

**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 2006**

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# MESSAGE FROM THE DIRECTOR



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

Theodore E. Liu  
Director

# MESSAGE FROM THE CHAIRPERSON



**Linda Lingle**  
Governor

**Theodore E. Liu**  
Director, DBEDT

**Mark K. Anderson**  
Deputy Director, DBEDT

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During the 2005, 2006 legislative period, the Small Business Regulatory Review Board studied and made recommendations on new rules and many changes to existing rules. We are deeply appreciative of the tedious hours spent by so many Directors and their staff reviewing our requests and recommendations. Their cooperation is making a difference to businesses buried in regulations.

This legislative session will no doubt bring about new laws impacting our business community. These laws are just the beginning of the process and there is often a delay of a year or so before the Board has the opportunity to see the rules created by each piece of legislation. What has become very obvious to me is that our rule makers are creating rules with an eye towards less business impact. What an achievement for our Board Members and our Administration!

To say that our Board Members are dedicated to the cause of reducing business impacts is to state the obvious. They have spent many hours reviewing and discussing rules, and with the support of the Governor's office, have experienced a high degree of success for a number of industries. I congratulate each Board Member on their efforts. I treasure my relationship with each and every member of our Board.

What makes a group such as ours successful is the incredible support it receives from DBEDT. Business Advocate, Dori Palcovich organizes all of our efforts and so often this year has single-handedly taken us to new levels of achievement. On behalf of our Board I extend a special Mahalo to DBEDT Director Ted Liu for his unwavering support of our Board's work. It is always rewarding to be part of such a successful team.

Chairperson  
December 2006

# OVERVIEW

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

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

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

(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 small business regulatory review board shall submit an evaluation report to each regular session of the legislature in even-numbered years.

Pursuant to the RFA, Section 201M-7, HRS, the Small Business Regulatory Review Board (Review Board) may request from each State Agency a list of current rules that affect small business and a report describing the specific public purpose or interest for adopting the rules or any other reasons to justify the rules continued implementation.

In addition, according to Section 201M-7 (d) of the RFA, 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.” Further, “upon consideration of any report submitted by an Agency under this section any public testimony; the Board will submit an evaluation report to each regular session of the legislature in even-numbered years.”

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

# ADMINISTRATIVE RULE REVIEW

For the Board's first report in 2003, fourteen State agencies provided a total of 345 rules that affect small business. Also provided was the specific purpose for adopting the rule or other reasons that justify continued implementation of the rule. In addition, four agencies submitted a total of 67 rules that have received the most complaints or that have resulted in the most citations.

In 2005, the Board requested a modified version of the 2003 rule submittals. In accordance with the law, the Board within its discretion, requested only those rules which have been determined to bear significant business impact require a full re-analysis, by describing its specific purpose and reasons for justifying its continued implementation.

As a result, 11 state agencies provided 237 rules that effect small business. Upon review, the Review Board is recommending that a full review and analysis be performed on 49 of these administrative rules, as outlined in the following matrix and summary. Of the 49, six are recommended for full review only if updates to the regulations have been made, such as increase in fees.

## RULES REVIEWED MATRIX

<b>Agency</b>	<b># of Rules Reviewed</b>	<b># of Rules Recommended for Full Analysis</b>
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 DIVISON	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
<b>Total</b>	<b>237</b>	<b>49</b>



# **SUMMARY OF ADMINISTRATIVE RULE REVIEW**

## **Summary of Department of Agriculture Administrative Rules Reviewed**

**Rules Reviewed: 29**

**Rules Recommended for Full Analysis: 3**

Chapter 4-86, "Brake Fluids, Coolants, Petroleum Products, and After-Market Additives"

Chapter 4-93, "Packaging and Labeling"

Chapter 4-101, "Weighing and Measuring Devices"

**Rules Currently under Review by Agency which Board is in Agreement: 3**

Chapter 4-72, "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules:

Chapter 4-73, "Plant and Non-domestic Animal Quarantine Plant Export Rules"

Chapter 4-96, "Schedule and Fees for Licensing Devices susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification"

**Rules Currently under Review by Agency: 3**

Chapter 4-17, "Swine"

Chapter 4-20, "Non-Domestic Animals"

Chapter 4-23, "Horses"

## **Summary of Department of Budget and Finance Administrative Rules Reviewed**

### **Financial Administration Division**

**Rules Reviewed: 7**

**Rules Recommended for Full Analysis: 0**

### **Public Utilities Commission**

**Rules Reviewed: 10**

**Rules Recommended for Full Analysis: 3**

Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers"

Chapter 6-63, "Motor Carrier Tariffs and Schedules"

Chapter 6-65, "Water Carriers"

## **Summary of Department of Business, Economic Development and Tourism Administrative Rules Reviewed**

**Rules Reviewed: 3**

**Rules Recommended for Full Analysis: 0**

## **Summary of Department of Commerce and Consumer Affairs Administrative Rules Reviewed**

**Rules Reviewed: 45**

**Rules Recommended for Full Analysis: 13**

- Chapter 16-51, "Fees"
- Chapter 16-73, "Barbers"
- Chapter 16-74, "Boxing"
- Chapter 16-75, "Cemeteries and Funeral Trusts"
- Chapter 16-83, "Hearing Aid Dealers and Fitters"
- Chapter 16-84, "Massage Therapy"
- Chapter 16-86, "Motor Vehicle Dealers and Salesmen"
- Chapter 16-87, "Motor Vehicle Repair Dealers and Mechanics"
- Chapter 16-88, "Naturopaths"
- Chapter 16-101, "Veterinarians"
- Chapter 16-106, "Timesharing"
- Chapter 16-116, "Travel Agencies"
- Chapter 16-117, "Activity Providers and Activity Desks"

**Summary of Department of Education Administrative Rules Reviewed**

**Rules Reviewed: 1**

**Rules Recommended for Full Analysis: 0**

**Summary of Department of Health Administrative Rules Reviewed**

**Medical Division**

**Rules Reviewed: 7**

**Rules Recommended for Full Analysis: 6**

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

**Environmental Division**

**Rules Reviewed: 30**

**Rules Recommended for Full Analysis: 3**

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

Additionally, there are 11 administrative rules noted on the Agency's website that are "pending amendment and compilation."

**Summary of Department of Human Services Administrative Rule Reviewed**

**Rules Reviewed: 9**

**Rules Recommended for Full Analysis: 5**

- Chapter 17-402, "Services to the Blind and Visually Handicapped"

Chapter 17-893, "Licensing of Child-Placing Organizations"  
Chapter 17-894, "Licensing of Child-Caring Institutions"  
Chapter 17-896, "Licensing of Before and After School Child Care Facilities"  
Chapter 17-1417, "Adult Day Care Services"

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

#### **Rules Reviewed**

**Rules Reviewed:** 20

**Rules Recommended for Full Analysis:** 1

Chapter 12-12, "Prepaid Health Care"

**Rules Recommended for Full Analysis only if Updates to Regulations have taken Place:** 2

Chapter 12-11, "Temporary Disability Insurance"

Chapter 12-41, "Hawaii Labor Relations Board (Employment)"

### **Summary of Land and Natural Resources Administrative Rules Reviewed**

**Rules Recommended for Full Analysis:** 3

Chapter 13-5, "Conservation District"

Chapter 13-167, "Rules of Practice and Procedure for the Commission on Water Resource Management"

Chapter 13-209, "Activities within Natural Area Reserves"

**Rules recommended for analysis only if specific changes have been made (i.e., fee increases):** 1

Chapter 13-234, "Fees and Charges"

### **Summary of Department of Transportation Administrative Rules Reviewed**

**Rules Reviewed:** 21

**Rules Recommended for Full Analysis:** 3

Chapter 19-43, "Motor Vehicles"

Chapter 19-105, "Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways"

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

**Rules recommended for analysis only if specific changes have been made (i.e., fee increases, changes to federal regulations, etc.):** 3

Chapter 19-121, "Traffic Records"

Chapter 19-135, "Periodic Safety Inspection of Mopeds"

Chapter 19-143, "Pupil Transportation Safety"

### **Summary of University of Hawaii Administrative Rules Reviewed**

**Rules Reviewed:** 1

**Rules Recommended for Full Analysis:** 0

# LISTING OF RULES REVIEWED

Listed below are the 237 rules reviewed the Review Board, followed by the Agencies' justifications and recommendations made by the Review Board.

## ***Department of Agriculture***

### **Animal Industry Division**

1. Chapter 4-17 – “Swine”
2. Chapter 4-20 – “Non-domestic Animals”
3. Chapter 4-21 – “Vaccines, Microorganisms, and Parasites”
4. Chapter 4-22 – “Reporting of Animal Diseases
5. Chapter 4-23 – “Horses”
6. Chapter 4-24 – “Meat Grading”
7. Chapter 4-27 – “Brands”

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

8. Chapter 4-42 – “Standards for Hawaii-Grown Flowers and Foliage”
9. Chapter 4-44 – “Standards for Processed Products”
10. Chapter 4-45 – “Feed”
11. Chapter 4-46 – “Standards for Shell Eggs”
12. Chapter 4-48 – “Rules for Regulating Dealer in Farm Products”
13. Chapter 4-54 – “Industry and Product Promotion Program”

### **Plant Industry Division**

14. Chapter 4-67 – “Seed Rules”
15. Chapter 4-68 – “Noxious Weed Rules”
16. Chapter 4-69A – “Pests for Control or Eradication”
17. Chapter 4-70 – “Plant and Non-Domestic Animal Quarantine Plant Import Rules”
18. Chapter 4-71 – “Plant and Non-Domestic Animal Quarantine
19. Chapter 4-71A – “Plant and Non-Domestic Animal Quarantine Microorganism Import Rules”
20. Chapter 4-72 – “Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules”
21. Chapter 4-73 – “Plant and Non-Domestic Animal Quarantine Plant Export Rules”

### **Quality Assurance Division**

22. Chapter 4-86 – “Brake Fluids, Coolants, Petroleum Products, and After-Market Additives”
23. Chapter 4-87 – “Voluntary Registration of Service Persons or Service Agencies”
24. Chapter 4-89 – “Measure Masters”
25. Chapter 4-91 – “Unit Pricing of Consumer Commodities”
26. Chapter 4-93 – “Packaging and Labeling”
27. Chapter 4-94 – “Method of Sale of Commodities”

28. Chapter 4-96 – “Schedule and Fees for Licensing Devices Susceptible of Commercial Usage, and Measuring Devices and Measurement Standards for Testing or Certification”
29. Chapter 4-101– “Weighing and Measuring Devices”

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

### **Financial Administration Division**

1. Chapter 6-1 – “Public Records; Administrative Procedures; Receiving and Paying Hours”
2. Chapter 6-4 - “Special Purpose Revenue Bonds for Health Care Facilities”
3. Chapter 6-10 - “Special Purpose of Revenue Bonds for Industrial Enterprises”
4. Chapter 6-12 – “Special Purpose Revenue Bonds for Manufacturing Enterprises”
5. Chapter 6-13 – “Special Purpose Revenue Bonds for Processing Enterprises”
6. Chapter 6-16 – “Special Purpose Revenue Bonds for Early childhood Education and Care Facilities”
7. Chapter 6-17 – “Special Purpose Revenue Bonds for Not-for-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, Colleges and Universities”

### **Public Utilities Commission**

8. Chapter 6-61 – “Rules of Practice and Procedure Before the Commission”
9. Chapter 6-62 – “Motor Carrier Rules and Classification of Property and Passenger Carriers”
10. Chapter 6-63 – “Motor Carrier Tariffs and Schedules”
11. Chapter 6-65 – “Water Carriers”
12. Chapter 6-68 – “Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers”
13. Chapter 6-76.1 – “Shared Tenant Service”
14. Chapter 6-79 – “Aggregator and Operator Service”
15. Chapter 6-80 – “Competition in Telecommunications Services”
16. Chapter 6-81 – “Universal Service Fund”
17. Chapter 6-82 – “Pay Telephone Service”

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

### **Hawaii Community Development Authority**

1. Chapter 15-19 – “District-Wide Improvement Programs Rules”
2. Chapter 15-21 – “Development Program”
3. Chapter 15-24 – “Relocation Assistance to Displaced Persons”

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

### **Insurance Division**

1. Chapter 16-178 – “Administrative Special Mortgage Recording Fee Guidelines”

### **Division of Financial Institutions**

2. Chapter 16-31 – “Credit Unions”

### **Business Registration Division**

3. Chapter 16-37 – “Rules Under the Franchise Investment Law”

### **Office of the Director**

4. Chapter 16-51 – “Fees”
5. Chapter 16-53 – “Fees Relating to Boards and Commissions”

### **Professional and Vocational Licensing Division**

6. Chapter 16-71 – “Certified Public Accountants and Public Accountants”
7. Chapter 16-72 – “Acupuncture Practitioners”
8. Chapter 16-73 – “Barbers”
9. Chapter 16-74 – “Boxing”
10. Chapter 16-75 – “Cemeteries and Funeral Trusts”
11. Chapter 16-76 – “Chiropractors”
12. Chapter 16-79 – “Dentists and Dental Hygienists”
13. Chapter 16-80 – “Electricians and Plumbers”
14. Chapter 16-81 – “Elevator Mechanics”
15. Chapter 16-83 – “Hearing Aid Dealers and Fitters”
16. Chapter 16-84 – “Massage Therapy”
17. Chapter 16-85 – “Medical Examiners”
18. Chapter 16-86 – “Motor Vehicle Dealers and Salesmen”
19. Chapter 16-87 – “Motor Vehicle Repair Dealers and Mechanics”
20. Chapter 16-88 – “Naturopaths”
21. Chapter 16-90 – “Nursing Home Administrators”
22. Chapter 16-91 – “Opticians”
23. Chapter 16-92 – “Optometrists”
24. Chapter 16-93 – “Osteopaths”
25. Chapter 16-96 – “Pilotage”
26. Chapter 16-97 – “Private Detectives and Guards”
27. Chapter 16-98 – “Psychologists”
28. Chapter 16-99 – “Real Estate Brokers and Salespersons”
29. Chapter 16-100 – “Speech Pathologists and Audiologists”
30. Chapter 16-101 – “Veterinarians”
31. Chapter 16-104 – “Uniform Land Sales Practices”
32. Chapter 16-106 – “Timesharing”
33. Chapter 16-107 – “Rules Relating to Horizontal Property Regimes”
34. Chapter 16-108 – “Commercial Employment Agencies”
35. Chapter 16-110 – “Physical Therapy”
36. Chapter 16-112 – “Collection Agencies”
37. Chapter 16-113 – “Electrologists”
38. Chapter 16-114 – “Real Estate Appraisers”
39. Chapter 16-115 – “Professional Engineers, Architects, Surveyors, and Landscape Architects”
40. Chapter 16-116 – “Travel Agencies”

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

### **Office of Consumer Protection**

42. Chapter 16-301 – “Office of Consumer Protection, Public Records and Information, Rule-making Proceedings, and Declaratory Rulings”

43. Chapter 16-302 – “Office of Consumer Protection, Non-adjudicative Procedures”

44. Chapter 16-303 – “Office of Consumer Protection, Unfair or Deceptive Practices in Advertising”

45. Chapter 16-304 – “Office of Consumer Protection, Compensation of Witnesses”

## ***Department of Education***

1. Chapter 8-101 – “Licensing of Private Trade, Vocational, and Technical Schools”

## ***Department of Health***

### **Medical**

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

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

2. Chapter 11-95 – “Freestanding Surgical Outpatient (FSOF) or Ambulatory Surgical Centers”

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

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

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

#### **State Laboratories Division**

6. Chapter 11-110 – “Clinical Laboratories and Laboratory Personnel”

#### **Epidemiology Division**

7. Chapter 11-156 – “Examinations and Immunizations”

### **Environmental**

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

1. Chapter 11-5 – “Environmentally-Related Illness and Injury Reporting”

2. Chapter 11-451 – “State Contingency Plan”

#### **Sanitation Branch**

3. Chapter 11-10 – “Swimming Pools”

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

4. Chapter 11-33 – “Hawaii Drug Formulary of Equivalent Drug Products”

5. Chapter 11-35 – “Shellfish Sanitation”

6. Chapter 11-36 – “Sale of Prophylactics Through Vending Machines”

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

7. Chapter 11-39 – “Air Conditioning & Ventilating”
8. Chapter 11-44 – “Radiologic Technology Board Radiologic Technology Rules”
9. Chapter 11-45 – “Radiation Control”
10. Chapter 11-46 – “Community Noise Control”
11. Chapter 11-501 – “Asbestos Requirements”
12. Chapter 11-502 – “Asbestos Containing Materials in Schools”
13. Chapter 11-503 – “Fees for Asbestos Removal”
14. Chapter 11-504 – “Asbestos Abatement Certification Program”

### **Wastewater Branch**

15. Chapter 11-61 – “Mandatory Certification of Wastewater Treatment Plants”

### **Solid and Hazardous Waste Branch**

16. Chapter 11-68 – “Litter Control”
17. Chapter 11-260 – “Hazardous Waste Management General Provisions”
18. Chapter 11-261 – “Hazardous Waste Management Identification & Listing of Hazardous Waste”
19. Chapter 11-262 – “Hazardous Waste Management Standards Applicable to Generators of Hazardous Waste”
20. Chapter 11-263 – “Hazardous Waste Management Standards Applicable to Transporters of Hazardous Waste”
21. Chapter 11-264 – “Hazardous Waste Management Standards for Owners & Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities”
22. Chapter 11-265 – “Hazardous Waste Management Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities”
23. Chapter 11-266 – “Hazardous Waste Management Standards for the Management of Specific Hazardous Wastes & Specific Types of Hazardous Waste Management Facilities”
24. Chapter 11-268 – “Hazardous Waste Management Land Disposal Restrictions”
25. Chapter 11-270 – “Hazardous Waste Management State Administered Permits: The Hazardous Waste Permit Program”
26. Chapter 11-271 – “Hazardous Waste Management Procedures for Decision Making”
27. Chapter 11-273 – “Hazardous Waste Management Standards for Universal Waste Management”
28. Chapter 11-279 – “Standards for the Management of Used Oil”
29. Chapter 11-280 – “Hazardous Waste Management Public Information”
30. Chapter 11-281 – “Underground Storage Tanks (USTs)”

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

1. Chapter 17-402 – “Services to the Blind and Visually Handicapped”
2. Chapter 17-891.1 – “Registration of Family Child Care Homes”
3. Chapter 17-892.1 – “Licensing of Group Child Care Centers and Group Child Care Homes”
4. Chapter 17-893 – “Licensing of Child-Placing Organizations”



5. Chapter 17-894 – “Licensing of Child-Caring Institutions”
6. Chapter 17-895 – “Licensing of Infant and Toddler Child Care Centers”
7. Chapter 17-896 – “Licensing of Before and After School Child Care Facilities”
8. Chapter 17-1417 – “Adult Day Care Services”
9. Chapter 17-1419 – “Chore Services for Community Long-Term Care Programs”

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

### **Disability Compensation Division**

1. Chapter 12-11 – “Temporary Disability Insurance”
2. Chapter 12-12 – “Prepaid Health Care”

### **Wage Standard Division**

3. Chapter 12-20 – “Wage and Hour”
4. Chapter 12-21 – “The Administration and Enforcement of the Payment of Wages and Other Compensation Law”
5. Chapter 12-22 – “Wage Determinations and the Administration and Enforcement of Chapter 104, HRS”
6. Chapter 12-24 – “Relating to Unlawful Suspension or Discharge Under Part III, Chapter 378, HRS”
7. Chapter 12-25 – “Child Labor”
8. Chapter 12-26 – “Lie Detector Tests”

### **Workforce Development Division**

9. Chapter 12-6 – “Employment and Training fund Program (ETF)”
10. Chapter 12-30 – “Apprenticeship Programs”
11. Chapter 12-31 – “A State Plan for Equal Employment Opportunity in Apprenticeship Programs”
12. Chapter 12-506 – “Plant Closing Notification and Dislocated Worker Allowance”

### **Boards**

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

### **State Fire Council**

14. Chapter 12-45.1 – “State Fire Code”

### **Civil Rights Commission**

15. Chapter 12-46 – “Civil Rights Commission”

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

16. Chapter 12-47 – “Hoisting Machine Operators Advisory Board”

### **Hawaii Occupational Safety and Health Division**

17. Chapter 12-60, Part II. – “General Safety and Health Requirements”
18. Chapter 12-110, Part III – “Construction Standards”
19. Chapter 12-200, Part VIII – “Health Standards”
20. Chapter 12-220, Part X – “Boilers and Pressure Vessels” and Part XI – “Elevators”

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

### **Division of Aquatic Resources**

1. Chapter 13-32 – “Honolua-Mokuleia Marine Life Conservation District, Maui”
2. Chapter 13-33 – “Lapakahi Marine Life Conservation District, Hawaii”
3. Chapter 13-35 – “Wailea Bay Marine Life Conservation District, Hawaii”
4. Chapter 13-48 – “Waikiki-Diamond Head Shoreline Fisheries management Area, Oahu”
5. Chapter 13-51 – “Kahului Harbor, Maui”
6. Chapter 13-52 – “Kailua Bay, Hawaii”
7. Chapter 13-54 – “Pauka Bay and Pauka Reef, Hawaii”
8. Chapter 13-55 – “Kawaihae Harbor, Hawaii”
9. Chapter 13-57 – “Keahou Bay Hawaii”
10. Chapter 13-61 – “Nuuanu Freshwater Fish Refuge, Oahu”
11. Chapter 13-62 – “Wahiawa Public Fishing Area, Oahu”
12. Chapter 13-73 – “Fish Aggregating Devices”
13. Chapter 13-83 – “Shellfishes”
14. Chapter 13-84 – “Samoan Crab”
15. Chapter 13-85 – “Clam”
16. Chapter 13-89 – “Spiny Lobster or Ula”
17. Chapter 13-90 – “Nehu for Family Consumption”
18. Chapter 13-92 – “Opihi”
19. Chapter 13-93 – “Limu”
20. Chapter 13-94 – “Bottomfish Management”
21. Chapter 13-99 – “Introduced Freshwater Fishes”
22. Chapter 13-100 – “O’opu and Hinana”

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

23. Chapter 13-3 – “Alakai Wilderness Preserve, Island of Kauai”
24. Chapter 13-105 – “Closed (restricted) Watersheds”
25. Chapter 13-107 – “Threatened and Endangered Plants”
26. Chapter 13-121 – “Hunting”
27. Chapter 13-122 – “Game Bird Hunting, Field Trials and Commercial Shooting Preserves”
28. Chapter 13-123 – “Game Mammal Hunting”
29. Chapter 13-124 – “Indigenous, Endangered, Threatened and Injurious Wildlife, and Introduced Wild Birds”
30. Chapter 13-130 – “Trail and Access Program”
31. Chapter 13-209 - “Activities within Natural Area Reserves”

### **Division of State Parks**

32. Chapter 13-146 – “Hawaii State Park System”

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

33. Chapter 13-167 – “Rules of Practice and Procedure for the Commission on Water Resource Management”
34. Chapter 13-168 – “Water Use, Wells, and Stream Diversion Works”
35. Chapter 13-169 – “Protection of In stream Uses of Water”

- 36. Chapter 13-170 – “Hawaii Water Plan”
- 37. Chapter 13-171 – “Designation and Regulation of Water Management Areas”

### **Land Division**

- 38. Chapter 13-1 - “Rules of Practice and Procedure”
- 39. Chapter 13-183 – “Rules on Leasing and Drilling of Geothermal Resources”
- 40. Chapter 13-184 – “Designation and Regulation of Geothermal Resource Sub zones”
- 41. Chapter 13-185 – “Rules of Practice and Procedure for Geothermal and Cable System Development Permitting”
- 42. Chapter 13-190 – “Dams and Reservoirs”
- 43. Chapter 13-219 – “Fees”
- 44. Chapter 13-220 – “Public Auction”
- 45. Chapter 13-222 – “Shoreline Certifications”

### **Historic Preservation Division**

- 46. Chapter 13-197 – “Hawaii Historic Places Review Board”
- 47. Chapter 13-198 – “Hawaii and National Register of Historic Places Programs”

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

- 48. Chapter 13-230 – “General Provisions”
- 49. Chapter 13-231 – “Operations of Boats, Small Boat Harbors, and Permits”
- 50. Chapter 13-234 – “Fees and Charges”
- 51. Chapter 13-244 – “Rules of the Road, Local, and Special Rules”
- 52. Chapter 13-251 – “Waikiki and Kaanapali Ocean Waters”
- 53. Chapter 13-256 – “Ocean Recreation Management Rules”

### **Office of Conservation and Coastal Lands**

- 54. Chapter 13-5 – “Conservation District”

## ***Department of Transportation***

### **Administration Division**

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

### **Airports Division**

- 4. Chapter 19-20.1 – “Commercial Services at Public Airports”
- 5. Chapter 19-33 – “Control of Hazardous Materials & Waste at Public Airports”
- 6. Chapter 19-34 – “Tour Aircraft Operations at Public Airports”
- 7. Chapter 19-37 – “Fuel Handling Procedures at Public Airports”
- 8. Chapter 19-38.1 – “On-Demand Taxi Service at Public Airports”

### **Harbors Division**

- 9. Chapter 19-43 – “Motor Vehicles”

### **Highways Division**

10. Chapter 19-101 – “Movement of Overweight Vehicles Along and Upon Hana Highway (FAS 360) Between Kailua Village and Hana”
11. Chapter 19-102 – “Fee Schedule for the Issuance of a Permit to work on State Highways”
12. Chapter 19-104 – “The Movement by Permit of Oversize and Overweight Vehicles”
13. Chapter 19-105 – “Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways”
14. Chapter 19-121 – “Traffic Records”
15. Chapter 19-123 – “Statewide Motorcycle, Moped and Motor Scooter Education Courses and Licensing Skill Test Waiver”
16. Chapter 19-124 – “Protection Devices for Motorcycle and Motor Scooter Operators and Passengers”
17. Chapter 19-128 – “Design, Placement, and Maintenance of Traffic Control Devices”
18. Chapter 19-129 – “Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways”
19. Chapter 19-135 – “Periodic Safety Inspection of Mopeds”
20. Chapter 19-143 – “Pupil Transportation Safety”

### **Statewide Transportation Planning Office**

21. Chapter 19-150 – “Parking for Disabled Persons”

### ***University of Hawaii***

1. Chapter 20-15 – “Rules Governing Agriculture Diagnostic Services User Fees”

# AGENCY JUSTIFICATIONS AND REVIEW BOARD RECOMMENDATIONS

## *Department of Agriculture*

### Animal Industry Division

#### 1. Chapter 4-17 – “Swine”

This chapter 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.

This 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. In addition, the 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.

#### **SBRRB’s Comments**

**Concerns** – The rules are 25 years old.

**Recommendation** – Agency has indicated that the rules are in the process of being updated.

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

This chapter 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.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old.

**Recommendation** – Agency has indicated that the rules are in the process of being updated.

**3. Chapter 4-21 – “Vaccines, Microorganisms, and Parasites”**

This chapter controls the importation of microorganisms and parasites that are detrimental to livestock and poultry and, in some cases, injurious to man. In addition, importation of vaccines that potentially interfere with the diagnosis or surveillance of regulated diseases is controlled. There is little or no impact on small business since the State's approval process is at any cost and vaccines for approval are produced by large pharmaceutical companies. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**4. Chapter 4-22 – “Reporting of Animal Diseases”**

This chapter requires the Animal Industry Division to maintain a list of diseases, which have a significant detrimental affect on livestock and poultry. Practicing veterinarians are required to report such diseases to the division when diagnosed. Reporting can be by phone, facsimile or e-mail. Less than five diseases are reported each year. This chapter does not “bear significant business impact,” for those required to report diseases. The rules were established in 1949 and last amended in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**5. Chapter 4-23 – “Horses”**

This chapter 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.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old.

**Recommendation** – Agency has indicated that the rules are in process of being updated.

## **6. Chapter 4-24 – “Meat Grading”**

The Quality Assurance Division operates the meat inspection program, which is voluntary. A voluntary program has no impact on small business since there is no requirement to participate. The rules were established in 1981 and amended in 1991.

### **SBRRB’s Comments**

**Concerns** – These rules were transferred to the Agency’s Quality Assurance Division and should be referenced on the Agency’s website as such.

**Recommendation** – None, at this time.

## **7. Chapter 4-27 – “Brands”**

This chapter requires the Animal Industry Division to maintain a catalogue of all registered livestock brands, and requires owners of livestock brands to register brands every five years. Brand registration protects livestock producers against animal theft. The cost of “brand” registration is \$10 every five years. There are currently about 600 registered brands. This rule has little impact on small business (livestock producers). The industry expressed strong feelings about the need for “brand” regulations to address theft issues. The rules were established in 1988.

### **SBRRB’s Comments**

**Concerns** – These rules are 18 years old, but appear satisfactory and have little impact on small business.

**Recommendation** – None, at this time.

## **Marketing and Consumer Services Division**

### **8. Chapter 4-42 – “Standards for Hawaii-Grown Flowers and Foliage”**

This chapter establishes standards for local flowers and foliage for quality control and common industry communication, and sets minimum export requirements. This rule is justified because it allows for fee-for-service third party certification to settle disputes related to quality and condition of agricultural products, and allow recovery of financial loss. Certification stands as prima facie evidence in State court. Minimum export requirements help to maintain quality image of Hawaii products in export markets. The rules were established in 1967 and amended in 1984.

### **SBRRB’s Comments**

**Concerns** – The last amendments to these rules were made 22 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

### **9. Chapter 4-44 – “Standards for Processed Products”**

This chapter establishes standards for local processed products for quality control and common industry communication, and sets minimum export requirements. This rule is justified because it allows for fee-for-service third party

certification to settle disputes related to quality and condition of agricultural products, and allow recovery of financial loss. Certification stands as prima facie evidence in State court. Minimum export requirements help to maintain quality image of Hawaii products in export markets. The rules were established in 1968 and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**10. Chapter 4-45 – “Feed”**

This chapter requires registration of feed, certification, and feed analysis. Tonnage fees are assessed to cover costs to check feed for adulteration and proper label and label guarantee. Also allows for fee-for-service third party certification to settle disputes related to quality and condition of agricultural products, and allow recovery of financial loss. Certification stands as prima facie evidence in State court.

This rule is justified because it protects local feed users by checking incoming and locally produced feed, especially from suspicious or foreign sites, for adulteration and improper labeling. Prevents adulterated feed from entering the food chain, and assures buyers that label guarantees are accurate, which is especially important when they formulate feeding rations. The rules were established in 1984 and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**11. Chapter 4-46 – “Standards for Shell Eggs”**

This chapter establishes standards for local eggs for quality control and common industry communication. It also establishes requirements and enforcement for proper grade, size, labeling, and temperature to assure consumer protection, and for importing of eggs, to assure distinction of imports from local eggs.

This rule is justified because it allows for fee-for-service third party certification to settle disputes related to quality and condition of agricultural products, and allow recovery of financial loss. Certification stands as prima facie evidence in State court. They protect consumers by minimizing hazards common in eggs such as bacterial contamination and salmonella at retail outlets, and support the local egg industry by assuring that the mainland eggs are properly marked and distinctive from the higher priced local eggs. The rules were established in 1971 and amended in 1985.



**SBRRB's Comments**

**Concerns** – These rules were last amended 21 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

**12. Chapter 4-48 – “Rules for Regulating Dealer in Farm Products”**

This chapter issues licenses to dealers in farm produce, and assures fair treatment and timely payment to producers. This rule is justified because it protects producers against dealers if they believe payment of transaction was not fair or timely. The rules were established in 1972 and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**13. Chapter 4-54 – “Industry and Product Promotion Program”**

This chapter provides minimum guidelines and a framework to administer the State's agricultural product promotion program funds, and to ensure that procedures were established so that these funds were distributed in a logical, fair and transparent manner on a statewide basis.

This rule is justified because the promotion efforts are geared toward agricultural associations and trade groups involved in local production of fresh and processed products. All promotional contracts are also issued in compliance with the State procurement code, Chapter 103D, HRS. The rules were established in 1986.

**SBRRB's Comments**

**Concerns** – These rules are 20 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**Plant Industry Division****14. Chapter 4-67 – “Seed Rules”**

This chapter regulates the sale of seeds. It does not bear significant business impact but ensures consumer protection. The seed import industry allows consumers to purchase a variety of seeds for planting purposes. The seed rules require seed distributors to properly and truthfully label their products for the consumers' information. Seed regulatory requirements set limits on the number and kinds of noxious weed seeds a person can sell, offer, or expose for sale. Seed package labeling also protects the consumers by requiring that seeds treated with chemicals be labeled as such for consumers' information. The rules were established in 1946 and amended in 1992.

**SBRRB's Comments**

**Concerns** – These rules were last amended 14 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

#### **15. Chapter 4-68 – “Noxious Weed Rules”**

This chapter establishes the criteria for designation, control, or eradication of noxious weeds. It does not bear significant business impact, but provides criteria for designation of noxious weeds for eradication or control. These rules allow for the designation of an area as free or relatively free of a specific noxious weed. The rules also provide for the department to enter into cooperative agreements with landowners or land occupiers to control or eradicate noxious weeds. The rules were established in 1951 and amended in 1991.

##### **SBRRB’s Comments**

**Concerns** – These rules were last amended 15 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

#### **16. Chapter 4-69A – “Pests for Control or Eradication”**

This chapter governs the criteria and procedures for designation of pests for control or eradication programs on public or private property other than dwellings in the State. The rules do not bear significant business impact but provide the department the authority to designate pests and to control or eradicate designated pests on private property after notice has been given. The rules were established in 1983 and amended in 1993.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

This chapter restricts or prohibits the importation of specific plants to minimize the risk of introduction and establishment of insects, diseases, and other pests that would be highly destructive to Hawaii’s agricultural industries and forest resources. 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 includes gourmet baby vegetables, exotic cut flowers, and tropical fruits, as well as ornamental plants, Hawaii’s agricultural industries have greatly expanded, and 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 regulate plant and plant products introduced for the protection of Hawaii’s agriculture, natural resources and environment. Presently, this administrative rule prohibits and restricts certain plant or plant products as listed by the Plant Quarantine Branch. Plants regulated would include those that are allowed under special conditions (certificates, treatment, and quarantine). Moreover, certain plants require post-

entry quarantine inspections by the Branch, which is contingent upon the issuance of a USDA permit.

Without this administrative rule in place, the introduction of harmful invasive species may occur rapidly and directly affect the agricultural or horticultural industries by impacting important economic crops. As a consequence of the additional entry of invasive species, our 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 1941 and amended in 1981.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**18. Chapter 4-71 – “Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules”**

This chapter restricts or prohibits the importation of specific non-domestic animals that is detrimental to the agricultural, horticultural, and aqua-cultural industries, and the natural resources and environment of Hawaii. 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 included gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, Hawaii's agricultural industries have greatly expanded, and 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 regulate the organisms introduced for the protection of Hawaii's agriculture, natural resources and environment. Presently, this administrative rule prohibits or restricts certain non-domestic animals via permit system that is enforced by the Plant Quarantine Branch. Organisms regulated would include those that are allowed under permit and may include the following purposes: live retail sales for consumption or pet trade, aquaculture production, exhibition in zoological parks, and scientific or medical research. Moreover, certain specific organisms require a site inspection approval by the Branch, which is contingent upon the issuance of the permit.

To implement the requirements of this chapter the Branch has the authority to impose user fees for these permits as well as site inspections, which may seem to impact small business; however, the fees collected are placed in a revolving fund that is used by the Branch to expedite the processing and issuance of the permit. 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 introduction of harmful invasive species may occur rapidly and directly affect the agricultural, horticultural and aqua-cultural industries by impacting important economic crops. In addition, the unregulated introduction of exotic animals may also result in the increase of foreign-borne diseases that impact livestock and other desirable animals as well as posing a public health threat to the at-large community. Lastly, as a consequence of the additional entry of invasive species, our 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 1941 and last amended in 2006.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

This chapter regulates the importation of specific micro-organisms that are detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources, including native biota, or have an adverse effect on the environment as determined by the Board of Agriculture. 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, and 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 regulate the micro-organisms introduced for the protection of Hawaii's agriculture, horticulture, animal or public health, natural resources, including native biota, or have an adverse effect on the environment. Presently, this administrative rule prohibits or restricts certain micro-organisms via permit system that is enforced by the Plant Quarantine Branch. Other micro-organisms require, at a minimum, a request for import, approval for the import in advance of shipment, and compliance with notification, labeling, and inspection requirements of sections of this rule. Certain micro-organisms require a site or lab inspection approval by the Branch, which is contingent upon the issuance of the permit. Allowable microbial products may be introduced into the State under registration.

To implement the requirements of this chapter, the Branch has the authority to impose user fees for these permits as well as site inspections, and registration fees which may seem to impact small business; however, the fees collected are placed in a revolving fund that is used by the Branch to expedite the processing

and issuance of the permit. 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 introduction of harmful invasive micro-organism species may occur rapidly and directly affect the agricultural, horticultural and aqua-cultural industries by impacting important economic crops. In addition, the unregulated introduction of exotic micro-organisms may also result in the increase of foreign-borne diseases that impact livestock and other desirable animals as well as imposing a public health threat to the at-large community. Plant diseases may infect native species which we are trying to preserve. Lastly, as a consequence of the additional entry of invasive species, our 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 2001.

#### **SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

This chapter restricts 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 uninfested 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, and 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 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 uninfested

islands of the State. As a consequence of the additional entry of invasive species on un-infested islands of the State, our 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.

#### **SBRRB's Comments**

**Concerns** – Rule amendments were submitted to this Board in 2006, however, the Agency has pulled the rules back for further analysis.

**Recommendation** – Agency is in the process of amending and updating the rules.

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

This chapter provides for export plant and plant products inspectional and disinfestation 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 plants 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 of this chapter, 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 state 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 rules were established in 1981.

**SBRRB's Comments**

**Concerns** – Rule amendments were submitted to this Board in 2006, however, the Agency has pulled the rules back for further analysis; rules are 25 years old.

**Recommendation** – Agency is in the process of updating this rule; in agreement with the Agency that these rules should be reviewed and revised.

**Quality Assurance Division**

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

This chapter 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.

**SBRRB's Comments**

**Concerns** – These rules were last amended 25 years ago.

**Recommendation** – Rules need re-analysis and updating due to the introduction of new types of additives since last amendment.

**23. Chapter 4-87 – “Voluntary Registration of Service Persons or Service Agencies”**

This chapter ensures that businesses selling, installing, and calibrating commercial devices register with the State of Hawaii, Measurement Standards Branch. This rule ensures equity in the marketplace by requiring that all field test standards be calibrated annually. The rules were established in 1971 and amended in 1981.

**SBRRB's Comments**

**Concerns** – These rules were last amended 25 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

**24. Chapter 4-89 – “Measure Masters”**

This chapter ensures that every individual involved in public weighing, for a fee, is trained, tested, and licensed by the State of Hawaii, Measurement Standards Branch. The rules were established in 1981 and amended in 1993.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**25. Chapter 4-91 – “Unit Pricing of Consumer Commodities”**

This chapter ensures that all consumer commodities offered for sale in the State are priced according to specified unit and that price displayed for the consumers’ information. The rules were established in 1974 and amended in 1981.

**SBRRB’s Comments**

**Concerns** – These rules were last amended 25 years ago, but appear satisfactory.

**Recommendation** – None, at this time.

**26. Chapter 4-93 – “Packaging and Labeling”**

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

**SBRRB’s Comments**

**Concerns** – Many products that are represented as Hawaiian-made and Hawaiian-grown are not.

**Recommendation** – Rules need re-analysis and updating.

**27. Chapter 4-94 – “Method of Sale of Commodities”**

This chapter defines a fair and consistent method for businesses to offer consumer commodities for sale in the State. This rule also sets the guidelines and requirements for posting the octane rating on retail gasoline dispensers. This ensures that the octane rating is posted and that the gasoline meets or exceeds the posted octane rating. The rules were established in 1981 and amended in 1993.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

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

**SBRRB’s Comments**

**Concerns** – These rules are currently under review by the Agency; rules are 25 years old.

**Recommendation** – In agreement with the Agency that these rules should be re-reviewed.



## **29. Chapter 4-101 – “Weighing and Measuring Devices”**

This chapter 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.

### **SBRRB’s Comments**

**Concerns** – 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.

**Recommendation** – Rules need re-analysis and updating.

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

### **Financial Administration Division**

#### **1. Chapter 6-1 – “Public Records; Administrative Procedures; Receiving and Paying Hours”**

No justification given by the Agency. The rules were established in 1981 and amended in 1993.

### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

The rules are required by Part II, Chapter 39A, HRS, relating to the issuance of special purpose bonds to assist non-for-profit corporations that provide health care facilities to the general public. The rules were established in 1981.

### **SBRRB’s Comments**

**Concerns** – Not applicable to small business

**Recommendation** – None

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

The rules are required by Part V, chapter 39A, HRS, relating to special purpose revenue bonds for industrial enterprises. They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 1985.

### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**4. Chapter 6-12 - “Special Purpose Revenue Bonds for Manufacturing Enterprises”**

The rules are required by Part III, Chapter 39A, HRS, relating to special purpose revenue bonds for manufacturing enterprises. The rules ensure that applicable businesses/enterprises meet state and/or federal requirements for tax exemptions granted. The rules were established in 1985.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**5. Chapter 6-13 - “Special Purpose Revenue Bonds for Processing Enterprises”**

The rules are required by Part IV, Chapter 39A, HRS, relating to special purpose revenue bonds for processing enterprises. They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 1985.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

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

**SBRRB’s Comments:**

**Concerns** – None

**Recommendation** – None

**7. Chapter 6-17 - “Special Purpose Revenue Bonds for Not-for-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, colleges and Universities”**

The rules are required by Part VII, Chapter 39A, HRS, relating to special purpose revenue bonds for not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities. They ensure that applicable businesses/enterprises meet State and/or Federal requirements for tax exemptions granted. The rules were established in 2005.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

## **Public Utilities Commission**

### **1. Chapter 6-61 - “Rules of Practice and Procedure Before the Commission”**

As a quasi-judicial Agency and pursuant to HRS Chapter 91, 269, 271, and 271G, the rules are necessary to govern the practice and procedure before the Commission to ensure that all proceedings are just, speedy, and efficient. The rules were established in 1992.

#### **SBRRB’s Comments**

**Concerns** – The rules are 14 years old; but appear satisfactory.

**Recommendation** – None

### **2. Chapter 6-62 - “Motor Carrier Rules and Classification of Property and Passenger Carriers”**

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.

#### **SBRRB’s Comments**

**Concerns** – Since the rules have been established, there have been many changes to the industry.

**Recommendation** – Full analysis and update should be performed.

### **3. Chapter 6-63 - “Motor Carrier Tariffs and Schedules”**

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.

#### **SBRRB’s Comments**

**Concerns** – Rules are 12 years old.

**Recommendation** – Full analysis and update should be performed.

### **4. Chapter 6-65 – “Water Carriers”**

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.

#### **SBRRB’s Comments**

**Concerns** – Rules are over 30 years old.

**Recommendation** – Full analysis and update should be performed.

**5. Chapter 6-68 - “Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers”**

As required in various provisions set forth under HRS Chapter 91, 269, 271, and 271G, the rules are necessary to govern violations of the regulatory laws under the Commission’s jurisdiction. It further prescribes procedures for investigating alleged violations or suspected violations of regulatory laws and for issuing citations to and imposing sanctions on any person violating, allegedly violating, or suspected of violating the regulatory laws. The rules were established in 1997.

**SBRRB’s Comments**

**Concerns** – Enforcement of the rules is questioned.

**Recommendation** – None

**6. Chapter 6-76.1 – “Shared Tenant Service”**

Consistent with the intent of HRS § 269-16.9, the rules are necessary to prescribe procedures and standards governing share tenant service in Hawaii. As defined under HAR § 6-76.1-3, “shared tenant service” means telecommunications service provided through centralized or common switching on a resale or shared basis to end users who are occupants or tenants of units in a building or a complex of buildings described in HAR § 6-76.1-21. The rules were established in 1997.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**7. Chapter 6-79 - “Aggregator and Operator Service”**

As required under HRS §269-16.8, the rules are necessary to prescribe procedures and standards governing aggregator and operator services in Hawaii. As defined under HRS §269-16.8(a), “aggregator” means every person or entity that is not a telecommunications carrier, who in the ordinary course of its business, makes telephones available and aggregates the calls of the public or transient users of its business, including but not limited to a hotel, motel, hospital, or university, that provides operator-assisted services through access to an operator service provider. “Operator service” means a service provided by a telecommunications company to assist a customer to complete a telephone call.” The rules were established in 1997.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**8. Chapter 6-80 - “Competition in Telecommunications Services”**

As mandated by Act 225, Session Laws of Hawaii 1995, the Commission’s telecommunications infrastructure docket (Docket No. 7702), and the Federal Telecommunications Act of 1996, the rules are necessary to adopt standards and

procedures governing intrastate competition in the State's telecommunications marketplace. The rules were established in 1996.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**9. Chapter 6-81 - "Universal Service Fund"**

As mandated by Act 225, Session Laws of Hawaii 1995, and the Federal Telecommunications Act of 1996, this rule is necessary to adopt standards and procedures governing the implementation of the universal service fund for the State. The rules were established in 1996.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**10. Chapter 6-82 - "Pay Telephone Service"**

Consistent with Act 225, Session Laws of Hawaii 1995, and the Federal Telecommunications Act of 1996, the rules are necessary to adopt procedures and standards for pay telephone service that will (1) foster competition in the provisioning of pay telephone service; (2) ensure the payment of fair compensation to providers of pay telephone service; and (3) protect the interest of users of pay telephones. The rules were established in 1997.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

**Hawaii Community Development Authority**

**1. Chapter 15-19 - "District-Wide Improvement Program Rules"**

The purpose of the rules is to develop a district-wide improvement program to identify and construct necessary district-wide public facilities within Kaka'ako, in accordance with county standards, and to assess specially benefiting property owners for the cost of providing the necessary public facilities, as mandated in Chapter 206E of the Hawaii Revised Statutes.

HCDA's mission in Kaka'ako is to redevelop the district into a contemporary and vibrant urban community, which welcomes all of Hawaii's people and visitors to enjoy the mix of services offered by all businesses. By sharing the burden of the Improvement District programs, it has been possible to effect a significant and timely district improvement that has significantly contributed to the enhancement and growth of Kaka'ako. However, there are still many areas in the District that remain blighted, underutilized and unsafe. The continuance of the Improvement District program is needed to ensure that the vision of the 1976 State legislature

will become realty, when it created the HCDA, and is mandated by Section 206E-6, HRS. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**2. Chapter 15-21 - “Development Program”**

The purpose of the rules pertains to redevelopment or public facilities projects within the Kaka’ako District. This includes street utilities, schools, and parks, parking garages, sidewalks and similar public facilities. The rules are mandated by Section 206E-12, HRS, and are necessary to ensure the proper facilities exist to allow businesses to prosper. The rules were established in 1986.

**SBRRB's Comments**

**Concerns** – These rules are 20 years old, but appear satisfactory.

**Recommendation** – None; at this time.

**3. Chapter 15-24 - “Relocation Assistance to Displaced Persons”**

The purpose of the rules assists Kaka’ako businesses and residents being displaced due to government action within the District. The rules may include relocation office, payments for replacement structures, and relocation payments. Section 206E-10.5, HRS, states that the authority shall provide relocation assistance to those displaced and this program does so. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

**Insurance Division**

**1. Chapter 16-178 – “Administrative Special Mortgage Recording Fee Guidelines”**

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

and the types of documents to which it applies. The rules were established in 1998.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Division of Financial Institutions**

**2. Chapter 16-31 – “Credit Unions”**

The purpose of the rules regulates credit unions pertaining to federal and state requirements. The rules were established in 1976, and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Business Registration Division**

**3. Chapter 16-37 – “Rules Under the Franchise Investment Law”**

The purpose of the rules facilitates the filings of franchise offering circulars in compliance with the statutory information filing requirements for all franchises doing business in Hawaii. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old.

**Recommendation** – Full analysis and update should be performed.

**Office of the Director**

**4. Chapter 16-51 – “Fees”**

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, HAR, 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. The rules were established in 1964 and amended in 1991.

**SBRRB's Comments**

**Concerns** – The Agency is in the process of analyzing and reviewing the rules for either repeal or amendment.

**Recommendation** – In concurrence with the Agency that the rules should be analyzed or reviewed for either repeal or amendment.

**5. Chapter 16-53 – “Fees Relating to Boards and Commissions”**

The purpose of this chapter is to implement licensing and regulation fees of professions under the department's regulatory authority. HRS section 26H-2(7)

provides, “Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program.” The rules were established in 1983 and amended in 2002.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**Professional and Vocational Licensing Division**

**6. Chapter 16-71 – “Certified Public Accountants and Public Accountants”**

The purpose of the rules is to implement licensing and regulation of certified public accounts and public accountants under the department’s regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1974 and last reviewed and amended in 2001.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**7. Chapter 16-72 – “Acupuncture Practitioners”**

The purpose of the rules is to implement licensing and regulations of acupuncture practitioners’ rules under the department’s regulatory authority. This rule is still needed because they facilitate licensing and enforcement. The rules were established in 1976 and amended in 2000.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**8. Chapter 16-73 – “Barbers”**

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.

**SBRRB’s Comments**

**Concerns** – The Agency has indicated that the rules are in the process of being amended and are expected to be finalized within two years.

**Recommendation** – In concurrence with the Agency that the rules should be amended.

**9. Chapter 16-74 - “Boxing”**

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.



**SBRRB's Comments**

**Concerns** – 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.

**Recommendation** – In concurrence with the Agency that the rules should be amended.

**10. Chapter 16-75 - “Cemeteries and Funeral Trusts”**

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.

**SBRRB's Comments**

**Concerns** – This industry has had its share of publicity.

**Recommendation** – Full analysis and update should be performed.

**11. Chapter 16-76 – “Chiropractors”**

The purpose of the rules is to implement licensing and regulation of chiropractors under the department’s regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1973 and amended in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**12. Chapter 16-79 – “Dentists and Dental Hygienists”**

The purpose of the rules is to implement licensing and regulation of dentists and dental hygienists under the department’s regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1964 and last amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**13. Chapter 16-80 – “Electricians and Plumbers”**

The purpose of the rules is to implement licensing and regulation of electricians and plumbers under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement; however, there is no real small business impact. The rules were established in 1973 and amended in 1989.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**14. Chapter 16-81 – “Elevator Mechanics”**

The purpose of the rules is to implement licensing and regulation of elevator mechanics under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1999.

**SBRRB's Comments**

**Concerns** – The rules have a huge business impact due to public safety issues.

**Recommendation** – None, at this time.

**15. Chapter 16-83 – “Hearing Aid Dealers and Fitters”**

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.

**SBRRB's Comments**

**Concerns** – Since the rules were last amended 12 years ago, there have been huge changes in the industry.

**Recommendation** – Full analysis and update should be performed.

**16. Chapter 16-84 – “Massage Therapy”**

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.

**SBRRB's Comments**

**Concerns** – The rules were last amended 16 years old.

**Recommendation** – Full analysis and update should be performed.

**17. Chapter 16-85 – “Medical Examiners”**

The purpose of the rules is to implement licensing and regulation of medical examiners 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 1991.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

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

**SBRRB’s Comments**

**Concerns** – The rules were last amended 13 years old.

**Recommendation** – Full analysis and update should be performed.

**19. Chapter 16-87 – “Motor Vehicle Repair Dealers and Mechanics”**

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.

**SBRRB’s Comments**

**Concerns** – The rules were last amended 15 years ago.

**Recommendation** – Full analysis and update should be performed.

**20. Chapter 16-88 – “Naturopaths”**

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.

**SBRRB’s Comments**

**Concerns** – The rules are 12 years old.

**Recommendation** – Full analysis and update should be performed.

**21. Chapter 16-90 – “Nursing Home Administrators”**

The purpose of the rules is to implement licensing and regulation of nursing home administrators under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1971 and amended in 1988.

**SBRRB’s Comments**

**Concerns** – The rules have a large and necessary business impact.

**Recommendation** – None, at this time.

**22. Chapter 16-91 – “Opticians”**

The purpose of the rules is to implement licensing and regulation of opticians under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1964 and amended in 1992.

**SBRRB's Comments**

**Concerns** – The rules have a necessary business impact.

**Recommendation** – None

**23. Chapter 16-92 – “Optometrists”**

The purpose of the rules is to implement licensing and regulation of optometrists under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1964 and amended in 2002.

**SBRRB's Comments**

**Concerns** – The rules have an understandable business impact.

**Recommendation** – None

**24. Chapter 16-93 – “Osteopaths”**

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

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**25. Chapter 16-96 – “Pilotage”**

The purpose of the rules is to implement licensing and regulation of the pilotage system under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1990.

**SBRRB's Comments**

**Concerns** – The rules are necessary for public safety.

**Recommendation** – None

**26. Chapter 16-97 – “Private Detectives and Guards”**

The purpose of the rules is to implement licensing and regulation of private detectives and guards under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 2000.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**27. Chapter 16-98 – “Psychologists”**

The purpose of the rules is to implement licensing and regulation of psychologists under the department's regulatory authority. The rules are

necessary as they facilitate licensing and enforcement. The rules were established in 1970 and amended in 1988.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**28. Chapter 16-99 – “Real Estate Brokers and Salespersons”**

The purpose of the rules is to implement licensing and regulation of real estate brokers and salespersons under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 2001.

**SBRRB's Comments**

**Concerns** – The rules have tremendous business impact.

**Recommendation** – None, at this time.

**29. Chapter 16-100 – “Speech Pathologists and Audiologists”**

The purpose of the rules is to implement licensing and regulation of speech pathologists and audiologists 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 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**30. Chapter 16-101 – “Veterinarians”**

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.

**SBRRB's Comments**

**Concerns** – The rules were last amended 20 years ago.

**Recommendation** – Full analysis and update should be performed.

**31. Chapter 16-104 – “Uniform Land Sales Practices”**

The purpose of the rules is to implement licensing and regulation of uniform land sales practices under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement, and have minor small business impact. The rules were established in 1987 and amended in 1996.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

### **32. Chapter 16-106 – “Timesharing”**

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.

#### **SBRRB’s Comments**

**Concerns** – The rules are necessary to protect the general public; the rules were last amended 16 years ago.

**Recommendation** – Full analysis and update should be performed.

### **33. Chapter 16-107 – “Rules Relating to Horizontal Property Regimes”**

The purpose of the rule is to implement licensing and regulation of horizontal property regimes under the department’s regulatory authority. The rule is necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1994.

#### **SBRRB’s Comments**

**Concerns** – The rules appear to have no real impact on small business.

**Recommendation** – None

### **34. Chapter 16-108 – “Commercial Employment Agencies”**

The purpose of the rule is to implement licensing and regulation of commercial employment agencies under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rule were established in 1981 and amended in 1990.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

### **35. Chapter 16-110 – “Physical Therapy”**

The purpose of the rules is to implement licensing and regulation of physical therapists under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1987 and amended in 1994.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

### **36. Chapter 16-112 – “Collection Agencies”**

The purpose of the rules is to implement licensing and regulation of collection agencies under the Department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1994.

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**37. Chapter 16-113 – “Electrologists”**

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

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**38. Chapter 16-114 – “Real Estate Appraisers”**

The purpose of the rules is to implement licensing and regulation of real estate appraisers under the department's regulatory authority. The rules have substantial small business impact, and are necessary as they facilitate licensing and enforcement for the protection of land buyers and sellers. The rules were established in 1991 and amended in 1998.

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**39. Chapter 16-115 – “Professional Engineers, Architects, Surveyors, and Landscape Architects”**

The purpose of the rules is to implement licensing and regulation of professional engineers, architects, surveyors, and landscape architects under DCCA's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1980 and amended in 2001.

**SBRRB's Comments**  
**Concerns** – The rules have no more small business impact than what is necessary for public safety.  
**Recommendation** – None

**40. Chapter 16-116 – “Travel Agencies”**

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.

**SBRRB's Comments**  
**Concerns** – The industry has been facing extinction because of the Internet.  
**Recommendation** – Full analysis and update should be performed.

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

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; it was established in 1995.

**SBRRB's Comments**

**Concerns** – There is substantial small business impact largely due to fraud in the industry.

**Recommendation** – Full analysis and update should be performed.

**Office of Consumer Protection**

**42. Chapter 16-301 – “Office of Consumer Protection, Public Records and Information, Rule-making Proceedings, and Declaratory Rulings”**

The purpose of the rules provides the Director of the Office of Consumer Protection (OCP) with the discretion to issue declaratory rulings concerning the applicability of any statutory provision enforced by OCP. Any business or consumer subject to the jurisdiction of OCP could be affected by its provisions. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**43. Chapter 16-302 – “Office of Consumer Protection, Non-adjudicative Procedures”**

The purpose of the rules is to effectuate the investigatory functions of the Office of Consumer Protection, such as issuing subpoenas and examining witnesses. Any business under investigation is affected by its provisions. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**44. Chapter 16-303 – “Office of Consumer Protection, Unfair or Deceptive Practices in Advertising”**

The purpose of the rules is to protect consumers from unscrupulous individuals and businesses by encouraging the development and perpetuation of fair consumer sales practices. Any business that advertises is subject to its provisions. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.



#### **45. Chapter 16-304 – “Office of Consumer Protection, Compensation of Witnesses”**

The purpose of the rules governs the manner in which the Office of Consumer Protection (OCP) compensates witnesses. Any business or consumer subject to the jurisdiction of the OCP may be subject to its provisions. The rules were established in 1981.

##### **SBRRB’s Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.

### ***Department of Education***

#### **1. Chapter 8-101 – “Licensing of Private Trade, Vocational, and Technical Schools”**

These rules were adopted to implement the licensing requirement of §302A-425, HRS, whereby all private trade, vocational, and technical schools operating within the State must first secure a license from the Department in accordance with law and the administrative rule of the Department. The rules are needed to continue to implement the statutory licensing requirement of the existing §302A-425, HRS. They were established in 1987 and amended in 2001.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

### ***Department of Health***

#### **Medical**

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

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

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.

##### **SBRRB’s Comments**

**Concerns** – Standards have changed, and enforcement of the rules is different since 1992; thus, some provisions should be deleted.

**Recommendation** – Re-analysis and update of rules should be performed.

*Note:* Agency’s website indicates rules are pending amendment and compilation.

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

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.

### **SBRRB’s Comments**

**Concerns** – Need better defined guidelines and standards; especially with safety standards. The rules are too vague and are 20 years old.

**Recommendation** – Re-analysis and update of rules should be performed. *Note:* Agency’s website indicates rules are pending amendment and compilation.

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

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.

### **SBRRB’s Comments**

**Concerns** – Agency has indicated that the rules are in need of revisions; rules are 15 years old.

**Recommendation** – In agreement with the Agency that these rules should be reviewed and revised.

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

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.

### **SBRRB’s Comments**

**Concerns** – 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.

**Recommendation** – In agreement with the Agency that these rules should be reviewed and revised.

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

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.

**SBRRB’s Comments**

**Concerns** – Agency has indicated that the rules are in need of revisions; rules are over 20 years old.

**Recommendation** – In agreement with Agency that these rules should be reviewed and revised.

**State Laboratories Division**

**6. Chapter 11-110 – “Clinical Laboratories and Laboratory Personnel”**

The rules protect the health, welfare, and safety of the public by establishing minimum licensing standards for clinical laboratories and clinical laboratory personnel. Compliance to these regulations is essential because laboratory tests have a direct impact on the proper diagnosis and appropriate treatment of clinical diseases. These administrative rules give the Department of Health oversight of the quality of clinical laboratory work by setting minimum qualifications for clinical laboratory personnel and laboratories and the power to intervene, when necessary, to remediate any adverse events as a result of unsafe or inappropriate laboratory practices. The rules were established in 2002.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**Epidemiology**

**7. Chapter 11-156 – “Communicable Diseases”**

The rules specify diseases considered contagious, communicable or dangerous and establish reporting requirements. This rule is 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.

**SBRRB's Comments**

**Concerns** – Modes of urgency and routine need addressing.

**Recommendation** – Re-analysis and update of rules should be performed.

*Note:* Agency's website indicates rules are pending amendment and compilation.

**Environmental**

**Hazard Evaluation and Emergency Response Branch**

**1. Chapter 11-5 – “Environmentally-Related Illness and Injury Reporting”**

The State requirements for health care professionals and laboratory directors to report to the department the diagnosis of any person afflicted with a designated environmentally-related illness or injury.

HRS §§321-314 mandates health care professionals to report environmentally related illnesses and injuries, and these rules specify reporting requirements. Efficient and accurate reporting allows for appropriate surveillance, prevention and control potential public health disasters. This rule is essential to avoid or at least minimize environmentally illnesses and injuries such as mercury, lead, and pesticide poisoning in Hawaii. The rules were established in 1990.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**2. Chapter 11-451 – “State Contingency Plan”**

The purpose of these rules establishes the Hawaii State contingency plan to implement, administer and enforce Chapter 128D, HRS, “Hawaii Environmental Response Law.”

These rules contain the State contingency Plan which complements National Contingency Plan prepared under the authority of the federal Clean Water Act & CERCLA. This plan is necessary to specify methods and criteria to evaluate the degree of hazards present at a site with releases of hazardous substances (such as oil spills) or pollutants or contaminants, including whether the site is an imminent or substantial hazard and whether appropriate and immediate action must be taken. Such rules are essential to the public's health and safety. The rules were established in 1995.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

## **Sanitation Branch**

### **3. Chapter 11-10 – “Swimming Pools”**

The purpose of these rules set forth minimum requirements for the protection of public health respecting swimming pools. All 50 states have rules specifying the minimum requirements for swimming pools. Compliance to these specified rules prevent infection and spread of major communicable diseases such as E. coli and staphylococcal illnesses. The rules were established in 1937 and amended in 2002.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

## **Food and Drug Branch**

### **4. Chapter 11-33 – “Hawaii Drug Formulary of Equivalent Drug Products”**

The purpose of these rules establishes and maintains a Hawaii drug formulary of equivalent drug products. This rule is necessary to ensure the availability of generic drugs dispensed within the State of Hawaii; generic drugs are helpful in reducing the cost of prescriptive medications. The rules were established in 1981.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

### **5. Chapter 11-35 – “Shellfish Sanitation”**

The purpose of these rules establishes sanitary controls for the shellfish industry. The rules apply to all aspects of harvesting, processing, packaging, storing and distribution of shellfish. This rule is necessary to prevent/minimize the spread of shellfish-related illnesses and to ensure that the source of raw molluscan shellfish is safe for consumption. The rules were established in 1981.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

### **6. Chapter 11-36 – “Sale of Prophylactics Through Vending Machines”**

The purpose of these rules establishes and controls the sale of prophylactics through vending machines. Controlling the sale of prophylactics through vending machines help minimize the spread of communicable (venereal) diseases and ensures the efficacy of prophylactics sold through vending machines. The rules were established in 1982.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

### **7. Chapter 11-39 – “Air Conditioning & Ventilating”**

The purpose of these rules is required for core public health. These rules implement §321-11 (13), HRS “for the public health and safety respecting any place or building where noisome or noxious trades or manufacturers 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, mold and other detrimental health effects. The rules were established in 1983.

#### **SBRRB’s Comments**

**Concerns** – These rules are in need of updating.

**Recommendation** – Re-analysis and update of rules should be performed.

*Note:* Agency’s website indicates rules are pending repeal and replacement by chapter 48.

### **8. Chapter 11-44 – “Radiologic Technology Board and Radiologic Technology Rules”**

The purpose of these rules is required for public health and safety. These 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.

#### **SBRRB’s Comments**

**Concerns** – These rules are in need of updating.

**Recommendation** – Reanalysis and update of rules should be performed.

### **9. Chapter 11-45 – “Radiation Control”**

The purpose of these rules is required for core public health. These 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.

**SBRRB's Comments**

**Concerns** – The rules of in need of updating.

**Recommendation** – Re-analysis and update of rules should be performed.

**10. Chapter 11-46 – “Community Noise Control”**

The rules define the maximum permissible sound levels, and to provide for the prevention, control and abatement of noise pollution in the State from excessive noise sources. Also, establishes noise quality standards to protect public health and welfare, and to prevent the significant degradation of the environment and quality of life.

This rule is required to implement regulation of noise levels according to zoning districts and the community noise permit program for construction, industrial, and agricultural activities. Such rules protect the health and well being of employees and individuals who work in and live nearby these areas. The rules were established in 1996.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**11. Chapter 11-501 – “Asbestos Requirements”**

The purpose of these rules defines the minimum requirements for the processing, handling, and disposal of asbestos-containing material, and also to protect the general public by minimizing the release of asbestos fibers when facilities that contain asbestos-containing materials are demolished or renovated.

This rule is required for the implementation of the EPA grant program on asbestos abatement. Asbestos regulations are necessary because asbestos is related to cancers such as Mesothelioma. The rules were established in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**12. Chapter 11-502 – “Asbestos Containing Materials in Schools”**

The purpose of these rules defines the local education agencies' role of identifying, keeping records of and removing asbestos-containing materials. This rule is required for the implementation of the EPA grant program on asbestos management in schools. The focus on minimizing asbestos in schools is

necessary to prevent future morbidity and mortality related to asbestos exposures. The rules were established in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**13. Chapter 11-503 – “Fees for Asbestos Removal”**

The purpose of these rules sets forth a fee schedule for asbestos removal and certification of workers involved in abatement activities. This rule is required for the implementation of the EPA grant program on fees for the certification/accreditation of asbestos workers and training programs and notification of asbestos abatement activities. Asbestos abatement is necessary because as mentioned previously, asbestos is related to cancers such as mesothelioma. The rules were established in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**14. Chapter 11-504 – “Asbestos Abatement Certification Program”**

The purpose of these rules requires certification of persons or companies who evaluate or control material which contains asbestos; and sets forth requirements for work practices and accreditation of asbestos training.

This rule is required for the implementation of the EPA grant program on certification and accreditation of asbestos workers and training programs. Qualified individuals are required to ensure abatement activities are executed appropriately. Asbestos abatement by qualified individuals is necessary because as mentioned previously, asbestos is related to cancers such as mesothelioma. The rules were established in 2001.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Wastewater Branch**

**15. Chapter 11-61 – “Mandatory Certification of Operating Personnel in Wastewater Treatment Facilities”**

The purpose of these rules establishes a mandatory operator certification program to protect public health and to conserve and protect the water and public resources of the State. Wastewater treatment plants need to be operated and maintained by competent personnel. All wastewater treatment plants, whether privately or publicly operated require certified personnel. Without such rules,



unnecessary pollutants will be (and in the will (and in the past has been) discharged in oceans, streams, etc. The rules were established in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Solid and Hazardous Waste Branch**

**16. Chapter 11-68 – “Litter Control”**

The purpose of these rules reduces littering in Hawaii by setting standards, establishing requirements, determining responsibility of maintenance and procurement of litter receptacles, clarifying prohibitions on littering and determining responsibility of owners and lessees of property to maintain a litter free state.

These rules help keep Hawaii clean. Chapter 339, HRS, “Litter Control,” and these rules disallow littering in public and private places and in the waters of the state. The statutes allow for imposition of penalties for littering. If these rules were eliminated there will be no consequences for littering. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**17. Chapter 11-260 – “Hazardous Water Management General Provisions”**

The purpose of these rules establishes general provisions, definitions, standards and overview information for this chapter as well as chapter 11-280, “Hazardous Waste Management Public Information”. The State needs the state equivalent of the federal rules governing the management of hazardous waste because only with state rules may the state regulate the handling of hazardous waste from “cradle to grave.” Prior to the authorization and prior to establishing state rules, the State could investigate violations of the federal hazardous waste laws. With authorization, the State can fully regulate hazardous waste management – generation, transportation, storage and disposal – Penalties resulting from successful prosecution will stay in the State.

The rules are essential for maintaining public health and environment. Justification for these rules are as follows: 1) the State cannot enforce federal law; 2) the State needs a state equivalent of the federal law; 3) federal and state laws are virtually the same and allows for parallel jurisdiction; and 4) a uthorization (with state rules) promotes home rules and limits direct intervention by E nvironmental Protection Agency. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**18. Chapter 11-261 – “Hazardous Waste Management Identification & Listing of Hazardous Waste”**

The purpose of these rules identifies solid wastes which are subject to regulation as hazardous wastes under Chapters 11-262 to 11-280, HAR, and which are subject to notification requirements of HRS section 342 J-6.5, HRS. The rules are essential for maintaining public health and environment. Justification for these rules are as follows: 1) the State cannot enforce federal law; 2) the State needs a state equivalent of the federal law; 3) federal and state laws are virtually the same and allows for parallel jurisdiction; and 4) a authorization (with state rules) promotes home rules and limits direct intervention by Environmental Protection Agency. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation. .

**19. Chapter 11-262 – “Hazardous Waste Management Standards Applicable to Generators of Hazardous Waste”**

The purpose of these rules establishes standards for generators of hazardous waste. The rules are essential for maintaining public health and environment. Justification for these rules are as follows: 1) the State cannot enforce federal law; 2) the State needs a state equivalent of the federal law; 3) federal and state laws are virtually the same and allows for parallel jurisdiction; and 4) a authorization (with state rules) promotes home rules and limits direct intervention by Environmental Protection Agency. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**20. Chapter 11-263 – “Hazardous Waste Management Standards Applicable to Transporters of Hazardous Waste”**

The purpose of these rules establishes standards which apply to persons transporting hazardous waste into, within, and out of the State. The rules are essential for maintaining public health and environment. Justification for these rules are as follows: 1) the State cannot enforce federal law; 2) the State needs a state equivalent of the federal law; 3) federal and state laws are virtually the same and allows for parallel jurisdiction; and 4) a authorization (with state rules) promotes home rules and limits direct intervention by Environmental Protection Agency. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**21. Chapter 11-264 – “Hazardous Waste Management Standards for Owners & Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities”**

The purpose of these rules establishes minimum State standards which are consistent with and at least as stringent as national standards which define the acceptable management of hazardous waste. The rules are essential for maintaining public health and environment. Justification for these rules are as follows: 1) the State cannot enforce federal law; 2) the State needs a state equivalent of the federal law; 3) federal and state laws are virtually the same and allows for parallel jurisdiction; and 4) a authorization (with state rules) promotes home rules and limits direct intervention by Environmental Protection Agency. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**22. Chapter 11-265 – “Hazardous Waste Management Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, & Disposal Facilities”**

The purpose of these rules establishes State standards which define the acceptable management of hazardous waste that are consistent with and at least as stringent as federal standards during the period of interim status and until certification of final closure (if the facility is subject to post-closure) until the post closure responsibilities are fulfilled. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**23. Chapter 11-266 – “Hazardous Waste Management Standards for the Management of Specific Hazardous Wastes & Specific Types of Hazardous Waste Management Facilities”**

The purpose of these rules establishes minimum State standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**24. Chapter 11-268 – “Hazardous Waste Management Land Disposal Restrictions”**

The purpose of these rules identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**25. Chapter 11-270 – “Hazardous Waste Management State Administered Permits: The Hazardous Waste Permit Program”**

The purpose of these rules establishes provisions for the hazardous waste permit program under HRS chapter 342J. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**26. Chapter 11-271 – “Hazardous Waste Management Procedures for Decision Making”**

The purpose of these rules outlines departmental procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management “permits” other than “emergency permits” and “permits by rule.” The rules were established in 1991.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency's website indicates rules are pending amendment and compilation.

**27. Chapter 11-273 – “Hazardous Waste Management Standards for Universal Waste Management”**

The purpose of these rules establishes requirements for managing and disposal of batteries, pesticides, thermostats, and provides an alternative set of management standards in lieu of regulation under chapters 11-260 to 11-271. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency’s website indicates rules are pending amendment and compilation.

**28. Chapter 11-279 – “Standards for the Management of Used Oil”**

The purpose of these rules establishes standards for the management of used oil. The rules were established in 1999.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None, at this time.

**29. Chapter 11-280 – “Hazardous Waste Management Public Information”**

The purpose of these rules outlines policies and procedure to handle requests and /or disclosure of information relating to hazardous waste. The rules were established in 1994.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency’s website indicates rules are pending amendment and compilation.

**30. Chapter 11-281 – “Underground Storage Tanks (USTs)”**

The purpose of these rules lists hazardous waste requirements for Underground Storage Tank (UST) Operators and Owners. Similar to the Hazardous Waste Rules, state law and regulations allow the State to become authorized. Authorization allows the State to address local issues and customize the program for Hawaii with less federal intervention for the management of UST’s and clean-up of contaminated sites (i.e., the State has implemented a field citation program that allows the State to issue citations similar to traffic tickets for basic compliance with UST laws.

This program allows the State to quickly address UST problems by issuing minimal fines provided the facility comes into compliance within a short period of time). EPA still expects each authorized state to meet all federal requirements. The rules were established in 2000.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – *Note:* Agency’s website indicates rules are pending amendment and compilation.

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

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

The purpose of these rules is to continue implementation is because it is funded by the Rehabilitation Act of 1973 as amended and Randolph-Shepard Act. The

rules implement HRS chapter 347 and §102-14. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – Definitions are outdated; i.e., the terms “handicapped” and “disabled” are no longer legally used.

**Recommendation** – Review and update are needed.

**2. Chapter 17-891.1 – “Registration of Family Child Care Homes”**

The purpose of these rules is to govern the health and safety requirements for the care of children in a child care provider’s home. Therefore, the reason for the rule’s continued implementation is to implement the authorizing statute.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**3. Chapter 17-892.1 – “Licensing of Group Child Care Centers and Group Child Care Homes”**

The purpose of these rules is to govern the health and safety requirements for the care of children in child care centers and group child care homes. Therefore, the reason for the rule’s continued implementation is to implement the authorizing statute. The rules were established in 1982 and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**4. Chapter 17-893 – “Licensing of Child-Placing Organizations”**

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.

**SBRRB's Comments**

**Concerns** – These “unofficial” rules require formatting and housekeeping changes.

**Recommendation** – Review and update are needed.

**5. Chapter 17-894 – “Licensing of Child-Caring Institutions”**

The purpose of these 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.

**SBRRB's Comments**

**Concerns** – These “unofficial” rules require formatting and housekeeping changes.

**Recommendation** – Review and update are needed.

**6. Chapter 17-895 – “Licensing of Infant and Toddler Child Care Centers”**

The purpose of these rules is to govern health and safety requirements for programs that care for infants and toddlers in child care facilities. The reason for the rules is to implement authorizing statute. The rules were established in 1982 and amended in 2002.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

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

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

**SBRRB’s Comments**

**Concerns** – Definitions are outdated; i.e., the terms “handicapped” and “disabled” are no longer legally used.

**Recommendation** – Review and update are needed.

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

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 the department has made available to delay the institutionalization of disabled and elderly adults. The rules were established in 1992 and amended in 1995.

**SBRRB’s Comments**

**Concerns** – 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.

**Recommendation** – Review and update are required.

**9. Chapter 17-1419 – “Chore Services for Community Long-Term Care Programs”**

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

**SBRRB’s Comments**

**Concerns** – Last revisions were made in 1995; regulations appear standard.  
**Recommendation** – None

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

### **Temporary Disability Insurance**

#### **1. Chapter 12-11 – “Temporary Disability Insurance”**

The purpose of the rules is to illustrate disability plans with plan designs different from that of the statutory plan 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 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. 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.

#### **SBRRB’s Comments**

**Concerns** – The rules are 13 years old and appear to have huge small business impact.

**Recommendation** – Complete review is required only if updates to regulations have taken place.

#### **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 the 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 the 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 a verage 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 was 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 requires a local claims office be maintained, and were established in 1992, and establish standards for self-insurance mutually agreed upon between the DLIR and the employer applicants, and also requires a local claims office for claims processing.

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 qualified for self-insurance 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. This section

establishes the amounts of employer security deposit requirements to satisfy the financial requirement 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 the Director to return the security deposit posted with DLIR 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 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 the 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 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 the annual report.

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

### **12-12-1 – Definition “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.

### **SBRRB’s Comments**

**Concerns** – This rule is very old and appears to have huge small business impact.

**Recommendation** – Complete review is required.

**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. It was felt 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”**

This 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 specifies to give 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 but 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 cost 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. The rule was established in May 1981.

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 principal 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 the department of the health care plan(s) that is being provided to their employees or any subsequent changes in plans. For employees who refuse such coverage, waiver forms must be refilled with the department 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 plan(s) that is being 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 these 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.

### **Wage Standards Division**

#### **3. Chapter 12-20 – “Wage and Hour”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rules were established in October 1981.

#### **SBRRB’s Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**4. Chapter 12-21 – “The Administration and Enforcement of the Payment of Wages and Other Compensation Law”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rule was established in June 1981.

**SBRRB’s Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**5. Chapter 12-22 – “Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rule was established in July 1981

**SBRRB’s Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**6. Chapter 12-24 – “Relating to Unlawful Suspension or Discharge Under Part III, Chapter 378, Hawaii Revised Statutes”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rule was established in September 1981.

**SBRRB’s Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**7. Chapter 12-25 – “Child Labor”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been



no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rule was established in October 1981.

**SBRRB's Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**8. Chapter 12-26 – “Lie Detector Tests”**

The purpose of the rules is to implement the statute which authorizes the rules, including clarification of the statutory provisions and establishment of operating procedures. Generally, attendance at public hearings is nil, and there have been no objections from the community. There have not been any complaints received on the rules and no citations have been issued. Data from employers on costs incurred as a result of the rules would be needed to do cost analysis. The rule was established in March 1981.

**SBRRB's Comments**

**Concerns** – The rules have small business impact and are necessary.

**Recommendation** – None

**Workforce Development Division**

**9. Chapter 12-6-2 – “Employment and Training Fund Program (ETF)”**

The purpose of the rules is to implement Act 68 (Session Laws of Hawaii 1991) codified as Chapter 383-128, HRS. The Department of Labor and Industrial Relations (DLIR) is the authorized Agency to oversee the ETF program. Pursuant to Chapter 91, HRS, DLIR adopted on May 4, 1992, a set of administrative rules, which provides ETF with a framework to carry out its legislative intent and to establish basic operating procedures for the program. This chapter was established May 4, 1992, and amended on December 9, 2002.

The DLIR established a committee made up of both public and private agencies to draft the administrative rules for the ETF program. Throughout 1991-92, the DLIR conducted public hearings for administrative rulemaking in each country. Many of the comments and recommendations were incorporated in the rules, which provide operational guidelines and program limitations for ETF training activities. Initially, ETF provided grants to business groups to development innovative, customized training programs where there were critical job shortages within the State. Since that time, the ETF program expanded its operations to include incumbent worker training. Act 248 (2002 SLH), deleted the program's sunset date and made ETF permanent. It expanded program policies and guidelines and also required employers who use or who are assigned by any of these ETF programs to contribute fifty per cent of the cost of the assistance in cash or in-kind contributions. To carry out this legislation, the DLIR revised its rules to be consistent with the new law. On October 6, 2002, DLIR published a

public notice statewide, announcing its intentions to conduct public hearing to amend HAR § 12-6.

The amendments define the types of programs offered to users; clarified terms and expanded criteria used in administering the programs, repealed “supportive services” as allowable costs, and updated the rules to comply with Act 248/2002 SLH. The most important change in the rules was the requirement that employers pay 50 percent of the training costs. The hearing was held on November 13, 2002 on Oahu. There were no requests for the proposed rules and there were no written or oral testimonies at the hearing. Therefore, the rules became effective December 9, 2002.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**10. Chapter 12-30-5 – “Apprenticeship Programs”**

The purpose of the rules is to set forth regulations to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing rules concerning the registration of acceptable apprenticeship programs as required by Section 372-5 HRS. The rules are based on Federal requirements for registered apprenticeship programs, and apply only to those entities requesting to be apprenticeship program sponsors. The rule was established in May 7, 1981.

WDD does not have any records of public hearings that may have been held prior to those dates. A search of the files did not disclose any complaints against this chapter, per se. Occasionally an apprentice may file a complaint with WDD for the alleged failure of their program sponsor to follow program requirements, but the rules were designed with this purpose in mind. The costs associated with ensuring that sponsors are in compliance with this chapter are primarily personal service costs for staff.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**11. Chapter 12-31-5 – “A State Plan for Equal Employment Opportunity in Apprenticeship Programs”**

The purpose of the rules is to proscribe the guidelines for prohibiting discriminatory practices and implementing affirmative action in apprenticeship programs. The rules are based on Federal requirements for equal opportunity in registered apprenticeship programs. The rules apply only to those entities requesting to be apprenticeship program sponsors. The rule became effective on November 4, 1978 and was most recently revised on July 30, 1981.

WDD does not have any records of public hearings that may have been held prior to those dates. A search of the files did not disclose any complaints against Chapter 31 per se. Under the rule, apprentices may file discrimination complaints with DLIR, but this happens infrequently. The costs associated with ensuring that sponsors are in compliance with this chapter are primarily personal service costs for staff.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**12. Chapter 12-506-6 – “Plant Closing Notification and Dislocated Worker Allowance”**

The purpose of the rules implements Act 377, SLH 1987, which amended Chapter 394B, HRS, relating to dislocated workers, and protects employees from the effects of unexpected and sudden layoffs or terminations that result from closings, partial closings, or relocations due to the sale, transfer, merger, and other business takeover or transaction of business interests. As originally enacted, the law required a covered establishment to provide employees and the director written notification of a closing, partial closing, or relocation at least 45 days prior to its occurrence. In 2001, the law was amended to require employers to give 60 days prior notice.

The law also requires that covered establishments pay employees a dislocated worker allowance as a supplement to any unemployment compensation benefit received for that week. A covered establishment is defined as any industrial, commercial, or other business entity which employs at any time in the preceding twelve-month period, 50 or more persons. The rule became effective on August 15, 1988, following public hearings held on November 27, 1987, December 14, 1987, and December 16, 1987.

In general, the testimony received from the business community was that the rules were vague and ambiguous. However, testimony received from union representatives argued that the proposed rules were too restrictive and that they should apply to all business closings. On November 28, 2001, a public hearing was held regarding the amendment to the rules to reflect the statutory change in the prior notice period. No testimony was received and no one attended the hearing. No formal complaints have been received regarding the administrative Rules per se. Complaints from employees regarding a covered establishment's failure to abide by the rules must be handled by the court. WDD does not keep a record of these actions.

Costs associated with this chapter include WDD staff time to provide information on the Rules to interested parties and Attorney General Staff time to provide recommendations to the Director for declaratory rulings. WDD staff charges

average about \$7,000 per year. The last declaratory ruling was issued in 2001 and the amount billed to WDD by the Attorney General's office was about 1,000.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Boards**

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

The purpose of the rules define the 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 the Board's private sector proceedings, and without these procedural rules, the Board's proceedings and decisions will more likely be subject to court challenge and overturned on due process grounds.

The 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 by HERB 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.

**SBRRB's Comments**

**Concerns** – The rules are 23 years ago.

**Recommendation** – Complete review is required only if updates to regulations have taken place.

**State Fire Council**

**14. Chapter 12-45.1 – “State Fire Code”**

The purpose of the rules sets forth minimum requirements relative to the protection of persons and property from fire loss including the storage, handling and use of hazardous substances, materials and devices and the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The State Fire Code shall complement, augment and be consistent in form and language with the building and other codes of the respective counties.

The State Fire Code also prescribes regulations that are consistent with nationally recognized standards for safeguarding life and property from the hazards of fire, explosion and dangerous conditions and to assist emergency response personnel in preventing and mitigating these conditions. The State Fire Council reviews national fire codes and standards as they are periodically updated and published. The International Fire Code and National Fire Protection Association 1, Uniform Fire Code, 2003 edition, are currently being reviewed to eventually implement the most current fire protection regulations. The rules were established June 6, 1986; amended August 13, 1987; amended April 18, 1992.

### **SBRRB's Comments**

**Concerns** – The rules have a huge business impact and are in the interest of public safety.

**Recommendation** – The Agency is in the process of updating the rules due to recent changes in fire protection regulations.

## **Civil Rights Commission**

### **15. Chapter 12-46 – “Hawaii Civil Rights Commission (HCRC)”**

The purpose of the rules is to process all complaints within the jurisdiction of the commission pursuant to HRS Chapter 368, Hawaii Civil Rights Commission. The substantive rules provide for legal standards that are read in light of the statutes and judicial interpretation and precedent, that are applied to the facts in making determinations and adjudication on complaints. As such, these rules define the procedures on complaints, declaratory relief, rule relief, sex discrimination, marital status discrimination, age discrimination, religious discrimination, ancestry discrimination, disability discrimination, and real property transaction discrimination. The rules are necessary for the conduct of the commission's proceedings. The rules were established on December 31, 1990.

The 1988 Legislature in Act 219, Session Law 1988, established the HCRC to provide a uniform procedure for the enforcement of the state's laws dealing with employment, housing, and public accommodations discrimination. The civil rights law authorizes the HCRD to adopt rules in accordance with H.R.S. Chapter 91. The HCRC engaged in rulemaking on four occasions when rules were adopted.

#### ***First Rulemaking (Procedural and Substantive Rules)***

On December 31, 1990, before formally assuming sole jurisdiction over enforcement of civil rights laws, the HCRC adopted procedural rules covering the investigation, conciliation and adjudication of discrimination complaints. H.A.R. § 12-46-1 through 91. The procedural rules were in large part modeled after DLIR Enforcement Division rules (H.A.R. Title 12, Chapter 23) because that division formerly investigated employment discrimination complaints.

The procedural rules were also modeled after Department of Commerce and Consumer Affairs (DCCA) rules (H.A.R. Title 16, Chapter 201) because DCCA formerly had jurisdiction over housing discrimination complaints and used

hearings examiners for adjudicating complaints. DLIR did not use hearings examiners so the DCCA rules were important to setting up the HCRC administrative process which uses hearings examiners. At the same time, the Commission adopted the existing substantive rules covering sex, marital status, age, ancestry and religious discrimination in employment, which had been promulgated by the DLIR enforcement division during the years 1982-1986.

These substantive rules are found in H.A.R. § 12-46-101 through 177. Overall community response to the proposed rules was positive, but there were several concerns raised. Some members of the community felt that the Executive Director should not be allowed to dismiss complaints without hearings, or enter into conciliation agreements with respondents against the wishes of a complainant. The Commission felt that allowing dismissals without hearings would not violate due process because complainants would still be given right to sue letters to pursue their cases in court and allowing conciliation agreements over the objections of complainants would prevent the misuse of Commission resources by unreasonable complainants. Some members of the community wanted broad pre-hearing discovery rights. The Commission felt the rules already allowed these rights to be granted by the hearings examiner. Some members of the community wanted changes to the substantive rules regarding sexual harassment and pregnancy leave. The Commission felt that because there were no substantive changes to the enabling statute (H.R.S. 378-2); there was no authority to make such changes to the already existing substantive rules.

### ***Second Rulemaking (Procedural)***

On May 1, 1992 the HCRC adopted amendments to some of its procedural rules to help streamline the process and correct problems. The amendments allowed:

1. Receipt and filing of complaints by fax if followed by an original and two copies within seven days, H.A.R. § 12-46-5;
2. Amendment of complaints prior to hearing, H.A.R. § 12-46-6.1;
3. Withdrawal of complaints by complainants without having the request verified, H.A.R. § 12-46-8;
4. Dismissal of complaints if respondents are filing for bankruptcy or have insufficient assets, or if there is no significant relief available, H.A.R. § 12-46-11; 4) a shorter time for complainants to request reconsideration of dismissals from 90 to 30 days, H.A.R. § 12-46-11; and
5. The Executive Director to issue subpoenas to obtain documents during investigations, H.A.R. § 12-46-12; and
6. Expansion of time to investigate and conciliate complaints from 60 to 180 days, H.A.R. § 12-46-14 (to conform to an amendment to the civil rights law, Act 252, Session Law 1991.)

There was no community response to these amendments.

### ***Third Rulemaking (Housing Rules)***

On October 15, 1993, the HCRC promulgated rules on real property transaction (housing) discrimination. The purpose of the rules was to add a new subchapter

20 to implement H.R.S. Chapter 515 and Act 171, Session Law 1992, which was passed to make state law substantially equivalent to the federal Fair Housing Law (Title VIII of the Civil Rights Act). Community response was again positive because the rules were overall consistent with federal law. Some community members felt that housing providing and/or agents should not be liable for sexual harassment caused by tenants or other third parties. The commission deleted this proposed rule. Some community members felt that the prohibited practices for familial status discrimination should allow separate use areas by children for safety reasons. The Commission noted that the rule 12-46-307(5), which allows restrictions to common areas if justified by business necessity, addressed the child safety issues.

#### ***Fourth Rulemaking (Disability Rules)***

On August 18, 1994 the HCRC promulgated its disability discrimination in employment rules. The rules were a result of more than two years of meetings with the Office of the Attorney General and members of the business, civil rights and disability rights communities. The rules added a new subchapter 9 and generally followed the federal regulations and interpretive guidelines implementing the federal Americans with Disabilities Act (ADA). Overall, community response was positive and supportive. Some members of the community felt that the rules should not require reasonable accommodations for qualified persons with disabilities, since this was not specified in H.R.S. Chapter 378.

The Commission felt that because accommodations are mentioned in that chapter (in the form of a ban against requiring “unreasonable structural changes...to accommodate the employment of a person with a disability”) and reasonable accommodations are required under the ADA, the provision should remain. Some community members stated that a fourth definition of the term “being regarded as disabled” was confusing, so the Commission deleted this definition.

Finally, some community members felt that no compensatory or punitive damages should be awarded if an employer, in good faith, erroneously does not provide a reasonable accommodation. The Commission agreed that punitive damages should not be awarded in such situations, but felt that compensatory damages may be awarded where it could be shown that complainants suffered harm and because it is allowed by state statute.

#### **SBRRB’s Comments**

**Concerns** – The rules have huge small business impact; last amendments reviewed by the Small Business Regulatory Review Board in June 2006.

**Recommendation** – None

#### **16. Chapter 12-47 – “Hoisting Machine Operators Advisory Board”**

The purpose of the rules is to promulgate safety and health standards, which meet the state laws in providing safe and healthful work places for Hawaii’s

workers and to promulgate standards for the safe operation and use of hoisting machines which, are at this time limited to crane operators. The rules were established in December 2002.

Response was varied from the public as safety professionals and employee organizations voiced support for the rules. Employers voiced concern regarding the costs of the required certification testing, as well as the application and certification fee. Certification testing varies depending upon the private trainer. The state requires the applicant to submit a completed application form to the director with a non-refundable \$50 application fee & \$500 certification fee. The Hoisting Machine Operators Advisory Board does not feel that these added rules would cause a financial burden on any small business and the added precautions for the safety of the public outweighs the certification cost of \$500. However, the cost for certification was raised by the community at every statewide public hearing.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Hawaii Occupational Safety and Health Division**

*General Commentary:* All of the HIOSH Standards have origins dating back to 1974 when the program was first created following the 1972 Act that created the Division. Since 1974 the standards have undergone amendments aimed at bringing the standards more up-to-date with the technology of the industries that are covered by the standards and amendments that had to be implemented due to federal rule changes. HIOSH must continue to implement the federal rule changes as part of the OSHA requirement to be “as effective as” the federal program which is a requirement for a State Plan. In order for a State Plan to be “as effective as” the federal program, the State must be at the minimum adopt the identical standard that the federal program releases as a final rule.

The State has made minor revisions in some cases to conform to prior State Industrial safety rules or for clarity. Most of the updates are federally initiated since OSHA has staff dedicated specifically for the development and review of standards that includes its impact to employees and employers.

The OSHA Program develops and implements standards according to research data that identifies high hazard industries as well as what types of injuries are being suffered by employees. The preambles to all standards released by OSHA contain an economic feasibility, technological feasibility and cost analysis. OSHA also has a Regulatory Flexibility Act that they must comply with and reviews all proposed rules to determine if it would have a significant impact on small business before releasing the proposed changes.

**17. Chapter 12-60 – “General Safety and Health Requirements”**



This chapter contains requirements for a written safety and health program. Having a safety and health program has always been in the standards but having it in written format was added to the HIOSH standards as a result of the 1995 Legislature Bill (Act 199) requiring all contractors placing bids with the State that exceeded \$100,000 in cost to have a written and implemented safety and health program by the time the notice to proceed on the project is received. This added §396-18, HRS, safety and health programs for contractors bidding on state construction jobs, to the HIOSH law.

Testimony as the public hearing included statements that the level of detail would diminish the level of returns by being overwhelming, making people focus only on complying with the details so that the underlying objective is lost. For general industry the requirements are more of a guide as to what should be included in their written program, but for the construction industry, the requirements listed are the minimum that need to be included in the written program. Testimony was also received stating that the amendments should be adopted as an appendix. Through past experience with appendices in other standards, we have found that people tend to ignore appendices thinking that all the requirements, if important enough are contained within the standard and will not look at the appendix.

Neither DBEDT nor B & F voiced any objection to these standards, except that DBEDT requested that the Agency hold informational meetings primarily for small businesses prior to the effective date. Two-hour meetings in which information was distributed were held on all islands.

#### **SBRRB's Comments**

**Concerns** – The rules have necessary small business impact.

**Recommendation** – None

#### **18. Chapter 12-110, Part III – “Construction Standards”**

This Chapter contains requirements for a written safety and health program. Having a safety and health program has always been in the standards but having it in written format was added to the HIOSH standards as a result of the 1995 Legislature Bill (Act 199) requiring all contractors placing bids with the State that exceeded \$100,000 in cost to have a written and implemented safety and health program by the time the notice to proceed on the project is received. This added §396-18, HRS, safety and health programs for contractors bidding on state construction jobs, to the HIOSH law.

Testimony as the public hearing included statements that the level of detail would diminish the level of returns by being overwhelming, making people focus only on complying with the details so that the underlying objective is lost. For general industry the requirements are more of a guide as to what should be included in their written program, but for the construction industry, the requirements listed are the minimum that need to be included in the written program. Testimony was also received stating that the amendments should be adopted as an appendix.

Through past experience with appendices in other standards, we have found that people tend to ignore appendices thinking that all the requirements, if important enough are contained within the standard and will not look at the appendix.

Neither DBEDT nor B & F voiced any objection to these standards, except that DBEDT requested that the Agency hold informational meetings primarily for small businesses prior to the effective date. Two-hour meetings in which information was distributed were held on all islands.

**SBRRB's Comments**

**Concerns** – The rules have necessary small business impact.

**Recommendation** – None

**19. Chapter 12-200.1 Part VIII – “Health Standards”**

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

Testimony as the public hearing included statements that the level of detail would diminish the level of returns by being overwhelming, making people focus only on complying with the details so that the underlying objective is lost. For general industry the requirements are more of a guide as to what should be included in their written program, but for the construction industry, the requirements listed are the minimum that need to be included in the written program. Testimony was also received stating that the amendments should be adopted as an appendix. Through past experience with appendices in other standards, we have found that people tend to ignore appendices thinking that all the requirements, if important enough are contained within the standard and will not look at the appendix.

Neither DBEDT nor B & F voiced any objection to these standards, except that DBEDT requested that the Agency hold informational meetings primarily for small businesses prior to the effective date. Two-hour meetings in which information was distributed were held on all islands.

**SBRRB's Comments**

**Concerns** – The rules have necessary small business impact.

**Recommendation** – None

**20. Chapter 12-220, Part X – “Boilers and Pressure Vessels” & Part XI – Elevators”**

The 1980 Legislature did not believe that 396, HRS, Hawaii Occupational Safety and Health Law adequately provided for the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment and

created 397, HRS, Boiler and Elevator Safety Law. The Boiler and Elevator Safety Law do not cover only the working men and women of the State but the general public as well. The Boiler and Elevator Branch adopts standards from the American National Standards Institute (ANSI) and the American Society of Mechanical Engineers (ASME), the standards from both of these organizations are national consensus industry standards. Even though the standards are national consensus industry standards, the Boiler and Elevator Branch still presents all proposed standards changes to their Advisory Committee.

In forming the Advisory Committee for each section, all the companies in the industry were asked if they wanted to participate and all those that wished to participate were accommodated with a place on the board. Boiler Advisory Board – Dogwood Engineering, Hartford Steam Boiler Inspection & Insurance Co., Island Pool & Spa Supply, Plumbers & Mechanical Contractors Association of Hawaii (PAMCAH), J. M., Inc., chevron Products Co., Outrigger West, Tinker Enterprises, Inc., and Hawaiian Dredging Construction Co.

Elevator Advisory Board – Buildings Owners Managers Association of Hawaii (BOMA), Island Elevator Corp., Hawaiian Pacific Elevator Corp., Otis Elevator Co., U.S. Elevator Corp., Montgomery KONE, Inc., Schindler Elevator Corp., Mitsubishi Electronics America, Inc., Elevator Constructors Union, and Access Lifts of Hawaii, Inc. The two areas that have received the most public comments on are the frequency of inspections and the fees. The frequency of inspections and the fees were adjusted when the Legislature decided to take the Boiler and Elevator Branch off the General Fund and place them in a Revolving Special Fund which required the Branch to be self-supporting.

Overall, the Advisory Boards have supported the fee increases citing the higher costs businesses would have to pay if the service was privatized. The inspection frequencies for boilers and pressure vessel inspections are based on need as determined by inspection findings. In 2002, the State Legislature determined that elevator inspections shall be set to not exceed one-year intervals and amusement ride inspections at six months; although the frequency is set by State Law, §396-4, HRS, Powers and Duties.

DBEDT reviewed the changes for impact on small businesses after the Advisory Board, and recommended that the promulgation process proceed. There were no comments received at the public hearing. Associated costs of \$70,000 fine per safety and health violation can be assessed.

#### **SBRRB's Comments**

**Concerns** – The rules have necessary small business impact.

**Recommendation** – None

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

### **Division of Aquatic Resources**

#### **1. Chapter 13-32 – “Honolua-Mokuleia Marine Life Conservation District, Maui”**

The purpose of these rules is to conserve marine habitats. The area has live coral beds, is a popular swimming destination, and should be maintained to provide continued conservation of important marine habitats. Commercial akule fishers may still use the bay for their fishing operations with a permit. The rules were established in 1978 and last modified in 1987.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

#### **2. Chapter 13-33 – “Lapakahi Marine Life Conservation District, Hawaii”**

The purpose of these rules is to conserve important marine habitats. The area is seaward of a State historic site that is the foundation of an ancient Hawaiian fishing village. The ocean fronting the fishing village has fields of live corals and should be maintained to provide continued conservation of important marine habitats. The rules were established in 1978 and last modified in 1987.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

#### **3. Chapter 13-35 – “Wailea Bay Marine Life Conservation District, Hawaii”**

The purpose of these rules is to conserve important marine habitats. The area is a good example of a “spur and groove” reef habitat, and should be maintained to provide continued conservation of important marine habitats. The rules were established in 1985.

##### **SBRRB’s Comments**

**Concerns** – The rules are 21 years old, but appear satisfactory.

**Recommendation** – None

#### **4. Chapter 13-48 – “Waikiki-Diamond Head Shoreline Fisheries Management Area, Oahu”**

The purpose of these rules is to resolve user conflicts and conserve important marine resources. The rules were established in 1978 and last modified in 1988.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

#### **5. Chapter 13-51 – “Kahului Harbor, Maui”**

The purpose of these rules is to conserve important marine resources. The area remains an active fishing site with many net and pole fishers within the main town of Kahului. The fisheries’ management area should be maintained to provide

continued management of conflicts and important marine resources. Commercial fishers may currently fish the marine resources in most of the harbor. The rules were established in 1984.

**SBRRB's Comments**

**Concerns** – The rules are over 20 years old, but appear satisfactory.

**Recommendation** – None

**6. Chapter 13-52 – “Kailua Bay, Hawaii”**

The purpose of the rules is to resolve user conflicts and conserve important marine resources. The area continues to be a popular pole fishing site, and should be maintained to provide continued management of conflicts and important marine resources. The rules were established in 1984.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**7. Chapter 13-54 – “Pauka Bay and Pauka Reef, Hawaii”**

The purpose of the rules is to resolve user conflicts and conserve important marine resources. The area should be maintained to provide continued management of conflicts and important marine resources. The rules were established in 1985.

**SBRRB's Comments**

**Concerns** – The rules are over 20 years old, but appear satisfactory.

**Recommendation** – None

**8. Chapter 13-55 – “Kawaihae Harbor, Hawaii”**

The purpose of these rules is to resolve user conflicts and conserve important marine resources. The area should be maintained to provide continued management of conflicts and important marine resources. Commercial fishers may currently fish the marine resources in most of the harbor. The rules were established in 1989.

**SBRRB's Comments**

**Concerns** – The rules are 17 years old, but appear satisfactory.

**Recommendation** – None

**9. Chapter 13-57 – “Keahou Bay Hawaii”**

The purpose of these rules is to resolve user conflicts and conserve important marine resources. The area should be maintained to provide continued management of conflicts and important marine resources. The rules were established in 1992.

**SBRRB's Comments**

**Concerns – None**  
**Recommendation –None**

**10. Chapter 13-61 – “Nu’uanu Freshwater Fish Refuge, Oahu”**

The purpose of these rules is to provide opportunities for freshwater recreational fishing. The area should be maintained to provide continued opportunities for recreational fishing. The rules were established in 1958 and last modified in 1987.

**SBRRB’s Comments**  
**Concerns – None**  
**Recommendation – None**

**11. Chapter 13-62 – “Wahiawa Public Fishing Area, Oahu”**

The purpose of these rules provides opportunities for freshwater recreational fishing. The area should be maintained to provide continued opportunities for recreational fishing. The rules were established in 1966 and last modified in 1998.

**SBRRB’s Comments**  
**Concerns – None**  
**Recommendation – None**

**12. Chapter 13-73 – “Fish Aggregating Devices”**

The purpose of these rules provides more opportunities for marine fishing. The devices should be maintained to provide continued opportunities for recreational and commercial fishing. The rules were established in 1982.

**SBRRB’s Comments**  
**Concerns – The rule is over 20 years old, but appear satisfactory.**  
**Recommendation – None**

**13. Chapter 13-83 – “Shellfishes”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management of commercially important marine resources. The rules were established in 1981 and last modified in 1987.

**SBRRB’s Comments**  
**Concerns – None**  
**Recommendation – None**

**14. Chapter 13-84 – “Samoan Crab”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued conservation for this commercially important marine species. The minimum size for taking applies to all fishers,

commercial or not, and is intended to protect the juveniles so they may reach spawning age. The rules were established in 1981 and last modified in 1982.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**15. Chapter 13-85 – “Clam”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management for important marine species. The regulations apply to all fishers as it is believed that the populations for this species are very low and cannot sustain any harvest. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are over 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**16. Chapter 13-89 – “Spiny Lobster or Ula”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management of these commercially important marine species. The rules were established in 1981, and were last modified in 1989.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**17. Chapter 13-90 – “Nehu for Family Consumption”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continue management of this commercially important marine baitfish species. This regulation allows limited public taking of this baitfish that is generally reserved for commercial tuna fishers. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**18. Chapter 13-92 – “Opihi”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management of these commercially important marine species. The department is currently considering further regulations for these species as their population levels are of some concern. The rules were established in 1981 and were last modified in 1989.

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**19. Chapter 13-93 – “Limu”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management of commercially important marine resources. The rules were established in 1986.

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**20. Chapter 13-94 – “Bottomfish Management”**

The purpose of these rules is to conserve important marine resources. The rules should be maintained to provide continued management of commercially important marine resources. The department is currently reviewing this regulation to ensure the continued commercial fishery for these species. The rules were established in 1998.

**SBRRB's Comments**  
**Concerns** – None  
**Recommendation** – None

**21. Chapter 13-99 – “Introduced Freshwater Fishes”**

The purpose of these rules is to manage important freshwater resources. The rules should be maintained to provide continue management of important recreational freshwater resources. The development of a popular recreational fishery improves the economy of those businesses that service the fishing public. The rules were established in 1981.

**SBRRB's Comments**  
**Concerns** – The rules are 25 years old, but appear satisfactory.  
**Recommendation** – None, at this time.

**22. Chapter 13-100 – “O’opu and Hinana”**

The purpose of these rules is to manage important freshwater resources. The rules should be maintained to provide continued management of important freshwater resources. The rules were established in 1989.

**SBRRB's Comments**  
**Concerns** – .The rules are 17 years old, but appear satisfactory  
**Recommendations** – None, at this time.

**Division of Forestry & Wildlife**

**23. Chapter 13-3 – “Alakai Wilderness Preserve, Island of Kauai”**



The purpose of these rules is to preserve, protect, and conserve all manner of flora and fauna. The rules provide authority to the Agency to set aside lands under its control as wilderness preserves, and specifically provide additional protections for the Alakai Swamp. The rules were established in 1981.

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendations** - None

#### **24. Chapter 13-105 – “Closed (Restricted) Watersheds”**

The purpose of these rules is to regulate activities, and preserve and protect important watershed areas in public forest Reserves. The rules provide an essential framework for protecting important natural resources and watersheds, particularly those watersheds which may be more vulnerable to contamination due to public access. The rules were established in 1981.

##### **SBRRB’s Comments**

**Concerns** – The rules are 20 years old, but appear satisfactory.

**Recommendation** – None

#### **25. Chapter 13-107 – “Threatened and Endangered Plants”**

The purpose of these rules is to conserve, manage, protect, and enhance native endangered and threatened plants. The rules are important for the long-term recovery of native endangered and threatened plants. Both provide direct protection for the plants and a licensing system for activities from collection through propagation so that the Agency can better monitor the health of plant species. The rules were established in 1998.

##### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

#### **26. Chapter 13-121 – “Hunting”**

The purpose of these rules is to prohibit hunting of wildlife except as authorized by the Board of Land and Natural Resources or its authorized representative. The rules provide regulatory oversight to ensure effective management of wildlife resources. The rules are needed for the sustainability and safety of the public hunting program. The rules were established in 1981

##### **SBRRB’s Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None

#### **27. Chapter 13-122 – “Game Bird Hunting, Field Trails and Commercial Shooting Preserves”**

The purpose of the rules is to regulate game bird hunting, field trials, and commercial shooting preserves; they provide bag limits, seasons, hunting areas,

and other regulatory oversight to ensure effective management of game bird resources. The rules are needed for the sustainability and public safety of the game bird hunting program. The rules were established in 1943, and last amended in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**28. Chapter 13-123 – “Game Mammal Hunting”**

The purpose of the rules is to regulate game mammal hunting; they establish bag limits, hunting seasons, hunting areas, and other regulatory oversight to ensure effective management of game mammal resources. The rules are needed for the sustainability and public safety of the game mammal hunting program. The rules were established in 1955 and last amended in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**29. Chapter 13-124 – “Indigenous, Endangered, Threatened and Injurious Wildlife, and Introduced Wild Birds”**

The purpose of the rules is to conserve, manage, protect, and enhance indigenous wildlife and to manage introduced birds. The rules provide regulatory oversight to ensure that indigenous wildlife is protected and managed to ensure long-term sustainability, and provide a framework to permit taking of certain wildlife for education, science, or to prevent damage to resources as appropriate. The rules were established in 1953 and amended in 1997.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**30. Chapter 13-130 – “Trail and Access Program”**

The purpose of the rules is to guide the Na Ala Hele Advisory Council in procedures for the selection of trails for the program, and rules for the management of the trails. The rules provide framework, guidance, and oversight for public access to trails and natural resources, and ensure appropriate management of public trails and access to public lands. The rules were established in 1999.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

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

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

**SBRRB's Comments**

**Concerns** – The rules are 25 years; Agency indicates rules are in the process of being amended.

**Recommendation** – In concurrence with Agency that the rules are in need of amending.

**Division of State Parks**

**32. Chapter 13-146 – “Hawaii State Park System”**

The purpose of the rules is to govern the use and protection of all land, and historic and natural resources within the state parks. The rules regulate activities in the state parks including commercial activities. Commercial activities within the state parks require permits, contract licenses, or concession agreements from the department. These rules were established in 1991 and amended in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**Commission on Water Resource Management**

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

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.

**SBRRB's Comments**

**Concerns** – Rules are 18 years old.

**Recommendation** – Review and update is needed.

**34. Chapter 13-168 – “Water Use, Wells, and Stream Diversion Works”**

The purpose of the rules is to carry out the intent of the State Water Code to assure maximum beneficial use of ground and surface waters of the State by establishing rules for reporting and gathering meaningful data on all water uses and sources. The rules provide for the declaration and certification of all existing uses of surface and ground water; the registration of all existing wells and existing stream diversion works, the reporting of current uses of surface and ground water, the permitting of wells, the permitting of pump installations and repairs, and the permitting of stream diversion works.

Section 13-168-14 “Well Construction and Pump Installation Standards” has remained unchanged, though the technical details contained in the standards were updated and formally adopted by the Commission on February 18, 2004 to address complaints mentioned in the Agency’s previous report. These changes were also followed by updating well permit application forms to make the driller the only appropriate applicant. On August 18, 2004, the Commission clarified that the cost of public notices for water use permits shall be borne by the applicant. In the past, such cost was covered by the Commission.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**35. Chapter 13-169 – “Protection of In-stream Uses of Water”**

The purpose of the rules is to provide for the establishment of a statewide program to protect, enhance, and re-establish, where practical, beneficial in-stream uses of water, including the development and establishment of standards for in-stream flows and the creation of a permit system to regulate the alteration of stream channels. The rules were established in 1988.

**SBRRB’s Comments**

**Concerns** – The rules are 18 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**36. Chapter 13-170 – “Hawaii Water Plan”**

The Hawaii Water Plan shall serve as a continuing long-range guide for water resource management. The rules were established in 1988.

**SBRRB’s Comments**

**Concerns** – The rules are 18 years old, but appear satisfactory.

**Recommendation** – None

**37. Chapter 13-171 – “Designation and Regulation of Water Management”**

The purpose of the rules is to provide for the designation and regulation of hydrologic areas where water resources are being threatened by existing or proposed withdrawals or diversions of water, water quality problems, or serious disputes. It shall be the duty of the Commission to designate areas for the purpose of establishing administrative control over the withdrawals and diversions of ground and surface water in threatened areas to ensure the most beneficial use, development, or management of the water resources in the interest of the people of the State. The rules were established in 1988.

**SBRRB’s Comments**

**Concerns** – The rules are 18 years old, but appear satisfactory.

**Recommendation** – None

## **Land Division**

### **38. Chapter 13-1 - “Rules of Practice and Procedure”**

The purpose of the rules is to govern the practice and procedure before the Board of Land and Natural Resources (BLNR) under Chapter 91, HRS, the land laws of the State, and such other related acts as may now or hereinafter be administered by the Board. Upon review, the Department has determined these rules do not bear significant business impact. In addition to lacking any fees, the rules ensure that the public and government agencies will have a just, speedy, and inexpensive determination of their disputes before the BLNR. These rules were adopted in 1981 and most recently amended in 1985. The Department has no plans for amendments.

#### **SBRRB’s Comments**

**Concerns** – Last amendments were performed 20 years ago; rules appear to have little small business impact.

**Recommendation** – None

### **39. Chapter 13-183 – “Rules on Leasing and Drilling of Geothermal Resources”**

The purpose of the rules is to regulate the leasing of geothermal resources and the exploration, development and production of geothermal resources and its by-products on State or reserved lands in Hawaii. The rules provide for conservation and for the optimum use of geothermal resources; minimizing or preventing degradation of the environment, surface and ground waters, and other resources; and preventing injury to life and property. The rules were established in 1981.

#### **SBRRB’s Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None

### **40. Chapter 13-184 – “Designation and Regulation of Geothermal Resource Subzones”**

The purpose of the rules is to establish guidelines and procedures for the designation and regulation of geothermal resource subzones for the exploration, discovery, development, and production of geothermal resources for electrical energy production and distribution within conservation, agricultural, rural and urban districts. The guidelines and procedures are intended to assist in designation areas which have potential for geothermal resource development for electrical energy production and which have an acceptable balance of the relationships of geothermal development to uses allowed in the land use classifications, to present uses of surrounding lands, and to potential benefits and impacts. The rules were established in 1984.

#### **SBRRB’s Comments**

**Concerns** – The rules are 22 years old, but appear satisfactory.

**Recommendation** – None

**41. Chapter 13-185 – “Rules of Practice and Procedure for Geothermal and Cable System Development Permitting”**

The purpose of the rules is to establish guidelines for consolidated geothermal and cable system development permitting. Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that affect geothermal and cable system development. The rules were established in 1989.

**SBRRB’s Comments**

**Concerns** – The rules are 17 years old, but appear satisfactory.

**Recommendation** – None

**42. Chapter 13-190 – “Dams and Reservoirs”**

The purpose of the rules is to govern the design, construction, operation, maintenance, enlargement, alteration, repair and removal of dams, reservoirs, and appurtenant works in the State. The rules were established in 1990.

**SBRRB’s Comments**

**Concerns** – The rules are 16 years old, but appear satisfactory.

**Recommendation** – None

**43. Chapter 13-219 – “Fees”**

The purpose of the rules is to establish fees for the processing of certain public documents and records as authorized under Section 171-6(5), HRS. DLNR has determined that these rules do not bear significant business impact. The fees charged for government services are lower than private sector fees for similar services. The schedule of fees was implemented in 1981 and has remained the same for over 25 years.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**44. Chapter 13-220 – “Public Auction”**

The purpose of the rules is to give due public notice of impending disposition of State lands by auction as authorized by Section 171-16, HRS. The rules were established in 1981.

**SBRRB’s Comments**

**Concerns** – The rules are 25 years old, but appear satisfactory.

**Recommendation** – None

**45. Chapter 13-222 – “Shoreline Certifications”**

The purpose of the rules is to standardize the application procedure for shoreline certifications to implement the shoreline setback law and other related laws. These rules shall be applicable to all real properties within the State of Hawaii which border the ocean.

The fees charged for government services are lower than private sector fees for similar services; they do not cover staffing expenses for other government agencies involved with the shoreline certification process, such as DLNR – Office of Conservation and Coastal Lands, Department of Accounting and General Services – Survey Division, and the Department of the Attorney General. The shoreline application fee of \$75 is a reasonable cost for a landowner to obtain a shoreline certification from the State, and was established in 2003.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**Historic Preservation Division**

**46. Chapter 13-197 – “Hawaii Historic Places Review Board”**

The purpose to the rules is to govern the practice of and the procedures before the Hawaii historic places review board under Chapter 91, Hawaii Revised Statutes. The rules were established in 1981, and amended in 1989.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**47. Chapter 13-198 – “Hawaii and National Register of Historic Places Programs”**

The purpose of the rules is to set forth the procedures by which historic properties shall be ordered and entered into the Hawaii register of historic places by the Review Board and by which nominations of historic properties to the national register will be approved by the review board. The rules were established in 1977, and last amended in 1989.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

**Division of Boating and Ocean Recreation**

**48. Chapter 13-230 – “General Provisions”**

The purpose of the rules is to secure the most effective control and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. The rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean

waters, and navigable streams of the State. The rules were established in 1994.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**49. Chapter 13-231 – “Operations of Boats, Small Boat Harbors, and Permits”**

The purpose of the rules is to regulate the operations and use of small boat harbors, boat operations, commercial activities, and special area rules and allocation of berths of the small boat harbors rules. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors 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.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**50. Chapter 13-234 – “Fees and Charges”**

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.

**SBRRB's Comments**

**Concerns** – The rules are 14 years old.

**Recommendation** – If fees have changed since the last amendment, review and update is needed.

**51. Chapter 13-244 – “Rules of the Road, Local, and Special Rules”**

The purpose of the rules is to regulate the rules of the road, and the local and special rules of the state boating regulations. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division to the DLNR, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991; the rules were amended in 1994.

**SBRRB's Comments**

**Concerns** – No justification was provided by the Agency for this rule.

**Recommendation** – None, at this time.

**52. Chapter 13-251 – “Waikiki and Ka’anapali Ocean Waters”**



The purpose of the rules is to regulate catamaran captain, canoe captain, canoe second captain and surfboard instructor permits, owners of for-rent surfboards and passengers carrying vessel – proof of financial responsibility, registrations rule of the road, special operating restrictions and soliciting prohibited in or on Waikiki shore waters of the Hawaii Shore Waters rules,. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division to the DLNR, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991; the rules were amended in 1994.

**SBRRB’s Comments**

**Concerns** – No justification was provided by the Agency for this rule.

**Recommendation** – None, at this time.

**53. Chapter 13-256 – “Ocean Recreation Management Rules”**

The purpose of the rules is to reduce conflicts among ocean water users; particularly in areas of high activity. DLNR has designated ten "Ocean Recreation Management Areas; described in subchapters 2 through 11. All other waters of the state within three thousand feet seaward of the base line of the territorial sea are established as non-designated ocean recreation management areas subject to this chapter. The rules were established in 1994.

**SBRRB’s Comments**

**Concerns** – The rules are 12 years old, but appear satisfactory.

**Recommendation** – None, at this time.

**54. Chapter 13-5 – “Conservation District”**

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.

**SBRRB’s Comments**

**Concerns** – Agency indicates that the rules are in the process of being amended.

**Recommendation** – In concurrence with the Agency that the rules are in need of amending.

## ***Department of Transportation***

### **Administration Division**

#### **1. Chapter 19-1 - “Practice and Procedure”**

The purpose of these rules is to carry out the purposes and policies of HRS 91. The rules were established in 1978. The rules affect all individuals or business that may appeal the department’s decisions and actions.

#### **SBRRB’s Comments**

**Concerns** – The rules are 28 years old, but appear satisfactory.

**Recommendation** – None, at this time.

#### **2. Chapter 19-2 - “Participation in the Federal Minority Business Enterprise Programs”**

The purpose of these rules is to allow the department to continue to receive federal financial aid for construction and consulting contracts required for improvement and maintenance of our airports, harbors and highways. The rules were established in 1980 and modified in 1999. Under 49 CRF, Part 23 and Part 26, these federally funded contracts will be awarded and provide construction and consultant related work.

#### **SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None

#### **3. Chapter 19-6 - “Service Charge for Delinquent Accounts at the Department of Transportation”**

The purpose of the rules establishes a \$25 service charge for delinquent accounts. The rules were established in 1990. The rules assess penalty on all delinquent accounts, including small business.

#### **SBRRB’s Comments**

**Concerns** – The rules were reviewed and approved by the Review Board in October 2006.

**Recommendation** – None

### **Airports Division**

#### **4. Chapter 19-20.1 - “Commercial Services at Public Airports”**

The purpose of these rules relates to airports responsible and accountable to the public to provide safe, reliable, timely and convenient service at public airports for all air travelers. Airports are required by federal law to maintain a fee and rental structure that will make our statewide airport system as self-sustaining as possible. Airports rely on the user fees from businesses to help airports operate and maintain the public airports. All for-profit businesses that use airport facilities are expected to contribute their fair share to making the statewide airport system

self-sustaining. The rules were established in 2002. Businesses are required to pay a fee to conduct business at public airports.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**5. Chapter 19-33 - "Control of Hazardous Materials & Waste at Public Airports"**

The purpose of these rules relates to the control, storage, security and transportation of hazardous waste at public airports. The rules were established in 1987. This chapter relates to the control, storage, security, and transportation of hazardous waste at public airports.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None at this time; the Agency will re-visit this rule for updating in the near future due to pending changes resulting from "9-11."

**6. Chapter 19-34 - "Tour Aircraft Operations at Public Airports"**

The purpose of these rules relates to airports responsibility and accountability to the public to provide safe, reliable, timely and convenient service at public airports of all air travelers. Airports are required by federal law to maintain a fee and rental structure that will make the statewide airport system as self-sustaining as possible. Airports rely on the user fees from businesses to help airports operate and maintain the public airports. All for-profit businesses that use airport facilities are expected to contribute their fair share to making the statewide airport system self-sustaining. The rules were established in 1989. Businesses are required to pay a fee to conduct business at public airports.

**SBRRB's Comments**

**Concerns** – There is substantial small business impact.

**Recommendation** – None, at this time.

**7. Chapter 19-37 - "Fuel Handling Procedures at Public Airports"**

The purpose of the rules is to establish safe and orderly aircraft fueling operations at public airports in the State. The rules were established in 1993. Businesses are required to comply with federal regulations governing fuel handling at public airports.

**SBRRB's Comments**

**Concerns** – The rules were reviewed by the Review Board in October 2006.

**Recommendation** – None, at this time.

**8. Chapter 19-38.1 - "On-Demand Taxi Service at Public Airports"**

The purpose of these rules is to regulate the open-access taxi system at public airports and to ensure safe, orderly and reliable taxi service for the traveling

public. The rules were established in 1997. Businesses are required to pay a fee to conduct business at public airports.

**SBRRB's Comments**

**Concerns** – The rules were reviewed by the Review Board in April 2006.

**Recommendation** – None

**Harbors Division**

**9. Chapter 19-43 - "Motor Vehicles"**

The purpose of these rules govern the applicability of statutes, traffic codes and ordinances; jurisdiction of harbormaster 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; 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.

**SBRRB's Comments**

**Concerns** – The rules are 32 years old.

**Recommendation** – Rules should be reviewed and updated.

**Highways Division**

**10. Chapter 19-11 - "Movement of Overweight Vehicles Along and Upon Hana Highway (FAS 360) Between Kailua Village and Hana"**

The purpose of these rules is to protect the highway facilities from overweight vehicles that could damage the highway by issuing a permit that is a cost item. The rules were established in 1981. The rules impact small business and are federally mandated by 23 CRF Chapter 1, Parts 657 and 658

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**11. Chapter 19-102 - "Fee Schedule for the Issuance of a Permit to Work on State Highways"**

The purpose of these rules is to recover costs associated with processing permits, to assure work on the highway is done in accordance with state and federal rules and regulations, and to minimize disruption to existing traffic. The rules were established in 1981 and were also amended in 1981; the rules impact small business.

**SBRRB's Comments**

**Concerns** – The rules were reviewed by the Review Board in October 2006.

**Recommendation** – None

**12. Chapter 19-104 - “The Movement by Permit of Oversize and Overweight Vehicles”**

The purpose of the rules is to protect the highway facilities from overweight vehicles that could damage the highway by issuing a permit, which is a costly item. The rules impact small business and are federally mandated by 23 CFR Chapter 1, Parts 657 and 658. The rules were established in 1981.

**SBRRB's Comments**

**Concerns** – The rules are 25 years.

**Recommendation** – Rules should be re-analyzed in light of a September 2006 incident resulting from an Army truck damaging a pedestrian overpass on the H-1 Freeway that caused a major roadblock on the Island of Oahu.

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

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.

**SBRRB's Comments**

**Concerns** – The rules are 25 years old.

**Recommendation** – Rules should be reviewed and updated.

**14. Chapter 19-121 - “Traffic Records”**

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 shall be 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.

The impact on small business depends on what rules or parts of the rules are applicable. Currently, there is a \$70,000 bond requirement in this part of the rule. The rules are federally mandated by Title 18, USC Section 2721.

**SBRRB's Comments**

**Concerns** – The rules are 12 years old.

**Recommendation** – Update of rules is necessary if fees have changed.

**15. Chapter 19-123 - "Statewide Motorcycle, Moped and Motor Scooter Education Courses and Licensing Skill Test Waiver"**

The purpose of this chapter is to establish statewide motorcycle, moped, and motor scooter education courses for persons seeking to comply with Sections 286-108, 286-107 or 43:10G-104 HRS. The rules were established in 2002. The rules may be a costly item to some to be in compliance with the rule.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**16. Chapter 19-124 - "Protection Devices for Motorcycle and Motor Scooter Operators and Passengers"**

The rules relate to the operation of motorcycles and motor scooters, which have been found to result in a high incidence of disabling personal injuries and deaths. The effects of these injuries and deaths extend beyond the person injured or killed – and the person's family to generally affect the health and welfare of the people of the State. These disabling personal injuries and deaths have an economic impact on the people of the State to the extent that they may result in a requirement for the furnishing of medical rehabilitative or welfare aid or assistance. The prevention or reduction in the severity of injuries resulting from the most common types of motorcycle accidents by the use of protective helmets and goggles, safety glasses, face shields, or other eye and face protection devices is deemed to be the public interest.

The rules do not impact small business unless the businesses use motorcycles or motor scooters as part of its operations. The rules were established in 2002.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

**17. Chapter 19-128 - “Design, Placement, and Maintenance of Traffic Control Devices”**

The purpose of these 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.

**SBRRB’s Comments**

**Concerns** – The rules are 24 years old.

**Recommendation** – Rules should be reviewed and updated.

**18. Chapter 19-129 - “Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways”**

The purpose of these rules is to establish construction maintenance, engineering survey, and any other work being conducted on, adjacent to, above, below, or near streets and highways that may temporarily obstruct any portion of the roadway that can constitute major hazards to motorists, pedestrians and workmen. Therefore, all persons who perform construction, maintenance, engineering survey and any other work on, adjacent to, above, or below any street or highway in the State shall use traffic control devices as required. The rules impact small business as there is some potential cost to contractors. The rules were established in 1982 and modified in 1986.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – None, at this time.

**19. Chapter 19-135 - “Periodic Safety Inspection of Mopeds”**

The purpose of these rules is to allow private inspection stations conduct the 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.

**SBRRB’s Comments**

**Concerns** – None

**Recommendation** – Update of rules is necessary only if regulations have changed.

**20. Chapter 19-143 - “Pupil Transportation Safety”**

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 qualifications operations, loading and unloading, and maintenance and inspection.

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

**SBRRB's Comments**

**Concerns** – Rules were established in 1989.

**Recommendation** – Update of rules is necessary only if changes to the Federal Motor Vehicle Safety Standards and Motor Carrier Safety Regulations have been made.

**Statewide Transportation Planning Office**

**21. Chapter 19-150 - "Parking for Disabled Persons"**

This rule states that small businesses must comply with the HAR, and is necessary to establish a uniform parking system to enhance access for the safety of persons with disabilities.

This chapter was amended and compiled on May 10, 2004 into Title 11, Chapter 219 entitled "Parking for Persons with Disabilities" when the function and responsibilities were transferred to the Department of Health.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None

***University of Hawaii***

**1. Chapter 20-15 - "Rules Governing Agriculture Diagnostic Services User Fees"**

The Agricultural Diagnostic Service Center (ADSC) is a service oriented unit in the College of Tropical Agriculture and Human Resources. It was formally established in 1984 through the consolidation of five separate ongoing programs in the college into a centrally located unit. This consolidation enabled CTAHR to more effectively respond to problems experienced by commercial growers and homeowners in Hawaii.

The ADSC provides analytical and diagnostic services and recommendations to the entire agricultural community in the state. The clientele includes CTAHR researchers and students, cooperative extension specialists and agents, private research organizations (HARC, Oceanic Institute, etc.), other government agencies, commercial producers, and the general public. If ADSC did not exist, many different laboratories would need to be created and equipped with expensive equipment and competent laboratory technicians. Because of the high cost to equip and operate a laboratory, most CTAHR researchers, students,



cooperative extension specialists and agents, and other clientele would need to have most of their analytical and diagnostic work done on the mainland.

The fees charged by the ADSC are comparable to the fees that are charged by other land grant universities and by commercial laboratories on the mainland. The revenues generated by the fees charged are used for salaries for full-time employees, student helpers, and operations including the maintenance of equipment as well as the purchasing of new equipment. The rules were amended in 1996.

**SBRRB's Comments**

**Concerns** – None

**Recommendation** – None, at this time.

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