

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 234
NATURAL DISASTER CLAIMS COMMISSIONS

§18-234-0	Scope
§18-234-02	Definitions
§18-234-03	Commission members
§18-234-04	Powers and duties
§18-234-05	Filing of claims
§18-234-06	Hearings
§18-234-07	Valuation of losses; certification of losses
§18-234-08	Allowance of tax relief
§18-234-09	Review of claim; appeal to circuit court
§18-234-10	Administration; expenditures; compensation

This is an unofficial compilation of the Hawaii Administrative Rules.

§-18-234-01 Scope. This chapter is intended to provide uniform rules of administrative procedure to govern the proceedings of every commission established pursuant to section 234-3, Hawaii Revised Statutes. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS §234-3)

§-18-234-02 Definitions. As used in this chapter, unless the context otherwise requires:
“Claimant” means any person making a claim for tax relief after suffering losses due to damage or destruction of the person’s real or personal property resulting from a natural disaster, as defined in section 234-1, Hawaii Revised Statutes.

“Commission” means the duly appointed and constituted natural disaster claims commission of the county of the State of Hawaii in which the natural disaster occurred.

“Department” means the department of taxation of the State of Hawaii.

“Director” means the director of taxation of the State of Hawaii.

“Governor” means the governor of the State of Hawaii. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS §234-1, 234-3)

§18-234-03 Commission members. (a) Members of each commission shall be appointed as provided by law.

(b) No individual shall sit as a member of a commission for a particular disaster if the individual:

- (1) Has any direct or indirect interest in a claim;
- (2) Is related by blood or affinity to any claimant within the third degree;
- (3) Is employed by any claimant;
- (4) Is an agent of any claimant; or
- (5) Is connected in business with any claimant.

(c) A chairperson shall be selected by majority vote from among the members of the commission. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS §234-3)

§18-234-04 Powers and duties. (a) The commission shall:

- (1) Receive, process, review, and investigate each claim;
- (2) Conduct a hearing regarding each claim to ascertain the amount of losses suffered by a claimant, in accordance with chapter 91, Hawaii Revised Statutes; provided that, if the commission and claimant agree that there is a no dispute as to the facts or the amount of a

claim involved in a particular matter, the claimant may waive in writing the opportunity for a hearing provided by these administrative rules;

- (3) Administer oaths or affirmations to persons testifying before the commission;
 - (4) Determine the amount of losses sustained by a claimant based upon the evidence presented to the commission;
 - (5) Certify the amount of losses to the director;
 - (6) Seek advice from the Office of the Attorney General when legal assistance is necessary;
 - (7) Prescribe and prepare the necessary forms to be used.
- (b) The commission may:
- (1) On its own motion, request or require the appearance of any witness it deems necessary or who may assist the commission in determining losses;
 - (2) Require the production of a claimant's account books, bank books, bank statements, records, vouchers, copies of state and federal tax returns, and any and all documents and evidences having any relevancy to the determination of losses;
 - (3) Seek additional advice from any person it believes may assist the commission in its review of claims; and
 - (4) Transmit copies of certifications of losses to the director of finance of the county in which the disaster occurred. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS §234-3)

§18-234-05 Filing of claims. (a) All claims shall be in writing, verified under oath, and submitted on a form prescribed by the commission and shall contain such information as the commission may require. An original and two copies of each claim shall be filed with the commission in the county in which the disaster occurred at any location designated by the commission. The commission shall publish the location or list of locations not less than once in a newspaper of general circulation which is printed and issued at least twice weekly in the affected county and may take additional measures to publicize the location or locations. A claim shall be deemed to be filed either on the date the claim is received by the commission, if hand-delivered, or the postmarked date of a claim, if mailed to the commission, and each claim shall be date stamped upon receipt by the commission.

- (b) Claims shall be filed:
- (1) On or before December 31 of the year in which the disaster occurred; or
 - (2) On or before the date prescribed by the commission.

Notwithstanding the foregoing, the last day for filing a claim shall not be more than six months from the date of the occurrence of the disaster as determined by the governor.

- (c) A claim may be amended at any time before the commission has certified a loss to the director.
- (d) After the commission has certified a loss to the director, the claim for that loss may be amended only if:
- (1) There is new and substantial evidence that may affect the determination; and
 - (2) The amended claim is filed not later than six months from the filing of the original claim. [Eff 5/26/88](Auth: HRS§231-3(9))(Imp: HRS §234-4)

§18-234-06 Hearings. (a) All hearings shall be governed by the requirements set forth in chapter 91, Hawaii Revised Statutes.

- (b) All hearings shall be conducted under the following procedures:
- (1) A claimant shall be given notice in writing of the hearing by registered or certified mail with return receipt requested not less than fifteen days before the date of the hearing. The notice of hearing shall include the date, time, and place of the hearing. The hearing shall be at the time and place set forth in the notice of hearing; provided that the chairperson or other designated member, by oral announcement at the hearing, may continue the hearing from day to day or adjourn the hearing to the later day or to a different place without further written notice.
 - (2) A majority of members of each commission shall constitute a quorum for the conduct of any hearing.
 - (3) The chairperson or other designated member shall conduct the hearing and shall administer an oath or affirmation to all witnesses appearing at the hearing.
 - (4) The hearing may be conducted informally without adherence to the rules of evidence. The commission may receive any information or testimony that is relevant or material to any claim, including hearsay evidence.
 - (5) All claimants shall be afforded the opportunity to present information, evidence, and argument on the valuation of their claimed losses.
 - (6) Any member of the commission may question a witness, including a claimant.

- (7) In its sole discretion, the commission may call witnesses other than the claimant's witnesses to provide information, in the opinion of the commission, additional testimony would be helpful in ascertaining the amount of losses sustained by a claimant.
- (8) The commission may required the production of documents, records, or other forms of proof of a claim.

(c) Within a reasonable time after the hearing, and as soon as practicable, the commission shall make a determination of the claimant's losses and shall certify its findings to the director. The commission may transmit a copy of its certification to the director of finance of the county for which it is appointed. [Eff 5/26/88](Auth: HRS §231-3(9)) (Imp: HRS §234-3)

§18-234-07 Valuation of losses; certification of losses. (a) The total losses sustained by a claimant shall be the difference between the fair market value of the real or personal property immediately prior to the disaster and the fair market value of the real or personal property immediately after the disaster.

(b) The fair market value of real property losses may be determined by using the market, income, or cost method of valuation. The commission may consider real property tax assessments in ascertaining the fair market value of land or buildings.

(c) The fair market value of personal property losses may be determined by using business records, reference manuals, indexes, and other written materials used for valuation purposes. Factors that may be considered in making the calculation include acquisition cost, date of acquisition, depreciation allowance, method of depreciation, and salvage value.

(d) The fair market value of crop losses shall be determined as follows:

- (1) The commission shall seek the assistance of the University of Hawaii in establishing standards or formulas to assist the commission in calculating as equitably as possible the value of crop losses;
- (2) All claimants filing for relief subject to this subsection shall disclose and make available to the University of Hawaii or its designated agents any information the University of Hawaii or its designated agents believe is necessary to establish the standards or formulas; and
- (3) The commission shall adopt the standards and formulas set by the University of Hawaii or its designated agents and apply the standards and formulas when calculating the value of crop losses.

The commission shall not certify the crop losses of any claimant who does not disclose or make available the requested information.

(e) The fair market value of livestock, poultry, and other animals may be determined as follows:

- (1) The commission may seek the assistance of the University of Hawaii in establishing standards or formulas to assist the commission in calculating as equitably as possible the value of losses;
- (2) The commission may require all claimants filing for relief subject to this subsection to disclose and make available to the University of Hawaii or its designated agents any information the University of Hawaii or its designated agents believe is necessary to establish the standards or formulas; and
- (3) The commission may adopt the standards and formulas set by the University of Hawaii or its designated agents and apply the standards and formulas when calculating the value of losses.

(f) After the commission determines the total losses sustained by a claimant as set forth in this section, the commission shall deduct from this amount, any or all of the following:

- (1) All insurance recoveries resulting from the loss;
- (2) The portion of losses attributable to insurable property which exceed \$100,000;
- (3) Federal income tax benefits; and
- (4) All other recoveries.

The resulting net amount shall be the amount certified to the director as the loss for which tax relief may be given. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: §§234-4, 234-7, 234-10)

§18-234-08 Allowance of tax relief. (a) Upon receipt of the certification of losses, the director shall remit, refund, or forgive real property and general excise taxes in the following amounts:

- (1) General excise taxes in an amount not to exceed \$25,000; and
- (2) Real property taxes in an amount not to exceed \$35,000./

In no event shall the maximum allowable tax relief including general excise tax and real property taxes exceed \$35,000, and the total amount of tax relief shall not exceed the amount of losses certified by the commission.

(b) If the claimant has claimed casualty losses on the claimant's State income tax return and has received tax benefits resulting from a casualty loss deduction, the amount of that benefit shall be deducted from the losses certified by the commission.

(c) Tax relief shall be given for a period not to exceed five years commencing January 1 of the year the disaster occurred.

(d) Tax relief received under this section shall apply only to tax liability arising from real property, trade, or business located on the island on which the losses were incurred.

(e) The following persons may receive the tax relief allowed by this section;

- (1) Claimant;
- (2) Transferee, heir, or assignee who is either a spouse or child of the claimant;
- (3) Corporation;
- (4) Partnership; or
- (5) Any legal entity recognized as a separate entity by the director for purposes of chapter 235, Hawaii Revised Statutes, which is a claimant as defined under this chapter. [Eff 5/26/88] (Auth: HRS §231-3(9))(Imp: HRS §234-8,234-9)

§18-234-09 Review of claims; appeal to circuit court. A claimant may appeal the commission's determination on a claim or amended claim to the circuit court of the county for which the commission is appointed. The appeal shall be filed not later than thirty days from the date of receipt of the certification of losses. Upon appeal, the claimant is entitled to a trial by jury; provided that a demand for jury trial shall be made in writing not more than ten days from the date the notice of appeal is filed or the demand for jury trial shall be deemed to be waived. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS §234-5)

§18-234-10 Administration; expenditures; compensation. (a) Each commission shall be placed within the department for supervisory and administrative purposes.

(b) All expenses necessary for the administration of the commission shall be paid from the governor's contingency fund; provided that, if moneys from the contingency fund are not available or released, the expenses may be paid from moneys allocated to the department.

(c) The commission may engage persons, through contractual or other written agreements, to assist in assessing and determining claimants' losses, and these persons may also serve as witnesses at hearings.

(d) Members shall serve without compensation but shall be reimbursed for any reasonable and necessary expenses incurred in the performance of their duties. Expenses shall include travel costs, mileage expenses, and other expenses reasonably related to the performance of members' duties.

(e) Contractual or other written agreements in subsection (c), requests for payments for services rendered under the agreements, and reimbursements for members' expenses in subsection (d) shall be approved by the director and processed by the department. All contractual or written agreements, requests for payments for services, and requests for reimbursement shall be made in accordance with the procedures and forms prescribed by the comptroller of the department of accounting and general services. [Eff 5/26/88](Auth: HRS §231-3(9))(Imp: HRS § 26-35, 234-3, 234-11)