (HMP) to modernize and expand Hawaii's commercial

harbors system. With the Harbors User Group's critical support, the HMP was passed by the state Legislature and signed into law as Act 200 in June 2008.

The Harbors Division subsequently proposed to increase the fees in this chapter to implement the HMP. As part of our small business consultation, we sent a letter to 360 harbor users explaining the proposed fee increases and soliciting comments from them. We thereupon prepared a small business impact statement and submitted it to the Small Business Regulatory Review Board (SBRRB). Public hearings on the proposed fee increase were held statewide in December 2009. After the public hearings, a small business statement after public hearing was submitted to the SBRRB. The Governor subsequently approved the final rules in January 2010. The fee increases went into effect on February 9, 2010.

The increased fees were necessary to provide revenues to cover current operating and maintenance expenses as well as the longer term HMP projects. The goals of the HMP are to provide a harbor system that addresses critically needed improvements and promotes user operational efficiencies; provide a harbor system with expanded capacity to accommodate Hawaii's projected growth in cargo volume; and ensure Hawaii's continue economic growth through improved harbor infrastructure.

## **Highways Division**

### **16. HAR Title 19 Chapter 101 - Movement of Overweight Vehicles Along and Upon Hana Highway (FAS 360) Between Kailua Village and Hana**

Justification – The purpose of this chapter is to promote the safety of persons and the protection of property, the furtherance of safe travel along the Hana Highway, and the general welfare of the residents of Hana. It imposes weight limitations and requires a special permit to move vehicles along and upon the section of Hana Highway between Kailua Village and Hana.

This chapter is needed to extend the useful life the highway and its structures. The failure of any of the structures would sever the vital land link between Hana and the rest of Maui for the transport of food, gasoline and other necessary goods, causing irreparable harm to the residents of Hana.

### **17. HAR Title 19 Chapter 102 - Fee Schedule for the Issuance of a Permit to Work on State Highways**

Justification – The purpose of this chapter is to establish a fee schedule for permits that authorize the performance of work on state highways. In the event the work under the permit requires inspection services outside of normal working hours of the department, the permittee must reimburse the department for any additional cost incurred for these services. The director may waive the fee payable by any governmental agency where the work provides for the safety of

pedestrians and the improvement of the high facility. This chapter is needed to defray the costs incurred in the permitting process.

**18. HAR Title 19 Chapter 104 - The Movement by Permit of Oversize and Overweight Vehicles**

Justification – The purpose of this chapter is to protect highways from damage caused by overweight and oversized vehicles. To accomplish this purpose, the chapter establishes the policies and procedures of the department for the issuance of permits for the movement of oversize or overweight vehicles or loads on state highways and sets forth the general and special conditions for issuance of permits for such movements. This chapter is needed to protect the general public from traffic hazards created by movement of such vehicles; to give due regard to the comfort and convenience of other motorists on the highway and to guard against undue hindrance to the normal flow of traffic; and to prevent damage to pavement, highway facilities and structures.

**19. HAR Title 19 Chapter 105 - Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways**

Justification – This chapter affects small businesses that perform utility work as subcontractors. The chapter prescribes policies and procedures for accommodating and installing utility facilities on the rights-of-way of state highways and federal-aid county highways; regulates the location, design and methods for the accommodation and installation of utility facilities on state highways and federal-aid county highways in the interest of safety and of protection, utilization and future development of the highways with due consideration given to public service afforded by adequate and economical utility installations; and establishes the conditions governing the occupancy, use or reservation of utility facilities all to the end that the highway facilities shall be preserved.

This chapter is needed for the following reasons: the department recognizes the utility's franchise to occupy the rights-of-way of state highways in providing essential services and commodities to the public. Therefore, utility facilities may be accommodated in the state highway rights-of-way provided that the use and occupancy do not interfere with the free and safe flow of traffic or otherwise impair the highway or its visual quality and do not conflict with federal, state or local laws and regulations.

**20. HAR Title 19 Chapter 121 - Traffic Records**

Justification – The purpose of this chapter is to establish and implement a traffic records system. This system is necessary to ensure that appropriate data on traffic accidents, drivers, and motor vehicles are available to provide a reliable indication of the magnitude and nature of the highway traffic accident problem; and a reliable means for identifying short-term changes and long-term trends in the magnitude and nature of traffic accidents. It is also necessary to provide a valid basis for the detection of high or potentially high accident locations and

causes; the design of accident, fatality and injury countermeasures; the development of means for evaluating the cost effectiveness of these measures; and the planning and implementation of selected enforcement and other operational programs.

**21. HAR Title 19 Chapter 123 – Statewide Motorcycle, Moped and Motor Scooter Education Courses and Licensing Skill Test Waiver**

Justification – The purpose of this chapter is to establish statewide motorcycle, moped and motorcycle, moped and motor scooter education courses for persons seeking to comply with HRS sections 286-108, 286-107 and 431:10G-104. All rider education rider instructors are required to be certified by the department and meet the pertinent requirements set forth in this chapter. This chapter is needed to protect the safety of motorcycle, moped and motor scooter operators.

**22. HAR Title 19 Chapter 124 - Protection Devices for Motorcycle and Motor Scooter Operators and Passengers**

Justification – The operation of this motorcycles and motor scooters has resulted in high incidence of disabling personal injuries and deaths. The effects of these injuries and deaths extend beyond the person injured or killed and the person's family. They affect the health and welfare of the people of the State in general. These disabling personal injuries and deaths have an economic impact on the people of the State to the extent that they may result in a requirement for the furnishing of medical rehabilitative or welfare aid or assistance. The prevention or reduction in the severity of injuries resulting from the most common types of motorcycle accidents by the use of protective helmets and goggles, safety glasses, face shield or other eye and face protection devices is deemed to be in the public interest.

**23. HAR Title 19 Chapter 128 - Design, Placement, and Maintenance of Traffic Control Devices**

Justification – The proper design, installation, placement and coordination of traffic control devices on public streets and highways can contribute substantially not only to the efficient movement of traffic, but also to the development of a safer environment on streets and highways. These rules are designed to insure the application of sound traffic engineering practices and, as far as it is practicable, uniform standards in the development and installation of a coordinated system of traffic control devices in the State. These rules are also designed to provide for continuing programs for the maintenance of traffic control devices, the study of their effectiveness, and the improvement of their design, placement and use.

**24. HAR Title 19 Chapter 129 - Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways**

Justification – This chapter governs the construction, maintenance, engineering survey and any other work being conducted on adjacent to, above, below or near streets and highways that may temporarily obstruct any portion of the roadway,

constitute major hazards to motorists and pedestrians as well as to workmen at the site. It requires that traffic control devices be used by all persons who perform construction, maintenance, engineering survey, or any other work on, adjacent to, above, below or near any street or highway in the State. This chapter is needed to protect the safety of department employees, contractors and the general public.

**25. HAR Title 19 Chapter 132 – Approval and Revocation of Approval for the Display, Sale and Use of Vehicle Equipment**

Justification – This chapter affects automobile parts stores, which are typically small businesses, because they restrict items that can be sold for use on motor vehicles. Although the restrictions eliminate potential profit that could be derived from the sale of unapproved equipment items, the restrictions also eliminate potential for crashes caused by the use of unsafe equipment is certified as being safe for use on motor vehicles that are used on public roads. There are over a million motor vehicles in Hawaii. All these vehicles need to be repaired at one time or another. When equipment items are replaced, it is important that the replacement items have the same safety characteristics as the original items.

**26. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles**

Justification – This chapter affects small businesses because the inspection stations are typically gas stations or motor vehicle repair shops. Part of the inspection fee is income for the inspection. There are over 900,000 motor vehicles and over 20,500 motorcycles in the State. This chapter needs to be continued because it governs the Periodic Motor Vehicle Inspection process. The purpose of the mandatory inspection program is to ensure that motor vehicles are maintained in reasonable safe operating conditions. This will lessen the probability of a crash being caused by mechanical failure.

The rules in this chapter inform inspectors how to inspect vehicles and provide criteria for passing or failing a vehicle; guide inspectors through the inspection process or provide documentation should the inspector be questioned regarding the criteria used during the inspection; and assist motor vehicle owners who bring their vehicles to stations for inspections by allowing them to know what to expect and how to prepare for the inspection. In the event of a disagreement regarding how an item was inspected, both the inspector and vehicle owner can refer to the rules and settle the disagreement. The chapter also establishes penalties and criteria for determining various penalties.

Thirty-four sections in this chapter were amended in May 2011. The amended sections covered inspection and certification of vehicles; administration and enforcement procedures; types of inspection station permits; issuance of inspection station permits; inspection station permit form; application for inspector certification; issuance of inspector certificates; inspector certificate form; inspection station operating procedures; inspection records; supervision of inspection stations; enforcement provisions; operating procedures for inspectors;



application for inspection certification; inspection fees; failure to qualify for certification and correction of effects; issuance of certificates of inspection and affixing of inspection stickers; replacement of lost, stolen or destroyed stickers; validity period of stickers for new vehicles; items to be inspected, inspection of vehicle registration, license plate, vehicle identification number of proof of insurance; inspection of steering and suspension systems; inspection of steering and suspension systems, wheels drive train, brakes, lamps and reflectors, horns, glazing materials, body and interior components, exhaust system, intake and fuel system, and speedometer-odometer; standards and criteria; and specific inspection procedures and standards for neighborhood electric vehicles. In short, this chapter is needed to protect the safety of the public by ensuring motor vehicles are maintained in a safe operating condition.

#### **27. HAR Title 19 Chapter 133.5 – Suspension or Revocation of an Official Inspection Station or Inspectors Certification**

Justification – This chapter affects small businesses because most inspection stations are gas stations, motor vehicle repair shops or motor vehicle sales dealers. Since conducting inspections can significantly increase income for a station, a suspension or revocation of this chapter may have a negative financial impact of small businesses.

This chapter needs to be continued because it establishes penalties for inspectors and inspection stations that conduct inappropriate inspections. The threat of a penalty ensures that inspections are performed properly. Proper inspections will improve highway safety by reducing the probability of a crash being caused by mechanical failure.

This chapter implements Chapter 19-133.2, which controls the Periodic Motor Vehicle Inspection process; it informs inspectors how to inspect vehicles and provides inspection criteria to guide inspectors through the inspection process; it also provides documentation should he or she be questioned regarding the criteria used during the inspection. The chapter assists motor vehicle owners to stations for inspections by enabling them to know what to expect and to prepare for the inspection. In the event of a disagreement regarding how an item was inspected, both the inspector and the vehicle owner can refer to the rules and settle the disagreement. Finally, the chapter establishes penalties and criteria used to determine which penalty to impose for inappropriate inspections or associated activities.

#### **28. HAR Title 19 Chapter 135 - Periodic Safety Inspection of Mopeds**

Justification - This chapter affects small businesses because many private inspection stations which conduct the inspections for a fee are moped dealers or gas stations. The inspection stations keep most of the inspection fees which provide a sizeable income for them since there are more than 15,000 mopeds registered in the State. The continued implementation of this chapter is required to ensure the safety of moped operators and the general public.

### **29. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations**

Justification – This chapter affects small businesses which operate commercial motor vehicles on state highways. The purpose of this chapter is to ensure that the State complies with the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-399). This chapter is needed to reduce commercial vehicle accidents; decrease fatalities, injuries and property losses; and reduce casualties and economic loss.

### **30. HAR Title 19 Chapter 143 - Pupil Transportation Safety**

Justification – This chapter affects small businesses which operate school buses. The purpose of this chapter is to ensure safe transportation of students by setting safety requirements relating to school bus equipment, design, construction and identification, driver training and qualifications, operations, loading and unloading, and maintenance and inspection. This chapter is needed to protect the safety of students who are passengers in school buses.

### **31. HAR Title 19 Chapter 145 – Hazardous Materials Regulations**

Justification – This chapter affects small businesses which operate motor vehicles to transport a hazardous waste or hazardous substance, or a flammable liquid in bulk on state highways. The purpose of this chapter is to ensure that the State complies with the Federal Hazardous Materials Regulations (49 CFR Parts 107, 171-173, 177, 178, and 180). The continued implementation of this chapter is needed to protect life, property and the environment; to ensure compliance with federal regulations; and to remain eligible for federal funds administered by the Federal Motor Carrier Safety Administration.

## ***University of Hawaii***

### **1. HAR Title 20 Chapter 15 - Agricultural Diagnostic Services User Fees**

Justification – The agriculture diagnostic services fees include fees for services including tissue analysis, soil nutrient availability analysis, water sample analysis, feed and forage analysis, pesticide residue analysis, agricultural pest and pathogen analysis, among other services. These services were at one time and continue to be requested by farmers, ranchers, homeowners and the general public. The fees charged are to recover the University's expenses in performing such services – salaries for full-time employees, student helpers, and operations including the maintenance of equipment as well as the purchase of new equipment.

The University is prohibited from competing against the private sector. The rules may affect commercial diagnostic services. The known commercial diagnostic service lab owned by C. Brewer was sold in 2002 and is now operated as FQLabs. Its focus is (per FQLabs website) “comprehensive microbiological and chemical testing of food, drinking water, wastewater, sludge and soil” primarily for regulatory, environmental and food quality purposes which is different from the needs of the community/general public. As a result, there continues to be a

demand for such services from the community and no one aside from the University can meet that need.

Public Purpose - The Agricultural Diagnostic Service Center (ADSC) is a service oriented unit in the College of Tropical Agriculture and Human Resources at the University of Hawaii at Manoa. ADSC was formally established in 1984 through the consolidation of five separate on-going programs in CTAHR into one centrally located unit. This consolidation enabled CTAHR to more effectively respond to problems experienced by commercial growers and homeowners in Hawaii.

The ADSC provides analytical and diagnostic services and recommendations to the entire agricultural community in the State of Hawaii. ADSC's clientele include CTAHR researchers and students, cooperative extension specialist and agents, private research organizations (HARC, Oceanic Institute, etc.), other government agencies, commercial producers and the general public. If ADSC did not exist, many separate laboratories would need to be created and equipped with expensive equipment and competent laboratory technicians to do the same type of work. The high cost to equip and operate a laboratory is probative, and most CTAHR researchers, students, cooperative extension specialists and agents, and other ADSC clientele would need to have most of their analytical and diagnostic work done on the mainland.

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