



**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 2008

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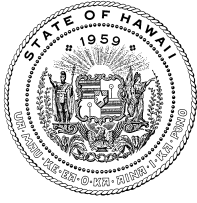
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MESSAGE FROM THE DIRECTOR



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

Theodore E. Liu
Director



MESSAGE FROM THE CHAIRPERSON



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The Small Business Regulatory Review Board began the rule review process in 2003 with fourteen State agencies providing this Board with 345 rules that impact small business. After a 2005 modification of the rule submittals, eleven agencies provided our Board with 237 rules. Upon review of each of the 237 rules submitted, the Board recommended that Agencies perform full analyses on 49 of the total submitted. Only the Public Utilities Commission refused to conduct a review after receiving our request.

This report entails the final review of the original 345 rules outlining the Agencies' justifications, actions, if any, and the Review Board's final commentary. The members are deeply appreciative of the hours spent by so many Directors and their staff reviewing this Board's recommendations. Their cooperation is making a difference to businesses buried in regulations.

To say that our Board members are dedicated to the cause of reducing business impacts is to state the obvious. Over this past year our members designed and implemented a Regulatory Alert program in order to avail members of business and industry specific organizations to the rule-making process during the drafting and reviewing phase, a further step towards the goal of making Hawaii a business friendly State.

It is truly an honor for me to work with all of our dedicated Board members, and with Dori Palcovich the State Business Advocate. Their hard work and dedication have made our efforts so very successful. I would also like extend a special Mahalo to DBEDT Director Ted Liu for his unwavering support of our Board's work over the years.

Chairperson
December 2008

OVERVIEW

Members of the Small Business Regulatory Review Board (Review Board) are pleased to provide a review and commentary on specific administrative rules, pursuant to the Regulatory Flexibility Act (RFA), Chapter 201M-7, HRS, 2002, for the year 2008.

[201M-7] Periodic review; evaluation.

- (a) Each Agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The Agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.
- (b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.
- (c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and

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

ADMINISTRATIVE RULE REVIEW

This Administrative Rule Review Report consists of 49 existing rules reviewed by the Review Board with final commentary. The analysis began with the Review Board's first report in 2003, where fourteen State agencies provided a total of 345 rules that affect small business. Agencies provided the specific purpose for adopting the rule and justification for the rule's continued implementation. Additionally, four agencies submitted a total of 67 rules that received the most complaints or resulted in the most citations.

In its 2005 report, the Review Board requested a modified version of the 2003 rule submittals. In accordance with the law and within its discretion, the Review Board requested a re-analysis of the rules that it determined had significant business impact. In particular, the Review Board required the specific purpose and reasons for justifying the rules' continued implementation. Subsequently, 11 agencies provided 237 rules that effect small business.

In its 2006 report, upon reassessing the agencies justifications, the Review Board recommended full analyses of 49 of the 237 administrative rules. This report, as a result, outlines the Agencies' justifications, actions and responses along with the Review Board's final commentary.

To date, the Review Board has not found it necessary to solicit testimony from the public regarding any report submitted by the Agency at public hearing.

RULES REVIEWED MATRIX

Agency	# of Rules Reviewed	# of Rules Recommended for Full Analysis
1. DEPARTMENT OF AGRICULTURE	29	6
2. DEPARTMENT OF BUDGET AND FINANCE		
FINANCIAL ADMINISTRATION DIVISION	7	0
PUBLIC UTILITIES COMMISSION	10	3
3. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	3	0
4. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	45	13
5. DEPARTMENT OF EDUCATION	1	0
6. DEPARTMENT OF HEALTH		
MEDICAL DIVISION	7	6
ENVIRONMENTAL DIVISION	30	3
7. DEPARTMENT OF HUMAN SERVICES	9	5
8. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	20	3
9. DEPARTMENT OF LAND AND NATURAL RESOURCES	54	4
10. DEPARTMENT OF TRANSPORTATION	21	6
11. UNIVERSITY OF HAWAII	1	0
Total	237	49

SUMMARY OF ADMINISTRATIVE RULES REVIEWED

Listed below are 49 administrative rules reviewed by the Review Board for the period of December 2006 through December 2008.

[Department of Agriculture](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 4-86, "Brake Fluids, Coolants, Petroleum Products, and After-Market Additives"
2. Chapter 4-93, "Packaging and Labeling"
3. Chapter 4-101, "Weighing and Measuring Devices"

Rules under Current Review by Agency which Review Board is in Agreement

1. Chapter 4-72, "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules"
2. Chapter 4-73, "Plant and Non-domestic Animal Quarantine Plant Export Rules"
3. Chapter 4-96, "Schedule and Fees for Licensing Devices Susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification"

Additional rules not part of the Initial 201M-7 Rule Review submitted by the Department of Agriculture

1. Chapter 4-16, "Cattle, Sheep and Goats"
2. Chapter 4-29, "Dogs, Cats and Other Carnivores"
3. Chapter 4-69-A, "Pests for Control or Eradication"
4. Chapter 4-70, "Plant and Non-Domestic Animal Quarantine Plant Import Rules"
5. Chapter 4-71A – "Plant and Non-Domestic Animal Quarantine Microorganism Import Rules"
6. Chapter 4-87, "Voluntary Registration of Service Persons or Service Agents"
7. Chapter 4-139, "Commodities Inspection Fees Rules"
8. Chapter 4-158, "Non-Agricultural Park Lands Program Rules"
9. Chapter 4-17, "Swine"
10. Chapter 4-20, "Non-domestic Animals"
11. Chapter 4-23, "Horses"

[Department of Budget and Finance](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers"
2. Chapter 6-63, "Motor Carrier Tariffs and Schedules"
3. Chapter 6-65, "Water Carriers"

[Department of Commerce and Consumer Affairs](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 16-51, "Fees"
2. Chapter 16-73, "Barbers"
3. Chapter 16-74, "Boxing"
4. Chapter 16-75, "Cemeteries and Funeral Trusts"
5. Chapter 16-83, "Hearing Aid Dealers and Fitters"
6. Chapter 16-84, "Massage Therapy"
7. Chapter 16-86, "Motor Vehicle Dealers and Salesmen"
8. Chapter 16-87, "Motor Vehicle Repair Dealers and Mechanics"
9. Chapter 16-88, "Naturopaths"
10. Chapter 16-101, "Veterinarians"
11. Chapter 16-106, "Timesharing"
12. Chapter 16-116, "Travel Agencies"
13. Chapter 16-117, "Activity Providers and Activity Desks"

[Department of Health](#)

[Medical Division](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 11-89, "Services for Developmental Disabilities Domiciliary Homes"
2. Chapter 11-95, "Freestanding Surgical Outpatient Facility"
3. Chapter 11-96, "Freestanding Adult Day Health Centers"
4. Chapter 11-97, "Home Health Agencies"
5. Chapter 11-99, "Intermediate Care Facilities for Mentally Retarded"
6. Chapter 11-156, "Communicable Diseases"

[Environmental Division](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 11-39, "Air Conditional & Ventilating"
2. Chapter 11-44, "Radiologic Technology Board and Radiologic Technology Rules"
3. Chapter 11-45, "Radiation Control"

[Department of Human Services](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 17-402, "Services to the Blind and Visually Handicapped"
2. Chapter 17-893, "Licensing of Child-Placing Organizations"
3. Chapter 17-894, "Licensing of Child-Caring Institutions"
4. Chapter 17-896, "Licensing of Before and After School Child Care Facilities"
5. Chapter 17-1417, "Adult Day Care Services"

[Department of Labor and Industrial Relations](#)

Rules Recommended by Review Board for Full Analysis

1. Chapter 12-12, "Prepaid Health Care"

Rules Recommended by Review Board for Full Analysis only if Necessary

1. Chapter 12-11, "Temporary Disability Insurance"
2. Chapter 12-41, "Hawaii Labor Relations Board (Employment)"

Department of Land and Natural Resources

Rules Recommended by Review Board for Full Analysis

1. Chapter 13-5, "Conservation District"
2. Chapter 13-167, "Rules of Practice and Procedure for the Commission on Water Resource Management"
3. Chapter 13-209, "Activities within Natural Area Reserves"

Rules Recommended by Review Board for Full Analysis Only if Necessary

4. Chapter 13-234, "Fees and Charges"

Department of Transportation

Rules Recommended by Review Board for Full Analysis

1. Chapter 19-43, "Motor Vehicles"
2. Chapter 19-105, "Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways"
3. Chapter 19-128, "Design, Placement, and Maintenance of Traffic Control Devices"

Rules Recommended by Review Board for Full Analysis only if Necessary (Fee increases, Changes to Federal Regulations)

4. Chapter 19-121, "Traffic Records"
5. Chapter 19-135, "Periodic Safety Inspection of Mopeds"
6. Chapter 19-143, "Pupil Transportation Safety"

AGENCY JUSTIFICATIONS AND FINAL COMMENTARY OF REVIEW BOARD

Department of Agriculture

1. Chapter 4-86 – “Brake Fluids, Coolants, Petroleum Products, and After-Market Additives”

Agency’s Justification

This rule ensures that commodities such as brake fluid, engine coolant, petroleum products, gasoline, and other additives meet specific physical requirements and are delivered through devices that can be checked and made to measure accurately. The rules were established in 1971 and amended in 1981.

Review Board’s 2006 Recommendation

These rules were last amended 25 years ago. Rules need re-analysis and updating due to the introduction of new types of additives since last amendment.

Response from Agency to Review Board’s Recommendation

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch in the Quality Assurance Division on February 8, 2008, indicated that these rules are a work-in-process. The Branch is considering either amending the existing rules or repealing the rules and adopting a brand new chapter with amendments. A follow-up conversation with Mr. Pierpont has revealed that the Branch is expecting to provide the Review Board with a draft by March 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

2. Chapter 4-93 – “Packaging and Labeling”

Agency’s Justification

This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture’s logo, “Island Fresh.” The rules were established in 1981 and amended in 1995.

Review Board’s 2006 Recommendation

Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency to Review Board’s Justification

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board’s comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo “Island Fresh” is completely different than “Hawaiian-made” and “Hawaiian-grown” therefore; no future plans to amend the rules are expected.

Final Commentary of Review Board

The Review Board is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the Review Board by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

3. Chapter 4-101 – “Weighing and Measuring Devices”

Agency's Justification

This rule establishes the requirements for the specification and tolerance of commercial weighing and measuring devices, taximeters, wheel-load weighers, portable axle-load weighers, and axle-load scales. The rules were established in 1981 and amended in 1993.

Review Board's 2006 Justification

Recent discussions with the taxi industry have brought forth numerous concerns including the establishment of clearly defined processes and procedures for the approval and implementation of rate changes, inspection and standards of taximeters, and an effective manner of calculating weights and measures. Rules need re-analysis and updating.

Response from Agency to Review Board's Justification

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008, indicated there are no future plans to amend the rules. The issues brought forth by the taxi industry pertained to setting rates, determining placement of rate cards, and concerns with the sealing device. These concerns were subsequently acknowledged and remediated by the Branch.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency; no further analysis is required at this point in time.

4. Chapter 4-72 – “Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules”

Agency's Justification

This rule restricts and/or prohibits the inter-island transportation of plant pests and their plant or commodity hosts to prevent the spread and establishment of plant pests detrimental to agriculture, horticultural industries and forest lands on un-infested islands of the State. Agriculture is an important economic industry to the State of Hawaii. From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, Hawaii's agricultural industries have greatly expanded. As such, Hawaii's agricultural industries now include the culture of various aquatic ornamental and food species.

As a result of the expansion, there has been an increased need to regulate the inter-island transportation of plant pests and their plant or commodity hosts for the protection of Hawaii's agriculture, natural resources and environment. Presently, this administrative rule prohibits or restricts certain pests and their plant or commodity hosts from being transported inter-island. This requires inspection of all propagated plants and

propagated plant parts by the Plant Quarantine Branch prior to being transported between the islands of the State; plants not inspected are prohibited.

Without this administrative rule in place, the introduction of harmful invasive species may occur rapidly and directly affect the agricultural, horticultural and aqua-cultural industries by impacting important economic crops on un-infested islands of the State. As a consequence of the additional entry of invasive species on un-infested islands of the State, its natural resources and environment would be adversely affected by these unwanted introductions, which may further endanger the indigenous and endemic flora and fauna that are unique to the State of Hawaii. The rules were established in 1991 and amended in 1998.

Review Board's 2006 Recommendation

Rule amendments were submitted to this Board in 2006; however, the Branch pulled the rules back for further analysis and amendments.

Response from Agency to Review Board's Recommendation

This rule provides an amendment to restrict the movement of propagative plant materials that may harbor or be infested with the coqui frog. The amendment addresses the need to prevent the further spread of coqui frogs within the island of Hawaii and to other islands in the State. The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing date projected for June 2009, as the rules have been stalled due to some concerns with the language of the draft rules.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

5. Chapter 4-73 – “Plant and Non-Domestic Animal Quarantine Plant Export Rules”

Agency's Justifications

This rule provides for export plant and plant products inspectional and dis-infestation treatment services that meet the requirements of the state or country of destination. Agriculture is an important economic industry to the State of Hawaii. From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

As a result of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country. To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule. Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

Review Board's 2006 Recommendation

Rule amendments were submitted to the Review Board in 2006; however the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the Review Board is in agreement the rule should be reviewed and revised.

Response from Agency to Review Board's Recommendation

This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries. The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

6. Chapter 4-96 – “Schedule and Fees for Licensing Devices Susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification”

Agency's Justification

This rule ensures that all commercial devices used to weigh and measure consumer commodities in the State meet the National Type Evaluation Protocol. This ensures equity in the marketplace and a good business environment. The rules were established in 1981.

Review Board's 2006 Recommendation

The rules are 25 years old; the rules need a full analysis.

Response from Agency to Review Board's Recommendation

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch in the Quality Assurance Division on February 8, 2008, indicated that the rules were in the process of being amended.

Final Commentary of Review Board

The amended rule proposal and impact statement were provided to the Review Board for review at its April 2008 board meeting. Changes to the rules included the addition of an annual examination and calibration fee for measurement standards, and increases in the annual registration fee for devices susceptible of commercial usage and updates to language for clarity. The rule changes will allow the Measurement Standards Branch to collect approximately the same amount in revenue as it costs the program to operate.

Small businesses that will be directly affected by the adoption of this rule are registered service agents or agencies, and those businesses that incorporate a device such as scales, retail gas pumps, bulk petroleum meters, and taximeters to conduct business. Fees imposed include \$100 registration fee, \$100 annual fee for registered service agents, and \$25 late fee for late annual registration renewal and late submittal of placed-in-service reports. In addition, a fifteen percent increase in all fees will go into effect five years after the proposed rules are adopted.

The Review Board reviewed the proposed rule amendments at its April 16, 2008 board meeting and recommended that they proceed to public hearing.

Additional Administrative Rule Reviews:

The Department of Agriculture subsequently submitted and addressed the following additional administrative rules:

1. Chapter 4-16 – “Cattle, Sheep, and Goats”

Agency’s Justification

The rules refer to the regulation of cattle, sheep and goats. Proposed rule amendments will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. The amendments will also update the existing rules to allow Hawaii to remain consistent with the National Scrapie Eradication Program, require additional testing for incoming cattle, and additional permit requirements for incoming livestock as well as qualifications.

A quarantine order put in place for the intrastate movement of sheep and goats has reduced the urgency to amend the rules as the Agency’s targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2008.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency and will follow-up with the Animal Industry Division.

2. Chapter 4-29 – “Dogs, Cats and Other Carnivores”

Agency’s Justification

The proposed amendments include definitions, arrival ports, carrier responsibility, preshipment requirements, other requirements, movement of dogs and cats originating in Hawaii, fees, and guide and service dogs. Amendments address neighbor island direct release, vaccination intervals, fee adjustments and clarification. The Agency’s targeted date for transmitting the draft rules to the Department of the Board of Agriculture was June 26, 2007 when approval was received.

Final Commentary of Review Board

In January 2008, the Department of Business, Economic Development and Tourism (DBEDT) received and reviewed proposed amendments to HAR Chapter 4-29. The Agency’s Dr. Isaac Maeda conveyed that the amendments do not have small business impact. The proposal was not provided to the Review Board as it did not meet the statutory purview.

3. Chapter 69-A – “Pests for Control or Eradication”

Agency's Justification

This is an amendment to add coqui frog, little fire ant, and nettle caterpillar to the list of pests for control. This is needed so regulatory actions can be taken. The Board of Agriculture approved the draft rules on February 28, 2006 and November 28, 2006.

Final Commentary of Review Board

In March 2007, the Review Board reviewed the proposed amendments; the amendments were not expected to have any small business impact. Amendments included three new items to the Agency's "list of insects, mites, other pests, and plant diseases designated as pests for control or eradication purposes." The addition of these pests to the list allow the Agency to control the pests on state-owned Agricultural Park lands, to aid nurseries, landscapers, and plant retailers in controlling infestations, and also aid in the control of these pests in small eradicable incipient infestations before they spread from small pockets and become widely established on an island.

The Review Board recommended that the proposal go to public hearing and in November 2008 the Review Board recommended that the rules proceed to the Governor for adoption.

4. Chapter 4-70 – “Plant and Non-Domestic Animal Quarantine Plant Import Rules”

Agency's Justification

The amendments will address restrictions on the importation of host products for the red imported fire ant and other pests, and will update current rules to minimize opportunities for entry of the red imported fire ant and other pests through plant import rules. The Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review was June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

5. Chapter 4-71A – “Plant and Non-Domestic Animal Quarantine Microorganism Import Rules”

Agency's Justification

This rule is in the process of being amended as the statutes that were passed several years ago require implementation. The amendments include the requirement for registering CLIA laboratories, and minor housekeeping changes. The Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review is June 2008.

Final Commentary of Review Board

In April 2006, the Review Board reviewed proposed amendments that covered regulating primates going into sanctuaries, requirements for allowing the private or commercial use for exhibition on a short-term basis, the increase of a required bond from \$1,000 to \$2,000 for private entities such as carnivals and fairs, and housekeeping measures; it was recommended that the proposal proceed to public hearing.

6. Chapter 4-87 – “Voluntary Registration of Service Persons or Service Agents”

Agency's Justification

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch in the Quality Assurance Division on February 8, 2008, indicated that these rules are in the process of being repealed and re-adopted into a new chapter.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency.

7. Chapter 4-139 – “Commodities Inspection Fees Rules”

Agency’s Justification

The amendments will include an adoption of a new chapter to consolidate all Commodities Branch inspection fees. The fees entail inspection fees for flowers and foliage, fresh fruits and vegetables, animal feed, shell eggs, and coffee. Amendments will also include changing the standards for Hawaii green coffee and repealing grade standards for parchment coffee. The Agency’s targeted date for transmitting the draft rules to the Board of Agriculture for review is June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

8. Chapter 4-158 – “Non-Agricultural Park Lands Program Rules”

Agency’s Justification

This is an adoption of a new chapter to administer the new “non-agricultural park lands” programs. Act 90, SLH 2003, transferred certain public lands classified for agricultural use by DLNR to DOA to ensure the long-term productive use of public lands leased or available to be leased for agricultural purposes. By default, the lands in this new program are administered under DLNR rules until these rules can be passed. The Agency’s targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2007 and approved on October 23, 2007. A public hearing was held in October 2007.

Final Commentary of Review Board

In February 2007, the Review Board reviewed the proposed amendments. The proposal affect agri-businesses leasing State of Hawaii lands, which were currently managed by DLNR. The rules have built-in accommodations for various possible economic circumstances that the lessees may experience in order to cause the least amount of business disruptions possible. The transfer of the lands and leases to this program provides a level of stability many of the agri-businesses do not currently enjoy. The rule proposal included a \$30 processing fee for documents and fines for violations. Fines for violations start at \$100 per day, but not more than \$2,500 for the first violation and up to \$1,000 per day, or for the third and subsequent violations. The Review Board recommended that the proposal proceed to public hearing.

Following are additional rules, justification and recommendations of the Review Board

1. Chapter 4-17 – “Swine”

Agency’s Justification

This rule authorizes the department to undertake disease control measures intended to control and eradicate certain disease of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the

potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

Review Board 2006 Recommendation

The rules are 25 years old; the agency has indicated that the rules are in the process of being updated.

Final Commentary of Review Board

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2. Chapter 4-20 – “Non-domestic Animals”

Agency’s Justification

This rule controls the importation of diseases and pests that affect non-domestic animals such as deer, elk, llamas, camels and other exotic species of animals that are not prohibited entry into Hawaii. Non-domestic animals may carry and transmit diseases that affect cattle or other livestock. Introduction of certain diseases, that are currently absent in Hawaii, could impede or prevent national or international animal trade (primarily cattle), or present serious public health concerns. Importation of non-domestic animals into Hawaii, except to zoos, is uncommon. Therefore, the economic impact is minimal. This chapter also authorizes the department to undertake disease control measures intended to control and eradicate certain diseases of local and national economic significance or that may affect public health adversely.

This rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the livestock industries and in protecting public health from infectious disease transmitted from animals to man. In addition, the general health and welfare of livestock is enhanced through disease control and eradication activities. The rules were established in 1981.

Review Board’s 2006 Recommendation

The rules are 25 years old; the agency has indicated that the rules are in the process of being updated.

Final Commentary of Review Board

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that there is no need, at this point in time, to amend the rules, despite their age.

3. Chapter 4-23 – “Horses”

Agency’s Justification

This rule controls the importation of diseases and pests that affect horses. Preventing the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. Since the majority of horses in Hawaii are pets, there is little impact on small business by these import requirements. The rules were established in 1949 and last amended in 1981.

Review Board 2006 Recommendation

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary of Review Board

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Department of Budget and Finance

Public Utilities Commission

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

Agency’s Justification

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS § 271-1. The rules were established in 1992.

Review Board’s 2006 Recommendation

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

Response from Agency to Review Board’s Recommendation

In response to the Review Board’s request, the Commission solicited proposals for amendments to HAR Chapter 6-62, “Motor Carrier Rules and Classification of Property and Passenger Carriers,” and HAR Chapter 6-63, “Motor Carrier Tariffs and Schedules” from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA’s recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission’s existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission’s consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

Final Commentary of Review Board

The Review Board is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the Review Board by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

2. Chapter 6-63 – “Motor Carrier Tariffs and Schedules” Agency's Justification

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. The rules were established in 1994.

Review Board's 2006 Recommendation

Rules are twelve years old. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

In response to the Review Board's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, “Motor Carrier Rules and Classification of Property and Passenger Carriers” and HAR Chapter 6-63, “Motor Carrier Tariffs and Schedules,” from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

Final Commentary of Review Board

The Review Board is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the Review Board by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

3. Chapter 6-65 – “Water Carriers”

Agency’s Justification

As required by HRS Chapter 271G, the rules are 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. It appears the rules have not been amended since first promulgated in 1976.

Review Board’s 2006 Recommendation

Rules are over 30 years old; full analysis and update should be performed.

Response from Agency to Review Board’s Recommendation

The Commission has determined that HAR Chapter 6-65, “Water Carriers” do not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the “rules are over 30 years old” is an incorrect assumption.

Final Commentary of Review Board

The Review Board is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the Review Board by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Department of Commerce and Consumer Affairs

1. Chapter 16-51 – “Fees”

Agency’s Justification

The purpose of the rules sets forth general fees applicable to the entire department (publication, dishonored check and photocopying fees), and also sets forth in Section 16-51-2 an hourly fee of \$25 for the examination of financial institutions. The hourly fee in this section, which was last amended and compiled in 1991, is obsolete since it implements HRS Section 401-8, which was repealed in 1993 with the enactment of HRS Chapter 412, the Code of financial Institutions which currently provides for an hourly fee of \$40.

Review Board’s 2006 Recommendation

The Agency is in the process of analyzing and reviewing the rules for either repeal or amendment. The Review Board is in concurrence with the Agency that the rules should be analyzed or reviewed for either repeal or amendment.

Response from Agency to Review Board’s Recommendation

The Agency agrees that section 16-51-2 is obsolete and was effectively superseded by chapter 412, HRS. Additionally, it appears that section 16-51-2 had prior application only to financial institutions regulated under repealed Chapter 401, HRS. Consequently, section 16-51-2 has no application to the examination of escrow depositories under

Chapter 449, or the examination of money transmitters under Chapter 489D. As such, the Agency no longer needs section 16-51-2 and is in the process of repealing the section.

Additionally, while analyzing section 16-51-2, it became apparent that section 16-51-2, which specifies the fee for dishonored payments, is unnecessary. The underlying statute to section 6-510-4 is section 40-35.5, which was recently amended by Act 240, SLH 2007. Section 16-51-4 is superfluous because it merely restates section 40-35.5. Consequently, it is appropriate to also repeal section 16-51-4. Therefore, in addition to section 16-51-2, the Agency will also be repealing section 16-51.4. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007.

Final Commentary of Review Board

In January 2008, the Review Board reviewed the proposed amendments to these rules and recommended that they proceed to public hearing, and in May 2008 the Review Board reviewed the rules after public hearing; noting that no changes had been made.

2. Chapter 16-73 – “Barbers”

Agency's Justification

The purpose of the rules is to implement licensing and regulation of barbers and rules under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1994.

Review Board's 2006 Recommendation

The Agency indicated that the rules are in the process of being amended and are expected to be finalized within two years. The Review Board is in concurrence with the Agency that the rules should be amended.

Response from Agency to Review Board's Recommendation

The Agency plans to amend the rules to address public health and safety issues such as the exclusion or controlled use of implements, equipment, and activities that have been shown to adversely affect consumers if used or if used improperly. Additionally, descriptions of allowable exceptions to the place of practice will be expanded, and descriptions of exemptions from licensure will be included. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007. The Agency has since updated this date by the latest, December 2009, and indicated that there has been activity on the amendments.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

3. Chapter 16-74 - “Boxing”

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1981 and amended in 1991.

Review Board's 2006 Recommendation

The rules are arduous and long; the Agency has indicated that the rules are in the process of being amended and are expected to be finalized within a year. The Review Board is in concurrence with the Agency that the rules should be amended.

Response from Agency to Review Board's Recommendation

The Review Board expressed concerns that the rules are arduous and long. The Agency intends to amend the rules to: (1) remove outdated requirements that are no longer relevant; (2) update and conform the rules to the Federal Boxing Safety Act of 1996; and (3) implement statutory changes made by Act 135, Session Laws of Hawaii (SLH) 2004. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency.

4. Chapter 16-75 - "Cemeteries and Funeral Trusts"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

Review Board's 2006 Recommendation

This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Review Board indicated that the industry has had its share of publicity and recommended that a full analysis and update be performed. The Agency plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency.

5. Chapter 16-83 – "Hearing Aid Dealers and Fitters"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of hearing aid dealers and fitters under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1982 and amended in 1994.

Review Board's 2006 Recommendation

Since the rules were last amended 12 years ago, there have been huge changes in the industry. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Review Board expressed concerns that the rules were last amended 12 years ago. Consequently, the Review Board recommended that a full analysis and update be performed. The Agency intends to amend the rules to: (1) conform to the changes made by Act 88, SLH 1997 relating to establishing experience requirements for licensure and clarifying provisions for direct supervision of unlicensed individuals; (2) identify and clarify the examination and passing score required for licensure; (3) repeal references relating to re-examination; and (4) clarify the license renewal and license restoration requirements. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was November 2008. An update by the Agency has revealed that the rule revisions are complete and are expected to be provided to the Review Board by June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

6. Chapter 16-84 – “Massage Therapy”

Agency's Justification

The purpose of the rules is to implement licensing and regulation of massage therapists under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1966 and amended in 1990.

Review Board's 2006 Recommendation

The rules were last amended 16 years old. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules were last amended 16 years ago, the Board recommended that a full analysis and update be performed. The Agency plans to amend the rules to: (1) clarify apprentice and apprenticeship requirements; (2) clarify the requirements for massage therapy establishments; and (3) increase education and training requirements to obtain a license as a massage therapist from 570 to 600 hours based on the addition of required studies including pathology and thermal and hydrotherapy courses. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007. An update by the Agency revealed that there have been some set-backs due to having new board members; a draft of the rules is expected to be provided to the Review Board by no later than December 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

7. Chapter 16-86 – “Motor Vehicle Dealers and Salesmen”

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle dealers and salesmen under the department's regulatory authority; they are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1993.

Review Board's 2006 Recommendation

The rules were last amended 13 years old. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules were last amended 13 years ago, the Review Board recommended that a full analysis and update be performed. The Agency does not envision submitting proposed rules sooner than December 2008 due to pending issues for the Motor Vehicle Industry Licensing Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "dealer" (issues such as wholesale, retail, more than two vehicle sales per year, etc.), "premise" (issues such as approved zoning), "salesperson" (the effects of disclosure relating to criminal conviction), "consumer consultant," and "bond".

An update from the Agency revealed that the rule revisions are actively being worked on every other month when the board meets; a draft is expected to be provided to the Review Board by December 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

8. Chapter 16-87 – "Motor Vehicle Repair Dealers and Mechanics"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1976 and amended in 1991.

Review Board's 2006 Recommendation

The rules were last amended 15 years ago. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules were last amended 15 years ago, the Review Board recommended that a full analysis and update be performed. The Agency does not anticipate submitting proposed rules sooner than November 2008 due to pending issues for the Motor Vehicle Repair Industry Board requiring further research and analysis. However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "mechanic" (license types, motorcycle examination and experience requirements, etc.), "repair dealer" (requirements for place of business), "written estimate required and waiver of estimate," and "supervisory mechanic or head mechanic."

An update from the Agency revealed that the rule revisions are expected to be provided to the Review Board by December 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

9. Chapter 16-88 – "Naturopaths"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of naturopaths under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1979 and amended in 1994.

Review Board's 2006 Recommendation

The rules are 12 years old. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules are 12 years old, the Review Board recommended that a full analysis and update be performed. The Agency plans to amend the rules to remove outdated requirements and add provisions to follow the national testing agency procedures. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2008.

An update from the Agency revealed that the rule revisions are expected to be provided to the Review Board by June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

10. Chapter 16-101 – "Veterinarians"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of veterinarians under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1967 and amended in 1986.

Review Board's 2006 Recommendation

The rules were last amended 20 years ago. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules were last amended 20 years ago, the Review Board recommended that a full analysis and update be performed. The Agency intends to align the rules with changes that have been made to licensing qualifications on the national level relating to the: (1) content and format of the national licensing examination; (2) nationally-recognized foreign graduate program; and (3) qualifications of graduates of veterinary medical programs at schools outside of the U.S. and those that are not approved by the American Veterinary Medical Association. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007.

An update from the Agency revealed that the rule revisions are expected to be provided to the Review Board by December 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

11. Chapter 16-106 – "Timesharing"

Agency's Justification

The purpose of the rules is to implement licensing and regulation of timesharing under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1980 and amended in 1990.

Review Board's 2006 Recommendation

The rules are necessary to protect the general; the rules were last amended 16 years ago. Full Analysis and update should be performed.

Response from Agency to Review Board's Recommendation

Because the rules were last amended 16 years ago, the Review Board recommended that a full analysis and update be performed. The Agency plans to propose amendments that will: (1) simplify requirements (e.g. repeal certain renewal requirements such as submitting a title report for developers); (2) repeal unnecessary requirements (e.g. no longer require the filing of advertising and promotional materials); and (3) delete requirement that were repealed in the statute. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was August 2008.

An update from the Agency revealed that the rules are actively being worked on with the industry and that rule revisions are expected to be provided to the Review Board by June 2009.

Final Commentary of Review Board

The Review Board is in concurrence and will follow-up with the Agency.

12. Chapter 16-116 – “Travel Agencies”

Agency's Justification

The purpose of the rules is to implement licensing and regulation of travel agencies under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1992.

Review Board's 2006 Recommendation

The industry has been facing extinction because of the Internet. Full analysis and update should be performed.

Response from Agency to the Review Board's Recommendation

The Review Board indicated that it believed that the travel agency industry has been facing extinction because of the Internet. Consequently, the Review Board recommended that a full analysis and update be performed. The Agency has reviewed the rules and determined that no substantive amendments are necessary at this time. The Agency has received an average of 25 complaints a year (there are about 1,247 registered travel agencies) over the past four years (some years have had an unusual higher volume due to investigations of travel agencies that were still conducting business after they failed to renew their registration). The relatively low number of complaints compared to the number of registered travel agencies does not appear to indicate that there is a need to rule changes.

Additionally, the Review Board's concern that it believes that the travel agency industry has been facing extinction because of the Internet does not appear to be a licensing issue. Travel services and accommodations sold over the Internet to Hawaii residents require a license.

Final Commentary of Review Board

The Board is in concurrence with the Agency at this point in time.

13. Chapter 16-117 – “Activity Providers and Activity Desks”

Agency's Justification

The purpose of the rules implements licensing and regulates the activity providers and activity desks under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

Review Board's 2006 Recommendation

There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Review Board expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the Review Board recommended that a full analysis and update be performed. The Agency has reviewed the rules and determined that no substantive amendments are necessary at this time. The Agency has received an average of 18 complaints a year (there are approximately 325 registered activity desks) over the past four years (Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company).

Final Commentary of Review Board

The Board is in concurrence with the Agency at this point in time.

Department of Health

Medical

1. Chapter 11-89 – “Services for Developmental Disabilities Domiciliary Homes”

Agency's Justification

The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities. These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

Review Board's 2006 Recommendation

Standards have changed and enforcement of the rules is different since the rules were established in 1992. Therefore, some provisions should be deleted. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency to Review Board's Recommendation

On March 20, 2008, correspondence from Health Director Chiyome Leinaala Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Final Commentary of Review Board

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The Review Board strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

2. Chapter 11-95 – “Freestanding Surgical Outpatient Facility”

Agency's Justification

The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised and federal reimbursement will not be realized. The rules were established in 1986.

Review Board's 2006 Recommendation

Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency to Review Board's Recommendation

On March 20, 2008, correspondence from Health Director Chiyome Leinaala Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Final Commentary of Review Board

The Review Board will monitor these rules for updates from the Agency.

3. Chapter 11-96 – “Freestanding Adult Day Health Centers”

Agency's Justification

The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees and the public. The rules were established in 1991.

Review Board's 2006 Recommendation

The agency has indicated that the rules are in need of revisions; rules are 15 years old. The Review Board is in agreement with the Agency that these rules should be reviewed and revised.

Response from Agency to Review Board's Recommendation

On March 20, 2008, correspondence from Health Director Chiyome Leinaala Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Final Commentary of Review Board

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding. Review Board concurs with the Agency.

4. Chapter 11-97 – “Home Health Agencies”

Agency's Justification

These rules outline licensing requirements for Home Health Agencies (HHA) and defines penalty for those who violate this chapter. HHA has the option of being Medicare/Medicaid certified in order to receive reimbursement, and there is an increasing interest for HHA's that receive private funding, to be licensed, in order to be reimbursed by private insurance and/or long term care insurance. Such licensing not only insures the health and safety of patients, employees and the public, but also looks toward reducing the abuse and exploitation of the elderly. The rules were established in 1982.

Review Board's 2006 Recommendation

Agency has indicated that the rules are in need of revisions; rules are 25 years old and exhibit inconsistent standards – standards and accreditation need to be in place. The Review Board is in agreement with the Agency that these rules should be reviewed and revised.

Response from Agency to Review Board's Recommendation

On March 20, 2008, correspondence from Health Director Chiyome Leinaala Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Final Commentary of Review Board

Currently, procedures are being enforced that are not reflected in the rules. If enforcement is sought, those procedures should be incorporated in the rules. The Review Board strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

5. Chapter 11-99 – “Intermediate Care Facilities for the Mentally Retarded”

Agency's Justification

The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

Review Board's 2006 Recommendation

Agency has indicated that the rules are in need of revisions; rules are over 20 years old. The Review Board is in agreement with Agency that these rules should be reviewed and revised.

Response from Agency to Review Board's Recommendation

On March 20, 2008, correspondence from Health Director Chiyome Leinaala Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Final Commentary of Review Board

It is very important that these rules are updated because there is a greater population within the community so the resources are limited to them. The Review Board strongly recommends that these rules be reviewed and amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

6. Chapter 11-156 – “Communicable Diseases”

Agency's Justification

The rules specify diseases that are considered contagious, communicable or dangerous and establish reporting requirements. The rules are necessary to protect the public from morbidity and mortality due to transmission of communicable and dangerous diseases. All 50 states in the nation and all industrialized countries have laws mandating the reporting of communicable, contagious, and dangerous diseases; the mandate in Hawaii State Law is §325-2, HRS. These rules set forth the specifications and requirements for reporting of such diseases and are essential to public health. The rules were established in 1981 and amended in 2001.

Review Board's 2006 Recommendation

Modes of urgency and routine need addressing. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency to Review Board's Recommendation

On August 15, 2007, provided proposed rule changes that fall under three distinct areas: 1) Changes concerning infectious disease reporting, 2) Changes concerning sexually

transmitted infections reporting, and 3) Changes concerning named HIV reporting. Hawaii was one of the last states to require HIV reporting.

Final Commentary of Review Board

The Review Board unanimously recommended that the proposed rules proceed to public hearing.

Environmental

1. Chapter 11-39 – “Air Conditioning & Ventilation System”

Agency’s Justification

The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

Review Board’s 2006 Recommendation

The rules are in need of updating. Re-analysis and update of rules should be performed. *Note:* Agency’s website indicates rules are pending repeal and replacement by chapter 48.

Response from Agency to Review Board’s Recommendation

HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program’s assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Final Commentary of Review Board

In October 2008, amended rules were proposed to the Board. Upon review, it was recommended that the proposed rules proceed to public hearing.

2. Chapter 11-44 – “Radiologic Technology Board and Radiologic Technology Rules”

Agency’s Justification

The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the general public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

Review Board's 2006 Recommendation

These rules are in need of updating. Re-analysis and update of rules should be performed.

Response from Agency to Review Board's Recommendation

A small business committee was created to review proposed revisions for this rule.

Final Commentary of Review Board

The Review Board reviewed these amended rules in June 2008 and recommended that they proceed to public hearing.

3. Chapter 11-45 – “Radiation Control”

Agency's Justification

The rules are required for core public health. The rules set minimum standards for all persons and facilities that 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.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the general public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

Review Board's 2006 Recommendation

The rules are in need of updating. Re-analysis and update of rules should be performed.

Response from Agency to Review Board's Recommendation

This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

Final Commentary of Review Board

The Review Board is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Department of Human Services

1. Chapter 17-402 – “Services to the Blind and Visually Handicapped”

Agency's Justification

The purpose of the rule is to continue implementation as it is funded by the Rehabilitation Act of 1973, and amended by Randolph-Shepard Act. The rules implement HRS chapter 347 and §102-14; they were established in 1981.

Review Board's 2006 Recommendation

Definitions are outdated; i.e., the terms "handicapped" and "disabled" are no longer legally used. Review and update are needed.

Response from Agency to Review Board's Recommendation

On December 11, 2007, a meeting held with the Review Board discussion leader and Director of Department of Human Resources Lillian Kollar revealed that the Review Board's recommendations to the selected rules would require legislation. The validity of the Review Board's 2006 comments/recommendations was also questioned.

Final Commentary of Review Board

Upon review and guidance of outside legal counsel, Louis Erteschik of the Hawaii Disability Rights Center, it was indicated that while the modern trend is to eliminate certain words, the use or non-use of the terms "handicapped" and "disabled" is more of a stylistic form or the need to be "politically correct," rather than that these terms are no longer legally used. The Review Board accepts Attorney Erteschik's guidance; therefore, no update is required at this time.

2. Chapter 17-893 – "Licensing of Child-Placing Organizations"

Agency's Justification

The purpose of these rules is to establish standards for child placing "organizations." Therefore, the reason for the rules is to implement authorizing statute 346-16, HRS. The rules were established in 1987 and amended in 1992.

Review Board's 2006 Recommendation

The rules require formatting and housekeeping changes. Review and update are needed.

Response from Agency to Review Board's Recommendation

On December 11, 2007, a meeting held with the Review Board discussion leader and Director of Department of Human Resources Lillian Kollar revealed that the Review Board's recommendations to the selected rules would require legislation.

Final Commentary of Review Board

It is agreed that since the Review Board's recommendations were non-substantive, there is no need at this time to update the subject rules.

3. Chapter 17-894 – "Licensing of Child-Caring Institutions"

Agency's Justification

The purpose of the rules is to establish standards for child placing "institutions." Therefore, the reason for the rules is to implement authorizing statute 346-17, HRS. The rules were established in 1956 and amended in 1992.

Review Board's 2006 Recommendation

These rules require formatting and housekeeping changes. Review and updates are needed.

Response from Agency to Review Board's Recommendation

On December 11, 2007, a meeting held with the Review Board discussion leader and Director of Department of Human Resources Lillian Kollar revealed that the Review Board's recommendations to the selected rules would require legislation.

Final Commentary of Review Board

It is agreed that since the Review Board's recommendations were non-substantive, there is no need at this time to update the subject rules.

4. Chapter 17-896 – “Licensing of Before and After School Child Care Facilities”

Agency's Justification

The rules govern health and safety requirements for programs that care for school-aged children in child care facilities. The purpose of the rules is to implement authorizing statute. The rules were established in 1989 and amended in 2002.

Review Board's 2006 Recommendation

Definitions are outdated; i.e., the terms “handicapped” and “disabled” are no longer legally used. Review and updates are needed.

Response from Agency to Review Board's Recommendation

On December 11, 2007, a meeting held with the Review Board discussion leader and Director of Department of Human Resources Lillian Kollar revealed that the Review Board's recommendations to the selected rules would require legislation. The validity of the Review Board's 2006 comments/recommendations was also questioned.

Final Commentary of Review Board

Upon review and guidance of outside legal counsel, Louis Erteschik of the Hawaii Disability Rights Center, it was indicated that while the modern trend is to eliminate certain words, the use or non-use of the terms “handicapped” and “disabled” is more of a stylistic form or the need to be “politically correct,” rather than that these terms are no longer legally used. The Review Board accepts Attorney Erteschik's guidance; therefore, no update is required at this time.

5. Chapter 17-1417 – “Adult Day Care Services”

Agency's Justification

The rules establish eligibility criteria for the receipt of adult day services and scope of the available services. There is no statutory mandate for this service. Adult day care is part of a continuum of long-term care related services made available to delay the institutionalization of disabled and elderly adults. The rules were established in 1992 and amended in 1995.

Review Board's 2006 Recommendation

Last revisions were in 1995; definitions are outdated (i.e., the terms “handicapped” and “disabled” are no longer legally used); these types of services do not have medical staffing in their centers. Review and update are required.

Response from Agency to Review Board's Recommendation

On December 11, 2007, a meeting held with the Review Board discussion leader and Director of Department of Human Resources Lillian Kollar, revealed that the Review

Board's recommendations to the selected rules would require legislation. The validity of the Review Board's 2006 comments/recommendations was also questioned.

Final Commentary of Review Board

Upon review and guidance of outside legal counsel, Louis Erteschik of the Hawaii Disability Rights Center, it was indicated that while the modern trend is to eliminate certain words, the use or non-use of the terms "handicapped" and "disabled" is more of a stylistic form or the need to be "politically correct," rather than that these terms are no longer legally used. The Review Board accepts Attorney Erteschik's guidance; therefore, no update is required at this time.

Department of Labor and Industrial Relations

1. Chapter 12-11 – "Temporary Disability Insurance"

Agency's Justification

The purpose of the rules is to illustrate disability plans with plan designs different from that of the statutory plan, and also provide benefits at least as favorable as those required under section 392.41. The rules were established in 1993, and are necessary to ensure that an employer's self-insured plan provides cash benefits as favorable as the statutory plan.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. The rules update section 392-41, HRS, which were amended on January 16, 1993, wherein the benefit rate was increased from 55% to 58% as required by Act 31, SLH 1992.

Review Board's 2006 Recommendation

These rules are 13 years old and appear to have huge small business impact. Complete review is required only if updates to regulations have taken place.

Response from Agency to Review Board's Recommendation

A conversation with Mr. Darwin Ching, Director of DLIR on September 14, 2007, indicated that these rules are in the process of being updated. The Agency expected the rules to be completed by December 2007; this was not done.

Final Commentary of Review Board

The Review Board sent a second request to the Agency for amended rules with a draft to be received by December 2009.

The Agency responded by indicating that the Disability Compensation Division will take the Board's recommendation under advisement, and should there be a need for amendments to the rules, the Review Board will be notified.

Chapter 12-11-3 – "Financial Solvency"

The purpose of this section is to require that employers approved for temporary disability insurance (TDI) self-insurance pursuant to §392-41 submit the audited financial

statements for review on an annual basis no later than three months after the close of the self-insured employers' fiscal year. There are approximately 600 employers with approved self-insured TDI plans. This section is required to enable the department to review self-insured employers' financial solvency to ensure payment of disability benefits.

The original DLIR regulation relating to the Hawaii TDA law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and chapter 11, Title 12, the Administrative Rules relating to TDI was adopted in May 1981. This section implements section 392-41, HRS, by self-insuring their TDI plans, employers can save on the premiums that would otherwise be payable to their TDI carriers.

Chapter 12-11-16 – “Existing and New Plans”

The purpose of this section is to illustrate disability plans with plan designs different from that of the statutory plan and also to provide benefits at least as favorable as those required under §392-41. This section is necessary to ensure that an employer's self-insured plan provides cash benefits as favorable as the statutory plan.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TEI, was adopted on May 11, 1981. This section updates section 392-41, HRS, which was amended on January 16, 1993, wherein the benefit rate was increased from 55% to 58% as required by Act 31, SLH 1992.

Chapter 12-11-24 – “Notices and Reports required with Respect to Plans”

The purpose of this section is to clarify what constitutes a material modification of a plan previously accepted by DLIR. All material modifications must be filed with DLIR to be effective. This section is necessary to require carriers and self-insured employers continue to file all material modifications so that plans on file with DLIR are updated for effective enforcement of employers' compliance with the TDI law.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effect on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Since the major change proposed in May 1981 was renumbering, Regulation XXXIV relating to TDI was repealed and this chapter was established on May 11, 1981. This section implements section 392-41, HRS, on the provision for payment of benefits.

12-11-35 – “Claim for Disability Benefits”

The purpose of this section is to provide procedures and specific time frames for filing a TDI claim. The rules are necessary because it helps clarify the steps and the specific time requirements for filing a TDI claim. The original DLIR Regulation XXXIV relating to

the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969.

On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements sections 392-25, 392-26, 392-27, and 392-44, on the eligibility requirements and payment of benefits. The timeframe within which a TDI claim must be filed was amended on November 3, 1989 to change from 30 to 90 days in order to be consistent with §392-27, HRS.

12-11-36 – “Responsibility of Employer to Provide Benefits”

The purpose of this section is to provide guidelines as to which employer is responsible for disability benefits when an employee changes employment. It specifies that, during the two-week period following termination of employment, the prior employer is still responsible for any disability benefits before the terminated employee enters into a new employment. This section is expected to effectively prevent an employer from avoiding paying disability benefits by simply terminating the employee who just filed a TDI claim.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and become effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, on provision for payment of benefits.

12-11-38 – “Concurrent Employment”

The purpose of this section is to provide guidelines as to how an employee would qualify for and file disability claims when engaged in more than one employment. This section clarifies how the eligibility is determined for an employee who has concurrent employments. If a disabled employee had two jobs and qualified for TDI benefits, that employee is entitled to disability benefits from both employments.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements sections 392-25 and 392-43.5, HRS, on entitlement of TDI benefits. The benefit amount is based on the employee’s average weekly wage. Since TDI provides partial wage replacement, if an employee suffered wage loss from both employments, that employee should be entitled to disability benefits from both employments.

12-11-40 – “Claim for Reimbursement out of Workers’ Compensation Benefits”

The purpose of this section is to specifically state that when a workers’ compensation (WC) claim is being controverted, the disabled employee can then file a TDI claim. The TDI must pay disability benefits first and assert subrogation rights against the employer’s WC carrier. This section is expected to enable the disabled employee to receive

disability benefits under the TDI law in a timely manner while the WC claim is being adjudicated.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, on TDI carriers' subrogation rights when WC benefits are awarded only after the TDI benefits have already been paid for the same disability. There is no added burden to the employers; if an injury is determined to be work-related through the WC adjudication process, the WC carrier is required to reimburse the TDI carrier for the TDI benefits already paid out.

12-11-41 – “Denial of Claim”

The purpose of this section is to provide procedures to ensure that the TDI denials by carriers or self-insured employers are proper and that the appeal process is in place if the disabled employees disagree with the denials of claims filed. This section ensures that TDI claims denied by carriers or employers are proper and that the disabled employees are afforded the due process in appealing the denials if they so desire.

The original DLIR Regulation XXXIV, relating to the Hawaii TDI law, was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI, was adopted on May 11, 1981. This section implements section 392-44.5, HRS, in specifying the due process in denying and appealing TDI claims. Associated costs provide employers the opportunity to deny claims which will eliminate the cost of improper TDI claims.

12-11-46 – “Average Weekly Wage”

The purpose of this section is to provide guidelines for computation of the average weekly wage based on which TDI benefit amount is calculated. This section provides additional guidelines in determining the average weekly wage in situations not addressed in §392-7, HRS; these guidelines will provide a uniform and less controversial methodology in computing the average weekly wages thus resulting in timely disbursement of disability benefits.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section supplements the methodology on computation of average weekly wage as specified in §392-7, HRS.

12-11-49 – “Failure to Provide Coverage”

The purpose of this section is to provide requirements on the disposition of unauthorized employer withholdings by the employer who did not provide TDI coverage. This section authorizes the Director to order the portion of withholdings not exceeding 0.5% of the employees' weekly wages be deposited into the TDI Special Fund, and the balance be refunded to the employees.

The original DLIR Regulation XXX IV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules, relating to TDI, were adopted on May 11, 1981. This section implement sections 392-41, 392-43 and 392-61, HRS, on the disposition of improper employee withholdings.

12-11-50 – “Deductions Greater than Authorized”

The purpose of this section provides requirements on the disposition of employee withholdings greater than authorized by the employer who provided TDI coverage. This section authorizes the Director to order the excessive employee withholdings be deposited into the TDI Special Fund if the employees, to whom the refunds are due, cannot be located for a period of two years.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section implements sections 392-43 and 392-61, HRS, on the disposition of unauthorized employee deductions.

12-11-56 – “Posting of Notice of Coverage”

The purpose of this section provides that all employers post a notice (Form DC-50) conspicuously at all work sites that insurance for disability benefits has been obtained for all eligible employees. This is for employers with a fully-insured plan. The rules facilitate the overall enforcement of the TDI law in that all the employees are properly informed of the availability of temporary disability insurance.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulations XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section implements section 392-91, HRS in mandating that a notice of coverage be posted at all worksites.

12-11-66 – “Posting of notice of coverage”

The purpose of this section provides that all employers post a notice (Form DC-50) conspicuously at all work sites that insurance for disability benefits has been obtained for all eligible employees. This is for employers with a self-funded plan, and facilitates the

overall enforcement of the TDI law in that all the employees are properly informed of the availability of temporary disability insurance.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulations XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section implements section 392-91, HRS, in mandating that a notice of coverage be posted at all work sites.

12-11-67 – “Application”

The purpose of this section is to authorize the Director to offer employers an alternative other than purchasing a statutory plan in order to comply with the TDI law. Instead of purchasing an insured plan from one of the authorized TDI carriers, this section allows the employers another alternative to comply with the TDI law by applying for TDI self-insurance.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, in explaining the self-insurance process. By self-insuring their TDI plans, employers can actually save on the premiums that would otherwise be payable to their TDI carriers.

12-11-68 – “Agreement”

The purpose of this section is to require employers wishing to self-insure their short-term disability plans execute with the Director of DLNR an agreement (Form TDI-15), wherein conditions on benefits payable, claim records and adjudication are specified and mutually agreed upon. This section, established in 1992, requires a local claims office be maintained for claims processing, and implements standards for self-insurance mutually agreed upon between DLIR and the employer applicants.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981.

This section was amended on January 13, 1992, when a new condition was added to the agreement that all self-insured employers are required to maintain a complete claims service office or engage an independent claims adjusting agent with draft authority for the processing of TDI payments in a timely manner. The rules implement sections 392-41 and 392-41.5, HRS.

12-11-69 – “Requirements for Self-Insurance”

The purpose of this section allows provision of security deposit as an alternative to satisfy the financial requirements for TDI self-insurance. This section establishes an alternative for employers to qualify financially for TDI self-insurance.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the administrative rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, in explaining specifically how employers could satisfy the financial requirement for self-insurance.

If any employer is qualified for self-insurance based on its financial statements, no security deposit is necessary. If, however, an employer's financials are not satisfactory, a security deposit is required, which may be treated as a long-term "savings account." By self-insuring its TDI plan, the employer actually saves on the premiums that would otherwise be payable to the TDI carrier.

12-11-70 – "Amount of Securities or Bond"

The purpose of this section is to authorize the Director to establish the amounts of security deposit for employers applying for TDI self-insurance. The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS in explaining how the amount of security deposit for TDI self-insurance is determined. The cost of a bond is less than the TDI insurance premium.

12-11-72 – "Termination of Self-Insurer's Status and Withdrawal of Security Deposit"

The purpose of this section authorizes DLIR Director to return the security deposit posted for TDI self-insurance to the employer only after 24 months from termination of self-insured status in order to ensure full payment on all outstanding TDI benefits. This section is necessary to ensure maintenance of the security deposit for self-insurance until all TDI benefits are paid.

The original DLNR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, in specifying a timeframe for the return of the security deposit.

12-11-73 – "Self-Insurance Deposit Credit"

The purpose of this section authorizes the Director to reduce the amount of security deposit for TDI self-insurance if the employer is also self-insured for workers' compensation (WC) purposes. The employer must, however, demonstrate to the satisfaction of the DLIR Director that the aggregate total of security deposit posted is adequate to cover all obligations of the employer under both laws. This section allows the employer to post a lower aggregate amount of security deposit for self-insurance under both TDI and WC laws.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-41, HRS, in pointing out a self-insured employer may be allowed to post a lower aggregate total of security deposit if self-insured for both TDI and WC. If financially feasible, the combined security deposit required for both TDI and WC self-insurance may be lower than what is required separately.

12-11-75 – “Revocation of Self-Insurance Status”

The purpose of this section authorizes DLIR Director to revoke a self-insured plan previously approved at any time for good cause. This section ensures that all self-insured plans have been approved by the Director.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements sections 392-91, HRS, in pointing out that an approved self-insured plan may be revoked for good cause. If an employer's self-funded plan is revoked, that employer would have to purchase an insured plan for its eligible employees.

12-11-76 – “Employee Contributions towards the Cost of Coverage by a Self-Insurer”

The purpose of this section establishes that if an employer allocates the cost of administering a self-insured plan to the eligible employees, employee withholding cannot exceed that as allowed for a fully insured plan. This section ensures that the employees will not be over-charged by an employer with a self-insured TDI plan approved by the DLIR.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements sections 392-43 and 392-61, HRS, in reiterating that the same set of rules on employee withholding apply whether the employer's TDI plan is fully insured or self-funded.

12-11-77 – “Limitation of Fund”

The purpose of this section specifies the maximum account balance of the fund established by employers for their self-insured TDI plans. Once the account balance reaches 5% of the highest monthly payroll in the last 12 completed calendar months, no further withholdings from employees are allowed. The DLIR Director may reduce the maximum fund balance as allowed under this rule.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981.

12-11-85 – “Periodic reports”

The purpose of this section requires all employees with approved self-insured disability plans to file an annual report (TDI-21) by March 1 of each year. The annual reports received by the CLIR are processed and summary reports are generated, which are provided to carriers, upon request, for future analysis. Employers with possible excessive employee withholdings or questionable insurance coverage are so indicated in the reports; accounts with such error messages are investigated, and compliance enforced if necessary.

The original DLIR Regulation XXXIV relating to the Hawaii TDI law was promulgated and became effective on December 25, 1969 after a public hearing on September 15, 1969. On February 25, 1981, a public hearing was held to consider the proposed renumbering of all sections in Regulation XXXIV as mandated by Act 216, SLH 1979. Regulation XXXIV relating to TDI was repealed and Chapter 11, Title 12, the Administrative Rules relating to TDI was adopted on May 11, 1981. This section implements section 392-91, HRS, in specifying what information is required of self-insured employees when filing annual reports.

2. Chapter 12-12 – “Prepaid Health Care”

Agency’s Justification

12-12-1 – Definitions - “Seasonal employment” and “Seasonal period(s)”

The purpose of the rule specifies that employees engaged in seasonal employment are excluded under the Prepaid Health Care Act. It establishes the criteria used to determine the seasonal period during which employers need not provide health care coverage for employees engaged in such seasonal pursuits. Employers are given relief for providing health care coverage to employees who work during seasonal periods only.

Sections 1 and 2 under Regulation XLII were originally promulgated in 1974 to clarify the definition of regular employee under section 393-3, Chapter 393, HRS. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapters 12, Title 12. There have been no substantive changes since inception. Employees save money because they do not need to provide health care coverage to seasonal workers.

Review Board’s 2006 Recommendation

This rule is very old and appears to have huge small business impact. Complete review is required

Response from Agency to Review Board's Recommendation

A conversation with Mr. Darwin Ching, Director of Department of Labor on September 14, 2007, indicated that these rules are regulated by Federal statute, Employee Retirement Income Security Act. As a result, no changes will be made to the rules unless the Federal law changes.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency.

12-12-2 – “Determination of Seasonal Pursuit and Seasonal Period”

The purpose of this section specifies that employees engaged in seasonal employment are excluded under the Prepaid Health Care Act. It establishes the criteria used to determine the seasonal period during which employers need not provide health care coverage for employees engaged in such seasonal pursuits. Employers are given relief for providing health care coverage to employees who work during seasonal periods only. The rule was established in May 7, 1981.

Sections 1 and 2 under Regulation XLII were originally promulgated in 1974 to clarify the definition of regular employee under section 393-3, Chapter 393, HRS. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapters 12, Title 12. There have been no substantive changes since inception. Employees save money because they do not need to provide health care coverage to seasonal workers.

12-12-6 – “Employee Already Disabled”

The purpose of this section shifts the responsibility for providing a reasonable extension of benefits to a disabled employee from the health care contractor to the employer. The rules ensure that disabled employees are continuously covered under a health care plan should the employer elect to charge their plans.

Section 6 under Regulation XLII was originally promulgated in 1974 using the NAIC Model rules and provisions governing Group Coverage Discontinuance and Replacement Model Regulation to determine if the preceding or succeeding health care contractor was responsible for coverage of disabled employees when employers elected to change plans. The rule was amended on June 19, 1968 making the employers responsible for continued coverage of their disabled employees instead of depending on the rules of NAIC, which was not a governmental agency or a subordinate of the Director. As the delegation of rule-making authority to the NAIC raised serious concerns regarding the validity of our rule, the rules were amended to its current language.

Insurance companies were opposed to the rule change because they followed NAIC guidelines and usually provided continued coverage of disabled employees on the back-end should the employer switch plans. A mutual benefit society was in support because they provided coverage to disabled employees on the front end but not on the back end as it believed that once the employer switched plans the disabled employee should be covered by the new plan. Premium rates under the new plan may be increased due to the added liability of paying for the medical costs of an employee who is already disabled when the new plan begins.

12-12-12 – “More than One Plan”

The purpose of this section specifies that employers are required to provide an approved health care plan for their eligible employees. In some situations employers provide more than one plan for their employees. The rules clarify that the employer will not be liable for more than the cost of the least expensive plan should the employer offer more than one plan. Employers who offer more than one plan can do so without the penalty of having to pay the added cost of the more expensive plan. Employees can choose among different plans however must accept the responsibility of the added cost.

Section 12 under Regulation XLII was originally promulgated in 1974 to clarify section 393-12, Chapter 393, HRS regarding choice of plan. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. There have been no substantive changes since inception. Premium costs may not change but the allocation of premium payment is decreased for an employer if the employee elects the more expensive plan.

12-12-17 – “Employer’s Obligation”

The purpose of this section specifies that employers must notify their employees of their entitlement to health care coverage. This section provides the guidelines that employers shall follow and also clarifies some employee responsibilities. It protects both the employer and employees through ongoing communication.

Section 17 under Regulation XLII was originally promulgated in 1974 to clarify sections 393-11, 393-12, 393-13, 393-14 and 393-15, Chapter 393, HRS regarding the mandatory coverage. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. There have been no substantive changes since inception.

12-12-18 – “Supplemental Coverage to Required Health Care Benefits”

The purpose of this section specifies that employers are required to provide an approved health care plan for their eligible employees and contribute to the cost of such plans. Employers may elect to pay the entire monthly premium or withhold 50% of the premium cost from employees but to not to exceed 1.5% of employee’s monthly gross earnings. In some situations employees provide a richer plan package for their employees that include supplemental benefits, such as drug, vision and dental. This may increase the cost of the plan.

This section clarifies if supplemental benefits are provided as an option and employees choose such benefits then the cost for such supplemental benefits can be passed on to the employees. However, if the employees must subscribe to the added benefits without having the option to decline such supplemental benefits, then the cost of the total package becomes the basis for allocation of premium cost as specified in section 393-13, HRS. Employers can offer richer plans and not be responsible for the added cost if employees are given the opportunity to opt out, thus reducing employer’s cost. The opposite can also happen, whereby an employer’s cost can increase if health care contractors sell the basic medical plan and supplemental riders as a package and do not make this opt-out provision available.

This section was added in May 1981 to clarify liability for payment under 393-13 when Regulation XLII was codified under Rules and Related administrative rules, Chapter 12, Title 12. No testimony was submitted in objection to this rule. Higher cost to small

employers because the medical and supplemental riders are sold as a package with no opt-out provisions for the riders. Thus, premium cost allocation is based on the total package.

12-12-24 – “Self-insurer”

The purpose of this section specifies that employers can self-insure and qualify as a health care contractor provided they are financially solvent and approved by DLIR to utilize a self-insured health care plan. Employers are not required to purchase only those plans sold in the State of Hawaii. Employers are free to design and offer their own health care plan. If they are financially able to defray or reimburse the expenses of health care under an approved self-insured plan, they can decrease their cost by not having to pay premiums for an insured plan.

Section 24 under Regulation XLII was originally promulgated in 1974 to clarify sections 393-7 and 393-12, Chapter 393, HRS, regarding required health care benefits and choice of plan. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. Although there is no provision for self-insurance stated in the law, this rule allows employers to self-insure; lower cost to employers who can afford to self-insure. Employers are not required to purchase insured plans.

12-12-28 – “Cancellation of Contract”

The purpose of this section provides for at least a 10 day notification to DLIR and employer before canceling health care contract and the reason for such action. It protects both the employer and employees by not allowing the health care contractor to cancel a policy without cause or prior notification.

Section 28 under Regulation XLII was originally promulgated in 1974 to implement sections 393-7, 393-12 and 393-13, Chapter 393, HRS, regarding the provisions on mandatory coverage. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes made since inception.

12-12-29 – “Refusal to insure”

The purpose of this section is to ensure that no employer applicant is refused coverage by health care contractors, except for nonpayment of premiums. It protects both the employer and employee by not allowing health care contractors to refuse coverage for reasons other than non-payment of premium.

Section 29 under Regulation XLII was originally promulgated in 1974 to implement sections 393-7, 393-12 and 393-13, Chapter 393, HRS to ensure all eligible employees are afforded the mandatory coverage. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12. No substantive changes made since inception.

12-12-41 – “Withholding by Employers”

The purpose of this section specifies that employers are required to provide an approved health care plan for their eligible employees and contribute to the cost of the plans. Employers may elect to pay the entire monthly premium or withhold 50% of the premium cost from employees not to exceed 1.5% of employees' monthly gross earnings. It clarifies employers' responsibility for remitting such withholdings to the health care

contractor and the consequences for not obtaining the coverage with such withholdings. This section is necessary to ensure that withholding of employees' wages for premium cost allocation is transmitted to health care for the mandated coverage.

On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 7, Title 12. No substantive changes have been made since inception. The associated costs are higher costs to employers if they fail to provide the mandated coverage; they must pay 100% of the employees cost incurred during the periods of non-coverage.

12-12-42 – “Deductions Greater than Authorized”

The purpose of this section specifies that employers are required to provide an approved health care plan for their eligible employees and contribute to the cost of such plans. Employers may elect to pay the entire monthly premium or withhold 50% of the premium cost from employees but not to exceed 1.5% of employee's monthly gross earnings. This section clarifies what employers must do if they withheld from an employee's wages more than was permitted by law. This section is necessary to ensure that employers are aware of the consequences of deducting more than is what is allowed under the law. Also, any excess not returned to employees are deposited into the premium supplementation fund.

Section 42 under Regulation XLII was originally promulgated in 1974 to clarify sections 393-13, and 393-41 Chapter 393, HRS, regarding the liability for premium payments and establishment of the premium supplementation fund. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes made since inception. An employer found to have over withheld premiums from employees must reimburse their employees and may be fined.

12-12-46 – “Experience Rating”

The purpose of these rules is to clarify how to disperse any experience credit or dividend received from the health care contractors among employees and employer. This section is necessary to ensure that both employers and employees share any refunds awarded by the health care contractors.

Section 46 under Regulation XLII was originally promulgated in 1974 to clarify sections 393-7, and 393-13 Chapter 393, HRS, regarding the liability for premium payments and required health care benefits. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes made since inception.

12-12-62 – “Principal and Secondary Employer”

The purpose of this section specifies that employees who work for more than one employer and are eligible for health coverage under each employer must notify each employer of its designation of principal or secondary employer, based on hours and/or wages paid. The principle employer must provide the coverage while the secondary employer is not required to provide coverage. This section clarifies which employer is responsible in situations where employees are eligible for coverage under both employers and eliminated dual coverage.

Section 62 under Regulation XLII was originally promulgated in 1974 to implement sections 393-6 and 393-16, Chapter 393, HRS, dealing with principal and secondary employers. On May 7, 1981, Regulation XLII was replaced with related administrative

rules, Chapter 12, Title 12. No substantive changes since inception; no costs to secondary employer.

12-12-63 – “Other Employer Reports”

The purpose of this section specifies that employers must notify DLIR of the health care plans that are provided to their employees or any subsequent changes in plans. For employees who refuse such coverage, waiver forms must be refilled with DLIR every December 31. Filing of waiver forms (Form HC-5) protects employers because this notification allows the employer to not provide the mandatory coverage to those employees who are covered elsewhere.

Section 63 under Regulation CLII was originally promulgated in 1974 to implement sections 393-17 and 393-21, Chapter 393, HRS, regarding exemptions permitted under the law. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes since inception. Employees save money because they do not need to provide coverage to employees who sign waivers.

12-12-64 – “Posting of Notice of Coverage”

The purpose of this section specifies that employers must notify their employees of the health care plans that are provided to their employees by posting such information in a conspicuous place in and about their business so employees are aware of their entitlement to coverage. Employees are made aware of the eligibility requirement for coverage under the PHC Act.

Section 64 under Regulation CLII was originally promulgated in 1974 to implement sections 393-7, Chapter 393, HRS regarding required health care benefits. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes since inception.

12-12-70 – “Entitlement to Premium Supplementation”

The purpose of the rules is to provide some relief to employers with less than 8 employees by reimbursing part of the employers paid to health care contractors to cover their eligible employees; employers must meet certain criteria. The rule provides monetary assistance to those employers who are having a difficult time paying the premiums for the required employee health care coverage.

Sections 70 and 71 under Regulation XLII was originally promulgated in 1974 to clarify the process in filing for premium supplementation in accordance with section 393-45, 393-46 and 393-47, Chapter 393, HRS, regarding entitlement claim to premium supplementation. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes since inception. Qualified employers may be entitled to premium reimbursement from the Premium Supplementation Fund.

12-12-71 – “Claim for Premium Supplementation”

The purpose of this section is to provide some relief to employers with less than 8 employees by reimbursing part of the employers paid to health care contractors to cover their eligible employees; employers must meet certain criteria. This section provides monetary assistance to those employers who are having a difficult time paying the premiums for the required employee health care coverage.

Sections 70 and 71 under Regulation XLII was originally promulgated in 1974 to clarify the process in filing for premium supplementation in accordance with section 393-45, 393-46 and 393-47, Chapter 393, HRS, regarding entitlement claim to premium supplementation. On May 7, 1981, Regulation XLII was replaced with related administrative rules, Chapter 12, Title 12. No substantive changes since inception. Qualified employers may be entitled to premium reimbursement from the Premium Supplementation Fund.

3. Chapter 12-41 – “Hawaii Labor Relations Board (Employment)”

Agency’s Justification

The purpose of the rules define “due process” accorded to parties appearing before the Hawaii Labor Relations Board (HLRB) and specifically provide how petitions are to be filed, how representation elections will be conducted, how unfair labor practice contested will be conducted, etc. The rules are necessary for the conduct of HLRB’s private sector proceedings, and without these procedural rules, HLRB’s proceedings and decisions will more likely be subject to court challenge and overturned on due process grounds.

HLRB administers this chapter, which affects small business insofar as the company employs organized workers. The rules, promulgated pursuant to HRS Chapter 377, Hawaii Employment Relations Act, provide procedures for unfair labor practice proceedings, the determination of collective bargaining units, the selection of exclusive representatives, declaratory rulings, and rule making. They are similar to the Hawaii Rules of Civil Procedure for the circuit courts or procedural rules promulgated by the National Labor Relations Board setting forth filing requirements and procedures governing hearings and other proceedings.

The rules were promulgated on November 10, 1983 to govern proceedings arising under HRS Chapter 377, Hawaii Employment Relations Act. In 1985, the board was renamed HLRB, and assumed jurisdiction to administer the provisions of Chapter 377.

Review Board’s 2006 Recommendation

The rules are 23 years ago. Complete review is required only if updates to regulations have taken place.

Response from Agency to Review Board’s Recommendation

A conversation with Mr. Darwin Ching, Director of Department of Labor on September 14, 2007, indicated that these rules are in the process of being updated. The Agency expected the rules to be completed by December 2007; this was not done.

Final Commentary of Review Board

The Review Board sent a second request to the Agency for amended rules with a draft to be received by December 2009.

The Agency responded by indicating that the Hawaii Labor Relations Board (HLRB) has completed a draft of a new chapter for administrative rules to govern Hawaii Occupational Safety and Health appeals before the Board; additionally, the HLRB has completed a draft of a new chapter of rules that consolidates and updates Chapter 12-41 (proceedings before the Hawaii Employment Relations Board) and Chapter 12-42 (proceedings before the Hawaii Public Employment Relations Board). The HLRB is currently drafting the small business impact statements for the proposed new chapters,

articulating the exact changes to be made, reasons for the changes, effect on the department, and impact on small businesses.

Department of Land and Natural Resources

1. Chapter 13-209 – “Activities within Natural Area Reserves”

Agency’s Justification

The purpose of the rules is to govern permitted activities, prohibited activities, and special use permits, and penalties. The rules were established in 1981.

Review Board’s 2006 Recommendation

The rules are 25 years; Agency indicates rules are in the process of being amended. The Review Board is in concurrence with Agency that the rules are in need of amending.

Response from Agency to Review Board’s Recommendation

The Agency performed a full analysis on the existing rules in late 2005 and early 2006. Based on this analysis, several amendments were developed to improve and enhance the ability of the State to protect the natural area reserves system and the unique biological, geological, and cultural resources found within them. The proposed amendments went through the appropriate channels of review including public hearing in June 2006. The amended rules were adopted in January 2007.

Final Commentary of Review Board

The Review Board has no further comment.

2. Chapter 13-167 – “Rules of Practice and Procedure for the Commission on Water Resource Management”

Agency’s Justification

The purpose of the rules is to govern the practice and procedure of the Commission on Water Resources Management of the State under Chapter 91, Hawaii Revised Statutes, the Constitution and Water Laws of the State, the Constitution and Laws of the United States, and such other related acts as may now or hereinafter be administered by the Commission. These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. The rules were established in 1988.

Review Board’s 2006 Recommendation

Rules are 18 years old. Review and update is needed.

Response from Agency to Review Board’s Recommendation

Agency is planning to update these rules; a draft to the Review Board is expected in the first quarter of 2009.

Final Commentary of Review Board

The Review Board has no further comment.

3. Chapter 13-234 – “Fees and Charges”

Agency’s Justification

The purpose of the rules is to regulate the schedule of fees and charges of the small boat harbors rules. The administrative jurisdiction for recreational boating and related vessel activities were transferred from the Department of Transportation, Harbors Division to DLNR, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. The rules were established in 1981, and amended in 1992.

Review Board's 2006 Recommendation

The rules are 14 years old. If fees have changed since the last amendment, review and update is needed.

Response from Agency to Review Board's Recommendation

Agency indicates that this rule was amended a few years ago when mooring fees were addressed and cruise ship fees were removed. Agency is planning to completely revise the rules that will include simplifying, making them more user-friendly, and resolving longstanding issues; a draft to the Review Board is expected mid-2009.

Final Commentary of Review Board

The Review Board has no further comment.

4. Chapter 13-5 – “Conservation District”

Agency's Justification

The purpose of the rules is to regulate land use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. The rules were established in 1994.

Review Board's 2006 Recommendation

Agency indicates that the rules are in the process of being amended. The Review Board is in concurrence with the Agency that the rules are in need of amending.

Response from Agency to Review Board's Recommendation

The proposed rules continue to undergo internal DLNR review as it has been for the last couple of years. DLNR's proposed amendments have been reviewed by the Legislative Reference Bureau rules section on two separate occasions as well as the Department of the Attorney General. DLNR estimates that the request for public hearings and the small business impact determination of the proposed rule amendments will be considered by the Board of Land and Natural Resources in the near future. The proposed rules are currently being reviewed by the Chairperson of DLNR.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency.

Department of Transportation

1. Chapter 19-43 - “Motor Vehicles”

Agency's Justification

The purpose of these rules govern 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; 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; operation of parking meters; reserved parking zone; parking time limits; and parking by permit; violations. The rules were established in 1974.

The rules authorize the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

Review Board's 2006 Recommendation

The rules are 32 years old. Rules should be reviewed and updated.

Response from Agency to Review Board's Recommendation

This rule authorizes the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

These rules also governing applicability of statutes, traffic codes and ordinances; jurisdiction of harbor master over vehicles; licensing, safety inspection and inspection; 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; 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; operation of parking meters; reserved parking zone; parking time limits; parking by permit; and violations.

Final Commentary of Review Board

A meeting held on November 30, 2007 with Director Barry Fukunaga, revealed that these rules will be updated regarding implications due to security in 1 – 2 years. The Review Board is in concurrence, and will follow-up with the Agency for the status of the amendments.

2. Chapter 19-105 - “Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways”

Agency's Justification

The purpose of the rules is to necessitate compliance with state and federal requirements by issuing a permit which is a costly item. The rules were established in 1981. The rules impact small business and are federally mandated by 23 CFR Chapter 1, Part 645.

Review Board's 2006 Recommendation

The rules are 25 years old. Rules should be reviewed and updated.

Response from Agency to Review Board's Recommendation

This rule will have an impact on small business. It is necessary to be in compliance with state and federal regulations; permit is issued to do work which is a costly item. This rule is to be amended; no target date has been set.

Final Commentary of Review Board

The Review Board is in concurrence, and will follow-up with the Agency for the status of the amendments.

3. Chapter 19-121 - "Traffic Records"

Agency's Justification

The purpose of these rules relates to the ever-increasing number of traffic accidents occurring on the public highways each year; it is therefore deemed in the public interest that a statewide, interrelated traffic records system shall be established.

The system is designed to assure that appropriate data on traffic accidents, drivers, motor vehicles, and roadways are available to provide: 1) A reliable indication of the magnitude and nature of the highway traffic accident problem; 2) a reliable means for identifying short-term changes and long-term trends in the magnitude and nature of traffic accidents; and 3) a valid basis for: a) the detection of high and or potentially high accident locations and causes; b) the detection of health, behavioral, and related factors contributing to accident causes; c) the design of accident, fatality, and injury countermeasures; d) the development of means for evaluating the cost effectiveness of these measures, and; e) the planning and implementation of selected enforcement and other operational programs. The rules were established in 1994.

Review Board's 2006 Recommendation

The rules are 12 years old. Update of rules is necessary if fees have changed.

Response from Agency to Review Board's Recommendation

The rule will have an impact on small business depending on what part of the rule is applicable. Currently, a \$70,000 bond requirement is incorporated into the rule, which is federally mandated by Title 18, USC Section 2721. There is currently no target date set to amend the rules.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency; no update appears necessary at this time.

4. Chapter 19-128 - "Design, Placement, and Maintenance of Traffic Control Devices"

Agency's Justification

The purpose of the rules is to establish the proper design, installation, placement and coordination of traffic control devices on public streets and highways which contribute substantially not only to the efficient movement of traffic, but also to the development of a safer environment on streets and highways. The rules impact small business, and may impact some contractors; for example, spacing of cones and types of work zone safety (signage) requirements. The rules were established in 1982.

Review Board's 2006 Recommendation

The rules are 24 years old. Rules should be reviewed and updated.

Response from Agency to Review Board's Recommendation

This rule has an impact on small business and it depends on what part of the rule is amended. It may impact some contractors. Example: Spacing of cones and types of work zone safety (signage) requirements (DBEDT and the Regulatory Review Board may need to determine). This rule is in current status and no target date has been set.

Final Commentary of Review Board

A meeting held on November 30, 2007 with Director Barry Fukunaga, revealed that no update is necessary; Review Board concurs.

5. Chapter 19-135 - "Periodic Safety Inspection of Mopeds"

Agency's Justification

The purpose of these rules is to allow private inspection stations to conduct inspections for an \$8.75 fee. Stations often are moped dealers or gas stations and moped inspections provide ancillary income of about \$7.25 per moped inspected. There are approximately 15,000 mopeds registered statewide. The rules impact small business and were established in 1986.

Review Board's Recommendation

Update of rules is necessary only if regulations have changed.

Response from Agency to Review Board's Recommendation

This rule has an impact on small business as private inspection stations conduct the inspections for a fee (\$8.75). The stations often are moped dealers or gas stations and moped inspections provide ancillary income of about \$7.25 per moped inspected. There are approximately 15,000 mopeds registered statewide. The rule will be amended and the target date is within 1 – 2 years.

Final Commentary of Review Board

The Review Board is in concurrence, and will follow-up with the Agency for the status of the amendments.

6. Chapter 19-143 - "Pupil Transportation Safety"

Agency's Justification

The purpose of these rules is to provide safe transportation of students by setting safety requirements relating to school bus equipment, design, construction, and identification, driver training and qualification operations, loading and unloading, and maintenance and inspection.

The rules impact small business as there may be a cost for school bus equipment compliance. The rules were established in 1989 and are federally mandated by 49 CRF, FMSCR Parts 390-399.

Review Board's 2006 Recommendation

Rules were established in 1989. Update of rules is necessary only if changes to the Federal Motor Vehicle Safety Standards and Motor Carrier Safety Regulations have been made.

Response from Agency to Review Board's Recommendation

This rule has an impact on small business as the rule sets safety standards to school bus equipment. In order to be compliant, there might be costs to the schools. This rule is in current status and no target date has been set.

Final Commentary of Review Board

The Review Board is in concurrence with the Agency; no update is necessary at this time.

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