

TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUTES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON April 4, 2016.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON October 4, 2017.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,
Hawaii Administrative Rules

1. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-1-08 "Transient accommodations broker", defined. "Transient accommodations broker" means:

- (1) A person that receives income for use of its website, travel agency, booking agency, publication, or other tool or application that offers, lists, advertises, or accepts reservations, or collects payment, whether in full or in part, for listing of a transient accommodation or resort time share vacation interest for an operator, owner of

- a resort time share vacation interest, or a resort time share vacation plan manager, or any agent thereof; or
- (2) A person that operates an online website that provides a forum for advertising transient accommodations or resort time share vacation interests, units, or plans, where such forum specifies a category for advertising transient accommodations, regardless of whether such category is denominated as "vacation rentals", "housing swap", "bed and breakfast", or the like. The lack of such a section shall not in itself prevent the department from determining that a person operates a forum for advertising transient accommodations based on other evidence; or
- (3) Any other person providing similar services.

Example 1:

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. FacePlus is not a transient accommodations broker.

Example 2:

Kai's List is an online classified advertisement website with various sections devoted to different types of classified ads such as jobs, housing, personals, items for sale, and vacation rentals. Kai's List is a transient accommodations broker. Kai's List should ensure it complies with the requirements of transient accommodations brokers under section 237D-4, HRS." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-1)

2. Section 18-237D-4-01, Hawaii Administrative Rules, is amended to read as follows:

"§18-237D-4-01 Certificate of registration.

~~[(a) In general. Each operator or plan manager, before engaging or continuing in the activity of furnishing transient accommodations or in business as a resort time share vacation plan within the State, shall register the name and address of each place of business within the State subject to this chapter with the director.]~~

~~[The]~~ (a) Each operator or plan manager shall indicate, on its application for registration, the type of [ownership on the registration.] entity it is. If the transient accommodation is ~~[jointly owned or furnished]~~ operated by a [husband and wife,] married couple or civil union partners, the ~~[husband and wife]~~ married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

~~[(b) The operator or plan manager shall pay a one-time registration fee of \$5 if the operator or plan manager has one to five transient accommodation units, \$15 if the operator or plan manager has six or more transient accommodation units, and \$15 for each resort time share vacation plan within the State. The fee shall be paid to any of the taxation district offices where the transient accommodations are located.]~~ (b) There shall be no additional ~~[charge]~~ registration fees due if the operator or plan manager ~~[later]~~ subsequent to its initial registration adds more units to ~~[the operator's or plan manager's]~~ its

registration [~~in accordance with section 18-237D-4-05~~], nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

~~[(c) Upon written request by an operator or plan manager, the department shall cancel a registration certificate.—The]~~ (c) Any cancellation of a registration shall be without any refund of the registration fee paid.

~~[(d) Subsections (a) to (c) are illustrated as follows:]~~

Example 1:

Hotel Corporation, engaged in [~~the activity of~~] furnishing transient accommodations in Hawaii, owns and operates a hotel [~~on the island of Oahu~~]. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the [~~Oahu taxation district office.—Hotel Corporation shall~~] department and shall pay a one-time fee of \$15 for the registration.

~~**[Example 2:]**~~

~~The facts are the same as in Example 1, except that Hotel Corporation also owns and operates hotels on the islands of Maui, Hawaii, and Kauai. Hotel Corporation shall register by providing its name and address and the business name and address of each hotel with the taxation district office on Oahu, Maui, Hawaii, or Kauai. Hotel Corporation shall pay a one-time fee of \$15 for the registration.]~~

Example [3:] 2:

Mr. Peters owns a single apartment unit [~~on Kauai that is used in the activity of furnishing~~]

he furnishes as a transient [~~accommodations.~~]
accommodation. Mr. Peters shall register with
the [~~Kauai taxation district office~~] department
by providing his name and address, and the
business name (if any) and address of the
apartment. Mr. Peters shall pay a one-time fee
of \$5 for the registration.

[~~Example 4:~~

~~The facts are the same as in Example 3,
except that Mr. Peters also owns five apartment
units in another apartment building on Kauai.
Those five units are also used in the activity of
furnishing transient accommodations. Mr. Peters
shall register the business name (if any) and
addresses of these five apartment units and the
other apartment unit in Example 3 with the Kauai
taxation district office and pay a one-time fee
of \$15 for the registration.~~

Example 5:

~~Ms. Cary owns two apartment units on Kauai,
four on Maui, and six on Oahu. All of the units
are used in the activity of furnishing transient
accommodations. Ms. Cary shall register by
providing her name and address, and the names and
addresses of the two apartment units on Kauai,
the four units on Maui, and the six units on Oahu
with the taxation district office on Oahu, Maui,
or Kauai. Ms. Cary shall pay a one-time fee of
\$15 for the registration.]~~

Example [6:] 3:

Property Corporation, a firm engaged in the
property management business, manages a
condominium apartment building consisting of [50]
fifty apartments. Each of the apartments in the
building is owned by a different investor who
rents the premises on a short-term basis.

Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for [50] fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the [50] fifty condominium apartments. Although Property Corporation must file [50] fifty annual tax returns, payment of taxes on the [50] fifty units may be made with a single check enclosed in the same envelope with the [50] fifty returns.

Example [7:] 4:

The individual owners of Tropical Condominium Apartments (consisting of [100] one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building [~~situated on Oahu~~] from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the [~~Oahu taxation~~]

~~district office.]~~ department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the ~~[100-unit]~~ one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation. ~~[See also section 18-237D-1-03.]~~

~~[Example 8:~~

~~Paradise Hotel operates a hotel on the island of Oahu, the first taxation district. Five of the rooms are rented for periods of less than 180 consecutive days. Paradise does not do business on any of the neighbor islands. Paradise must register with the first taxation district office by giving its name and address and the name and address of its place of business and pay a onetime fee of \$5.]~~

Example ~~[9:]~~ 5:

ABC, Inc. operates several facilities ~~[which furnish transient accommodations]~~. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a ~~[50-unit]~~ fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than ~~[180]~~ one hundred eighty consecutive days and other units for periods of over ~~[180]~~ one hundred eighty consecutive days. ABC also

operates a hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with ~~[one of the taxation districts in which its transient accommodations are located. To register, ABC is required to]~~ the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are ~~[being used to furnish]~~ transient accommodations. Regarding the ~~[50-unit]~~ fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for ~~[a]~~ consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

Example 6:

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later.

~~[(c) Time for registration. The operator or plan manager shall register as required by this section prior to commencing the activity of furnishing~~

~~transient accommodations or in business as a resort time share vacation plan.]~~" [Eff 11/25/88; am 7/18/94; am 6/3/05; am 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

3. Section 18-237D-4-02, Hawaii Administrative Rules, is repealed:

~~["**§18-237D-4-02 Display of the registration certificate.** (a) In general. Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice as set forth in subsection (b) at each place for which it is issued.~~

~~(b) Alternative method of display for more than one transient accommodation or in business as a resort time share vacation plan. Where the operator or plan manager operates more than one transient accommodation or more than one resort time share vacation plan, the director shall issue one certificate of registration. The operator or plan manager may post a notice in each room, apartment, suite, or the like either notifying the tenant or occupant where the certificate may be inspected or referring the tenant or occupant to the department.~~

~~(c) Subsections (a) and (b) are illustrated as follows:~~

Example:

~~Hawaii, Inc. owns a 400-unit condominium apartment that is used to furnish transient accommodations in Waikiki. To register, Hawaii, Inc. must list all of the units and pay a \$15 fee. A master certificate shall be issued. Hawaii, Inc. is not required to post a copy of the certificate in each of the 400 units but may post a notice in each unit stating that the apartment unit has been properly registered as a transient accommodation and either that a true copy of the certificate may be inspected or~~

~~examined at the resident manager's office or that an inquiry may be made at the department.~~

~~(d) Penalty for failure to register. Any person who engages or continues in the business of furnishing transient accommodations without registering in conformity with this chapter or any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both." [Eff 11/25/88; am 7/18/94; am 6/3/05; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)~~

4. Section 18-237D-4-03, Hawaii Administrative Rules, is repealed:

~~**["§18-237D-4-03 Nontransferability of certificate of registration.** The certificate of registration shall not be transferable. The certificate shall be valid only for the operator or plan manager in whose name the certificate has been issued and for the transaction of business only at the place designated." [Eff 11/25/88; am 6/3/05; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)~~

5. Section 18-237D-4-04, Hawaii Administrative Rules, is repealed:

~~**["§18-237D-4-04 Cancellation of registration by operator or plan manager ceasing to do business; change of ownership.** Any operator or plan manager which goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity or in business as a resort time share vacation plan for which a certificate of registration is issued or which transfers ownership of all of its~~

~~transient accommodation or resort time share vacation plan shall notify the taxation district office in which the operator or plan manager is registered by canceling the registration on a form prescribed by the department not more than ten days after the transfer of ownership or the activity has ceased." [Eff 11/25/88; am 6/3/05; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)~~

6. Section 18-237D-4-05, Hawaii Administrative Rules, is repealed:

~~**"§18-237D-4-05 Registration of the acquisition, sale, transfer, assignment, or gift of a transient accommodation.** (a) An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall notify the taxation district office in which the operator is registered by filing a form prescribed by the department not more than ten days after the transaction.~~

~~(b) A buyer, transferee, assignee, or recipient of a gift of a transient accommodation shall register as an operator of the transient accommodation as set forth in section 18-237D-4-01." [Eff 11/25/88; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)~~

7. Section 18-237D-4-06, Hawaii Administrative Rules, is repealed:

~~**"§18-237D-4-06 Registration upon reorganization; partnership formation.** Any operator of a transient accommodation which reorganizes its corporate structure or forms a partnership shall notify the taxation district office in which the operator is registered of the change by canceling the registration on a form prescribed by the department not more than ten days thereafter. The operator shall~~

~~file a new certificate of registration in accordance with the change in structure."]~~ [Eff 11/25/88; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

8. Section 18-237D-4-07, Hawaii Administrative Rules, is repealed:

~~["**§18-237D-4-07 Corporate name change.** Any operator of a transient accommodation which changes its corporate name shall notify the taxation district office in which the transient accommodation is registered of the change not more than ten days after the change of name. Upon notification, the change of name shall be noted in the records of the taxation district office. A new certificate of registration shall not be issued."]~~ [Eff 11/25/88; R 4/4/16] (Auth: HRS §§231-3(9), 231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

9. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§18-237D-4-08 Procedures; scope and purpose.

(a) Sections 18-237D-4-08 to 18-237D-4-34 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-08 through 18-237D-4-34 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-08 through 18-237D-4-34 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

10. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§18-237D-4-09 Definitions. As used in sections 18-237D-4-08 through 18-237D-4-34:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

11. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-10 Fine for failure to display. (a)

A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation.

The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-11 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient accommodation; provided that the department

may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation.

(e) The department shall not issue written warnings or citations to transient accommodations brokers who have, in good faith, displayed information that was supplied to them upon request and which the transient accommodations broker reasonably believes to be correct; provided that if a transient accommodations broker has actual knowledge that information is incorrect, the transient accommodations broker must immediately cure the violation by correcting the information or by removing the advertisement in violation, if possible. If the department initially issues a written warning or citation to a transient accommodations broker, and the transient accommodations broker responds with evidence that the violation was the result of it displaying, in good faith, information that was supplied to it upon

request, and that the transient accommodations broker immediately cured the violation by correcting the information or by removing the advertisement in violation when possible, the department shall retract the written warning or citation. Any retracted written warning or citation, for purposes of determining whether a written warning may be issued under section 18-237D-4-11 or determining whether a violation constitutes a first, second, third or subsequent violation, shall be considered to have never been issued.

(f) A transient accommodations broker that operates a website which provides a public forum where users may offer, list, or advertise transient accommodations and which makes it impossible for such users to offer, list, or advertise any transient accommodation in Hawaii without providing in the offering, listing, or advertisement a registration identification number issued under section 237D-4, HRS, and in the format in which such numbers are issued, to wit, the letter "W" followed by eight digits, followed by a dash and a two-digit suffix, or whatever successor format the department may adopt in subsequent years, shall generally be considered to have acted in good faith in accordance with subsection (e).

Example 1:

Kai's List is a transient accommodations broker in the form of an online classified advertisement website with various sections devoted to different types of classified ads such as jobs, housing, personals, items for sale, and vacation rentals. In order to list an item in the "Vacation Rentals" forum of Kai's List, the user must fill out a field that requires the input of an item described as "transient accommodations tax license number." Transient Rentals LLC is a user of Kai's List and an operator whose registration identification number issued under section 237D-4, HRS, is W12345678-

01. Transient Rentals LLC makes a typo while filling out Kai's List's "transient accommodations tax license number" field and inputs the following: "W1234567-01." When Transient Rentals LLC attempts to post its listing, it receives an error message informing it that the number it input is incorrect, and stating that the listing cannot be posted until it is corrected. Transient Rentals LLC then inputs the following incorrect registration identification number: "W12345679-01." The listing is then posted. Kai's List meets the safe harbor provided by subsection (f) and the department will not issue Kai's List a written warning or citation for failure to display. Transient Rentals LLC is not a transient accommodations broker, not subject to the safe harbor provided by subsection (f), and therefore may still be subject to a citation and fine for failure to display for displaying the incorrect registration identification number.

Example 2:

Assume the same facts as Example 1, except that one day after the listing is posted, Kai's List gains actual knowledge that the registration identification number posted is incorrect. Kai's List does not correct the number, delete the listing, or otherwise take any action to correct the violation, despite its knowledge of the violation. The department may issue Kai's List a written warning or citation because Kai's List failed to immediately cure a violation of which it had actual knowledge, and therefore was not acting in good faith under subsection (e)." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

12. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-11 Written warning for first violation under section 237D-4(d), HRS. (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-10(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-10(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-10(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and
- (5) A statement that the violator may be cited under section 18-237D-4-12 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the

violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) If, during the fifteen-day period described under subsection (c) (5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-10.

Example 1:

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-11.

Example 2:

Assume the same facts as Example 1, except that the department also reviews its records to see whether it has ever issued a warning or citation to T.A. Broker, Inc., the entity that operates TAbroker.com. In its records, the department sees that it issued a written warning

to T.A. Broker, Inc. four months previously because TAbroker.com displayed a unit operated by Tropical Rentals LLC, but failed to provide Tropical Rentals LLC's registration identification number or an online link leading to the number. Because the department has already issued T.A. Broker, Inc. a written warning over fifteen days ago, the department shall issue T.A. Broker, Inc. a citation for failure to display, including a fine for a first violation. It is irrelevant that the written warning T.A. Broker, Inc. previously received was for a violation related to a different transient accommodation. T.A. Broker, Inc. had already received its first and only written warning. This and all subsequent first violations shall result in a citation and fine." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

13. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-12 Citation for failure to display; requirements. (a) A citation for failure to display must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is

issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;

- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;
- (5) If applicable, the amount of the monetary fine imposed against the respondent;
- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative

shall not affect the validity of the citation; and

- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date of the citation, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

Example 1:

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-11, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during

which this transient accommodation has been in violation for a total fine of \$8,500.

Example 2:

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

Example 3:

Assume the same facts as Example 1, except that the department also reviews its records to see whether it has ever issued a warning or citation to T.A. Broker, Inc., the entity that operates TAbroker.com. It discovers that it has not, so on January 15, the department also issues a written warning to T.A. Broker, Inc. under section 18-237D-4-11, explaining that T.A. Broker Inc. has fifteen days to cure its violation by ensuring that the registration identification number is displayed in the advertisement. On January 27, T.A. Broker Inc. contacts Operator LLC and asks for its registration identification number so that it can display it in the advertisement and cure the violation. Operator LLC refuses to provide its registration identification number. T.A. Broker elects to remove the unit listing from its website. The department shall not issue a citation to T.A. Broker Inc. because it cured its violation by deleting the advertisement within the fifteen-day period granted by the written warning, and the warning shall be retracted under section 18-237D-4-10(e).

Example 4:

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB," a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display Operator LLC's registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

Example 5:

Assume the same facts as Example 4, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

Example 6:

Assume the same facts as Example 1, except that on April 1, the department returns to TAbroker.com and sees that the site contains an advertisement for a transient accommodation unit operated by Tropical Rentals LLC. The advertisement does not display Tropical Rentals LLC's registration identification, and through investigation, the department determines the advertisement has been displayed continuously on

the website for seven days. The department reviews its records and sees that it has previously issued T.A. Broker Inc. a written warning and that T.A. Broker Inc. timely cured the violation. The department shall issue T.A. Broker Inc. a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by seven days during which the advertisement has been in violation for a total fine of \$3,500. The department also reviews its records on Tropical Rentals LLC and sees that it has never issued it either a warning or a citation. The department shall issue Tropical Rentals LLC a written warning under section 18-237D-4-11.

Example 7:

Assume the same facts as Example 4, except that on June 1, Operator LLC contracts with Banner Advertisements Inc., a company which creates advertisements that appear on assorted websites with which Banner Advertisements Inc. has contracted. The advertisements are created by Banner Advertisements Inc. and the websites with which Banner Advertisements Inc. has contracted do not directly control which particular advertisement may display in the space allotted for Banner Advertisements Inc.'s advertisements. Operator LLC's contract with Banner Advertisements Inc. is to advertise its Kauai transient accommodation unit. The advertisement Banner Advertisements Inc. creates does not display Operator LLC's registration identification number, nor does it contain any link to the number. On June 15, the department first discovers the advertisement. Through investigation, the department determines that the advertisement has appeared in ads on Banner Advertisements Inc.'s partner websites on at least four different days. The department reviews its records and sees that it has

previously issued Operator LLC a citation for a first violation for this transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a second violation of \$1,000 multiplied by four days during which the advertisement has been in violation for a total fine of \$4,000. The department also reviews its records on Banner Advertisements Inc. and sees that it has never issued it a warning or citation. The department shall issue Banner Advertisements Inc. a written warning under section 18-237D-4-11.

Example 8:

The department goes to transientrentals.com, a website operated by Transient Rentals LLC, and sees an advertisement listing a unit for rent by a sole proprietor operator named Tommy Timeshare, and displaying a registration identification number. However, the registration identification number displayed in the advertisement is incorrect. The department reviews its records and sees that it has never issued Transient Rentals LLC a warning or citation. The department issues Transient Rentals LLC a written warning. However, Transient Rentals LLC replies to the written warning by showing that the incorrect registration identification number was supplied to it by Tommy Timeshare, and that it has cured the violation by deleting the listing. The department retracts its written warning, as the department shall not issue written warnings or citations to persons who have, in good faith, displayed information that was supplied to them and which they reasonably believe to be correct, provided that upon learning that such information is incorrect, the violation is cured by removal of the listing or posting of the correct information when possible. Tommy Timeshare may still receive a written warning or citation, and

may also be subject to penalties for wilful failure to supply information under section 231-35, HRS, as well as other penalties related to fraud.

Example 9:

On July 1, while inspecting a transient accommodation unit operated by Surfswax Rentals LLC, the department discovers Surfswax Rentals LLC has failed to conspicuously display its registration identification number inside the unit. Surfswax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surfswax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surfswax Rentals LLC a citation. The department shall issue Surfswax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously display the information required by section 237D-4(b), HRS.

Example 10:

Assume the same facts as Example 9, except that on July 15, the department goes to TAbrokers.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-

237D-4-11. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

Example 11:

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is offering to rent out the cottage on her property for \$200 per night. FacePlus is not a transient accommodations broker because FacePlus does not accept income in exchange for advertising Sally Social's cottage and because FacePlus does not provide a forum for advertising transient accommodations or resort time share vacation interests, units, or plans. Therefore the department will not issue a written warning or citation to FacePlus. The department may still issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation.

Example 12:

Kai's List is an online classified advertisement website with various sections devoted to different types of classified ads such as jobs, housing, personals, items for sale, and vacation rentals. Kai's List is a transient accommodations broker because it provides a forum for advertising transient accommodations or resort time share vacation interests, units, or plans. Sally Social, an individual user of Kai's List, posts an ad in the Kai's List "vacation rentals" section, advertising the cottage on her property for \$200 per night. She does not include a registration identification number issued under section 237D-4, HRS, nor a link to that number. The department reviews its records and sees that it has never issued Kai's List a warning or citation. The department shall issue Kai's List a written warning under section 18-237D-4-11.

Example 13:

Assume the same facts as Example 12, except that when Sally Social attempts to post her ad, the Kai's List website rejects it because she has not filled out a field or otherwise included her registration identification number issued under section 237D-4. Sally Social does not have a registration identification number, so she inputs a number at random and then publishes her ad. The department shall not issue Kai's List a warning or citation because Kai's List makes it impossible for its users to post advertisements for transient accommodations in this State without providing a registration number issued under section 237D-4, HRS. Sally Social may still receive a written warning or citation, and may also be subject to penalties for wilful failure to supply information under section 231-35, HRS, as well as other penalties related to fraud." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

14. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-13 Issuance of a citation for failure to display. (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry.

(d) The date on which the citation is served on the respondent shall constitute the date of issuance. If the citation is served by publication under subsection (c) (3), the date of service of the citation is the last date of publication in the second successive week. [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

15. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-14 Response to citation for failure to display. (a) A respondent must respond to a citation for failure to display within thirty days from the date of its issuance by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-17. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation is issued:

- (1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and
- (2) The department may collect any overdue monetary fines and enforce any overdue non-

monetary sanctions as set forth in section 18-237D-4-34(b) .

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

16. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-15 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing." [Eff 4/4/16] (Auth: HRS §§231-10.7, 237D-16(b)) (Imp: HRS §237D-4)

17. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-16 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony , exhibits, statements of matters officially noticed, offers of proof and

rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

18. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-17 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

19. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-18 Presiding officer of hearings; duties and powers; substitute presiding officers. (a) The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who

shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

(1) The fees and costs for the transcript;

- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

20. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-19 Disqualification of presiding officers. (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

21. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-20 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte

communication." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

22. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§18-237D-4-21 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-34, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

23. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§18-237D-4-22 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if

any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or

persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

24. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-23 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

25. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-24 Appearances in agency appeal.

(a) An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a

power of attorney." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

26. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-25 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

27. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-26 Consolidation; separate hearings.
(a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

28. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-27 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-22 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

29. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-28 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.
(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities."

[Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b))
(Imp: HRS §§91-9, 237D-4)

30. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-29 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-22(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-22(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion."

[Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b))
(Imp: HRS §§91-9, 237D-4)

31. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-30 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise

discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents

under section 18-237D-4-22, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time."
[Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b))
(Imp: HRS §§91-10, 237D-4)

32. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-31 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-2, 237D-4)

33. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-32 Service of decisions. All final orders, opinions, or rulings entered in an agency

appeal shall be served in accordance with section 91-12, HRS. [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

34. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-33 Correction of transcript.

Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-18(e), whichever is earlier. The motion shall be acted upon by the presiding officer. [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

35. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-34 Enforcement and stay. (a)

Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any

amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed." [Eff 4/4/16] (Auth: HRS §§91-2, 231-10.7, 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

36. Material to be repealed is bracketed and stricken. New material is underscored.

37. These amendments to chapter 18-237D, Hawaii Administrative Rules, are temporary rules issued pursuant to section 231-10.7, Hawaii Revised Statutes. As temporary rules, these administrative rules become effective seven days after public notice is issued, and are effective for eighteen months.

38. The foregoing copy of the rules, drafted in the Ramseyer format, is provided for reference only.