

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Adoption of Chapter 15-300
Hawaii Administrative Rules

May 1, 2007

SUMMARY

Chapter 300 of Title 15, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 300

RULES OF PRACTICE AND PROCEDURE

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Historical Note: Chapter 300 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 301 of Title 6, Hawaii Administrative Rules, [Eff 6/15/91; am and comp 7/5/96; R 10/25/99], chapter 15-160, Hawaii Administrative Rules, [Eff 10/25/99, R 10/3/05], and chapter 17-2000, Hawaii Administrative Rules. [Eff 10/3/05]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-300-1 Purpose. These rules are adopted pursuant to chapters 91 and 92, Hawaii Revised Statutes ("HRS"), and implement chapter 201H, HRS, and address the following objectives:

- (1) To govern the practice before the Hawaii housing finance and development corporation; and
- (2) To secure the just and efficient determination of proceedings before the Hawaii housing finance and development corporation.

[Eff JUN 15 2007] (Auth: HRS §201H-4)
(Imp: HRS Chapter 201H)

§15-300-2 Definitions. Whenever used in this chapter, unless otherwise specifically defined:

"Board" means the board of directors of the Hawaii housing finance and development corporation as defined by section 201H-2, HRS.

"Bylaws" means, pursuant to chapter 91, HRS, the legal instrument under which the corporation conducts its organization, internal management, and effectuates its purposes, powers, and programs.

"Chairperson" means the duly selected chair of the board of the corporation or a designated representative.

"Corporation" means the Hawaii housing finance and development corporation its board, and any branch, division, or section of the corporation.

"Declaratory relief" means the corporation's declaration as to the applicability or non-applicability with respect to a factual situation of any rule or order of the corporation or of a statute which the corporation is required to administer or enforce.

"Directors" means the members of the board of directors as defined in section 201H-3, HRS, and the bylaws of the corporation.

"Executive director" means the executive director of the corporation or the executive director's designated representative.

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form as defined in section 92F-3, HRS.

"Hearings officer" means any person, duly appointed and authorized by the board to hold a hearing for the purpose of taking evidence or oral argument and making a recommended decision in any matter before the board.

"Meetings" means the convening of the board following due notice as prescribed under chapter 92, HRS, and the bylaws of the corporation.

"Officers of the corporation" means the same as contained in the corporation's bylaws.

"Party" means the corporation, if named, permitted, or entitled as of right to participate in a proceeding, each person named in a proceeding, or any person permitted or entitled as of right to participate in a proceeding before the corporation in the capacity of a petitioner, claimant, respondent, intervener, or in a capacity other than that of a witness.

"Person" means an individual, partnership, corporation, association through a representative, or public or private organization of any character other than the corporation.

"Petition" means an application to the corporation by a party which seeks relief under these rules.

"Petitioner" means a party who initiates a proceeding.

"Practice and procedures" means these rules of practice and procedures before the corporation.

"Proceeding" refers to any matter brought before the corporation or the board for action following due

consideration of the objectives, goals, policies, and all related matters of the corporation.

"Respondent" means the party against whom a petition is filed, the party against whom relief is sought or, any party who contests or controverts a proceeding.

"Rule relief" means the adoption, modification, or repeal of any rule by the corporation.

"Rules", pursuant to chapter 91, HRS, refers to adopted rules of each program administered by the corporation. [Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §§91-1, 201H-3, 201H-4)

§15-300-3 Business hours and location.

(a) The principal office of the corporation is located at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813. All communication to the corporation, including specifically its board and chairperson, shall be transmitted to the corporation's office.

(b) The principal office of the corporation shall be open Monday through Friday, holidays excepted, from 7:45 a.m. to 4:30 p.m. of each week day, unless otherwise provided by statute or executive order. [Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §§ 80-1, 201H-4)

§15-300-4 Applicability of rules. The rules under this chapter shall apply to all practices and procedures of the corporation, provided that where these rules are inconsistent with the corporation's rules under another chapter, these rules shall be superseded by the specific rule of practice and procedure of the other chapter. The board shall refer to Robert's Rules of Order for guidance on procedural matters not addressed in the corporation's rules or in law. [Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-5 Meetings. The corporation shall hold meetings as defined and prescribed under article VII of the bylaws. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-6 Agenda. The executive director shall prepare the agenda for the meetings of the board, as directed by the chairperson. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-7 Notice. Notice of the meetings of the board shall satisfy the requirements of section 92-7, HRS. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §92-7)

§15-300-8 Minutes. The corporation shall maintain written minutes in compliance with section 92-9, HRS. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §92-9)

§15-300-9 Quorum and number of votes necessary for action. Five directors of the board shall constitute a quorum and the affirmative vote of at least five directors shall determine any action. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-3)

§15-300-10 Submittal and filing of documents.
 (a) All documents and requests to the corporation of every nature shall be in writing addressed to the executive director, the board, or the chairperson, as may be appropriate under the circumstances, and transmitted to the corporation within the time limits prescribed by law, rules, or by order of the corporation. The date of filing shall be established by the corporation's time-date stamp on the document.

(b) All documents filed with the corporation shall be either written in dark ink, typewritten, reproduced, or printed; shall be plainly legible, and shall be on strong, durable paper no larger than 8-1/2" x 11" in size, unless otherwise specified by the corporation, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.

- (1) All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, mailing address and business telephone number, if any, of the individual who may be served with any documents filed in the proceeding;
- (2) The original of each document shall be signed in black ink by the party; and
- (3) Reproduction may be by any process, provided all copies are clear and permanently legible.

(c) All documents must be signed by the party or the party's agent. The signature of the person constitutes a verification that the person has read the document, that to the best of the person's knowledge, information, and belief, every statement contained therein is true and no such statement is misleading; and that it is not interposed for delay.

(d) Unless otherwise required by these rules or the corporation, there shall be filed with the corporation an original and ten copies of each paper. Additional papers shall be promptly provided upon request of the executive director or chairperson.

[Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-11 Extensions of time. Unless otherwise provided in this chapter, whenever a party is required to take action within a period of time prescribed or allowed by applicable order, statute, or rule, the chairperson may:

- (a) Approve a written stipulation signed by all parties extending such time period; or
- (b) Extend such time period upon written request of the party requesting the extension for good cause shown. [Eff JUN 15 2007] (Auth: HRS §201H-4)
(Imp: HRS §§91-9(D), 201H-4)

§15-300-12 Amendment of documents. If any document filed with the corporation is not in substantial conformity with applicable rules of the corporation, the corporation may accept and file such documents and may request the filing of an amended document in conformance with the applicable rules. The mere fact of filing shall not waive any failure to comply with these rules, or any other legal requirement. If an amended document is requested by the corporation, the amended document shall be effective as of the date the corporation receives it. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-13 Retention of documents. The corporation shall retain all documents filed with the corporation in its files. The executive director may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-14 Access to corporation records. (a) All government records of the corporation shall be open for inspection in the principal office of the corporation during established business hours, unless access to such records is restricted or closed by law.

(b) A request for access to or copies of government records shall be made in writing to the executive director and shall include a clear and concise description of the records sought. All such

requests must be signed by the requesting party or the party's authorized representative.

(c) The corporation shall not be required to prepare a compilation or summary of its records in response to a request for records.

(d) Copies of the government records shall be available in accordance with subsection (b), and payment of the reasonable costs of reproduction set forth in section 92-21, HRS, and the fee for searching, reviewing, or segregating the records as set forth by the office of information practices, in chapter 5-43, Hawaii Administrative Rules. Reasonable costs of reproduction shall include, but are not limited to, actual time for reproduction, material costs, including electricity cost, equipment and equipment rental costs, costs for certification, and labor costs for monitoring the public inspection of the records to prevent theft, loss, defacement, or alteration of the records. [Eff JUN 15 2007]
(Auth: HRS §92F-11) (Imp: §§ 92F-11, 92-21)

§15-300-15 Limitation on access to corporation records. Access to corporation records is subject to the limitations set forth in section 92F-13, HRS. [Eff JUN 15 2007] (Auth: HRS §92F-11) (Imp: HRS §92F-13)

§15-300-16 Authentication of corporation's documents. The executive director is authorized to certify as to the authenticity of documents on file in the offices of the corporation. [Eff JUN 15 2007]
(Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-15 Inclusion on agenda. (a) Requests from members of the public to be included on the agenda of a board meeting shall be in writing and must be received by the executive director at least twenty calendar days before the scheduled board meeting. The

request shall be summarized, and shall include the action being requested by the board.

(b) The name of the requesting party shall be placed on the agenda for the next scheduled board meeting except when the chairperson determines that the volume or substance of the items scheduled for the next meeting or the location thereof warrant the placement of the requesting party's name on the agenda of a subsequent board meeting.

(c) The corporation shall maintain a list of all names and addresses of persons who have requested, in writing, notification of the board's meetings. The list shall be updated annually.

(d) Written requests to the board requiring a response shall be accompanied by a stamped, self-addressed envelope. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §92-7)

§15-300-18 Limitations on testimony before the board. (a) The board may limit the length of each person's oral testimony to three minutes.

(b) The board shall only accept oral testimony related to items on the agenda for the meeting at which the testimony is offered. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §92-3).

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§15-300-21 General rule. All persons and parties shall comply with these rules of practice and procedure when appearing before the board. The board may waive, modify, or suspend any of the provisions of this chapter to the extent permitted by law. All persons and parties shall have a reasonable opportunity to present evidence and argument on all the issues involved. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-9(d), 201H-4)

§15-300-22 Appearances before the board. (a) A party to a proceeding before the board may appear in person or through an authorized representative if the party is an individual; through an authorized representative if the party is a partnership, corporation, trust or association; or through an officer or employee if the party is a State agency or political subdivision of the State.

(b) The board may at any time require an authorized representative of a party to demonstrate or prove that he or she has the authority to act in such capacity.

(c) An appearance before the board may be made by speaker telephone or other electronic means, with the approval of the chairperson. [Eff JUN 15 2007]
(Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-23 Disqualification of member of board or hearings officer. No matter shall be heard by a member of the board or by a hearings officer who:

(a) Has any pecuniary interest in the matter being heard; or

(b) Is related within the third degree by blood or marriage to any party to the proceeding.

[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-24 Board proceedings, generally. The following shall apply to proceedings before the board under subchapter 3, contested cases, and subchapter 4, declaratory relief:

- (1) Unless otherwise provided in this chapter, all documents, as required by these rules, including memoranda and other documents requested by the board, shall be filed with the corporation prior to the date of the proceeding;
- (2) The board, at the written request of a party to the proceeding, shall have the power to issue subpoenas as provided under law,

requiring the attendance of witnesses or the production of documents at the hearing. The party requesting the issuance of a subpoena shall identify with particularity the person or documents to be subpoenaed. Witnesses so summoned shall be paid the same fees as are paid witnesses in the courts in the State of Hawaii and such fees, including mileage, shall be paid by the party who requests the issuance of the subpoena. The board may require deposit of such fees by the requesting party before the issuance of the subpoena. The board may deny or modify the issuance of the subpoena, if it is unreasonable or oppressive or fails to comply with the requirements under law;

- (3) Witnesses shall be placed under oath prior to testifying;
- (4) The proceeding shall be recorded, but it shall not be necessary to transcribe the record unless requested by the party. The proceedings shall be tape recorded unless a party requests the services of a court reporter to record the proceeding verbatim. In the event a court reporter is requested, the secretary to the board shall be given notice thereof at least seven calendar days prior to the commencement of the proceeding. The cost of the transcriptions of the proceedings shall be borne by the requesting party;
- (5) A party may submit written requests to the board regarding a matter pending before the board prior to the commencement of the proceeding. The chairperson may, but shall not be required to, issue a ruling on the request prior to the commencement of the proceeding;
- (6) Rules of evidence as stated in section 91-10, HRS, shall apply;

- (7) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained;
- (8) Documents offered in evidence shall be accepted upon ruling of the chairperson;
- (9) Proposed findings of fact, conclusions of law, decisions and orders shall not be accepted unless submitted no later than seven business days after the day the proceedings were concluded, or such other time as may be established by the board or hearings officer; and
- (10) Appeal of a decision may be made to the circuit court, as provided by law.
[Eff JUN 15 2007] (Auth: HRS §201H-4)
(Imp: HRS §§91-14, 92-16, 201H-4)

§15-300-25 Board's decision. With respect to proceedings before the board under subchapter 3, contested cases, subchapter 4, declaratory relief, and for reconsideration, all final orders, rulings, decisions or actions entered by the board shall be filed with the corporation. [Eff JUN 15 2007]
(Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-26 Request for reconsideration of board's decision. (a) Any request for reconsideration of an order, ruling, decision, or action of the board shall be made in writing and shall be filed with the corporation within ten days of the order, ruling, decision, or action. The request shall state the grounds for the request for reconsideration and may be summarily denied if it appears from the request that there is no new, relevant evidence on the matter to present to the board.

(b) Upon receipt of the request, the chairperson shall:

- (1) Assign the request for reconsideration for further proceedings either before the board or before a hearings officer; or
- (2) Deny the request on the ground that no new, relevant evidence exists to support the request for reconsideration.

(c) Notice pursuant to section 91-9, HRS, shall be provided to all parties upon the scheduling of a hearing before the board or a hearings officer.

(d) When the hearing is held before a hearings officer, the entire record shall be transmitted to the board for action together with the recommended decision, any timely filed exceptions, and any timely filed statement in support of the reconsideration.

[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-11, 201H-4)

§15-300-27 Limitation of time; appeal to circuit court. Appeal of the corporation's final order, ruling, decision, or action may be made to the circuit court as provided by law. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-14)

§15-300-28 Failure to appear. If any party fails to appear at the scheduled proceeding without good cause, the board may proceed in the absence of the party and may issue any decision or order it deems just and equitable under the circumstances, including dismissal of the party's claim for relief and reimbursement of costs, if such has been incurred. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-29 Procedure before a hearings officer; transmittal to board. (a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact,

conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter for the board.

(b) If the recommended decision is adverse to any party to the proceeding other than the corporation, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the board, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in subsection (b), or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the board for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §91-11)

SUBCHAPTER 3

CONTESTED CASES

§15-300-41 Contested cases; applicability. The right to a contested case hearing shall exist where provided for by administrative rule of the corporation or where required by law. The right to hearing shall only be afforded to the person affected by the action or decision of the corporation, unless otherwise provided by rule of the corporation or by law.

[Eff **JUN 15 2007**] (Auth: HRS §201H-4) (Imp: HRS §§91-14, 111-9, 201H-4, 516-7)

§15-300-42 Commencement of case. A contested case shall commence by the filing of a petition for a permitted relief with the board. Unless otherwise provided by rule of the corporation or by law, the petition shall be filed within thirty days of the action or decision of the corporation for which contested case hearing is sought. Upon the filing of a petition, the corporation shall docket the petition and assign a docket number to the petition. [Eff JUN 15 2007] (Auth: HRS §91-9, 201H-4) (Imp: HRS §201G-4)

§15-300-43 Contents of petition. (a) The petition shall state the following:

- (1) Name, address, telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petitioner at all times;
- (2) A brief and concise factual statement of the petitioner's claim;
- (3) The law or rule involved;
- (4) The names of all respondents or identities against whom the petition is brought; and
- (5) A brief statement of the relief sought by the petitioner.

(b) If the petition is not in substantial compliance with subpart (a), the board may refuse to file the petition and may request the petitioner to submit an amended petition in compliance thereto.

[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-2)

§15-300-44 Action by board. Upon the filing of the petition, the chairperson shall assign the petition for further proceedings before the board or assign the matter to a hearings officer and afford all parties in the matter an opportunity for hearing after reasonable notice. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-9, 201H-4)

§15-300-45 Board proceedings. Proceedings before the board shall be held as provided in section 15-300-24. [Eff ~~91-9.5~~ JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-~~10~~ JUN 15 2007, 201H-4)

§15-300-46 Response. Each respondent may file a written response to the petition with the board or hearings officer if the case has been assigned to one. The response shall state briefly a counterstatement of the facts, circumstances, law, rules, or reasons in defense thereof, and shall specifically admit or deny the allegations of the petition. The response shall be filed at least five working days prior to the hearing. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-47 Notice. The board or hearings officer shall, as soon as possible, provide notice pursuant to section 91-9.5, HRS, to all parties of the scheduled hearing in such form and manner as provided by law. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-~~9~~ JUN 15 2007, 91-9.5)

§15-300-48 Burden of proof; evidence. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-10(5))

§15-300-49 Procedure at hearing. Unless otherwise stipulated by the parties, which stipulation is approved by the board or the hearings officer, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
 - (A) Petitioner's opening statement; and
 - (B) Respondent's opening statement, unless respondent chooses to reserve the opening statement until after presentation of petitioner's evidence;
- (2) The petitioner's evidence shall be presented first, and shall be followed by the presentation of evidence by respondent;
- (3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;
- (4) Each witness shall first be sworn under oath and shall be examined first by the party calling the witness before cross-examination by the opposing party;
- (5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:
 - (A) Petitioner's final argument;
 - (B) Respondent's final argument; and
 - (C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and
- (6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post-hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or

upon the completion of taking further evidence, whichever is later.

[Eff JUN 15 2007] (Auth: HRS §201H-4)
(Imp: HRS §§91-9, 91-10)

§15-300-50 Proposed findings of fact and conclusions of law. Proposed findings of fact, conclusions of law, decisions, and orders shall be prepared by the prevailing party, filed with the board no later than seven business days after the day the proceedings were concluded, or such other time as may be established by the board or hearings officer, and delivered or mailed within a reasonable time to each party or to the party's authorized representative.
[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-51 Board's final decisions, orders, findings of fact, and conclusions of law. (a) The board shall issue its final decision and order together with findings of fact and conclusions of law. The findings of fact, conclusions of law, and final decisions and orders shall be based upon the whole record and shall be supported by reliable, probative and substantial evidence, including facts of which the board properly took judicial notice.

(b) If the proceedings were held before a hearings officer and exceptions were filed to the recommended decision, the board shall afford the parties an opportunity for oral argument before the board as to the exceptions, prior to the board's adoption of a decision and order and findings of fact and conclusions of law.

(c) If any party has timely filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding so presented, provided that a separate ruling on each proposed finding shall not be required.

(d) The board shall cause to have a certified copy of the decision and order and accompanying findings and conclusions, delivered or mailed within a reasonable time after their adoption by the board, to each party or the party's authorized representative. [Eff ~~§§91-11, 91-12~~ JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-11, 91-12)

§15-300-52 Procedure before a hearings officer; transmittal to board. (a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter for the board.

(b) If the recommended decision is adverse to any party to the proceeding other than the corporation, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the board, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in subsection (b), or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the board for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-11)

SUBCHAPTER 4

DECLARATORY RELIEF

§15-300-71 General provisions; contents of petition for declaratory relief. Any interested person may petition the board for a declaratory ruling as to the applicability of any statutory provision or of any rule or order. Each petition shall state concisely and with particularity the facts giving rise to the petition, including the petitioner's interest; reasons for filing the petition, and the names of any potential respondents, the provision or rule in question, the issues raised, and petitioner's position or contentions with respect thereto. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-8)

§15-300-72 Memorandum of authorities in support of petition. Petitioner shall also file a memorandum of authorities together with any petition for declaratory relief at the time the petition is filed. The memorandum of authorities in support of the petition shall contain a full discussion of the reasons, including legal authorities supportive of the petitioner's position. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201G-4)

§15-300-73 Notice of argument. All parties shall be given written notice of the hearing of argument at least fifteen days before the time of the argument. The notice shall include:

- (1) The date, time, place, and nature of the argument;
- (2) The legal authority under which the argument is to be heard;
- (3) Particular sections of the statutes and rules involved; and

- (4) A short and concise statement of issues involved, the basic facts giving rise to the petition.

The notice shall further apprise each party of their right to retain legal counsel if so desired.

[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-8)

§15-300-74 Argument. Upon the filing of the petition, the chairperson shall assign the petition for argument and further proceedings to either the board or a hearings officer. All parties shall be afforded full opportunity to present argument on all issues involved. The argument shall be at the time and place set forth in the notice of argument but at that time and place may be continued from day to day and adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-8)

§15-300-75 Board proceedings. Proceedings before the board shall be held as provided in section 15-300-24. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §§91-14, 92-16, 201H-4)

§15-300-76 Proposed findings of fact and conclusions of law. The prevailing party shall file proposed findings of fact, conclusions of law, decisions, and orders with the board no later than seven business days after the day the proceedings were concluded, or such other time as may be established by the board or hearings officer.

[Eff JUN 15 2007] (Auth: HRS §201G-4) (Imp: HRS §201G-4)

§15-300-77 Board's final decisions, orders, findings of fact, and conclusions of law. (a) The board shall issue its final decision and order together with findings of fact and conclusions of law. The findings of fact, conclusions of law, final decisions, and orders shall be based upon the whole record or such portions thereof as may be cited by the parties, and shall be supported by reliable, probative and substantial evidence, including facts on which the board properly took judicial notice.

(b) If the proceedings were held before a hearings officer and exceptions were filed to the recommended decision, the board shall afford the parties oral argument as to the exceptions, prior to the board's adoption of a decision and order and findings of fact and conclusions of law.

(c) If any party has timely filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding so presented, provided that a separate ruling on each proposed finding shall not be required.

(d) The board shall cause to have a certified copy of the decision and order and accompanying findings and conclusions, delivered or mailed within a reasonable time after their adoption by the board, to each party or to the party's authorized representative. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-8)

§15-300-78 Procedure before a hearings officer; transmittal to board. (a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter for the board.

(b) If the recommended decision is adverse to any party to the proceeding other than the corporation, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law

necessary to the recommended decision and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the board, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in subsection (b), or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the board for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-11)

§15-300-79 Order, effect. Any decision and order of declaratory relief, whether granting or denying the petition, shall have the same force and effect as other decisions and orders issued by the corporation. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-8)

SUBCHAPTER 5

RULE RELIEF

§15-300-91 General provisions; contents of petition for rule relief. Any interested person may petition the corporation for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition

shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-6)

§15-300-92 Disposition. (a) Within thirty days of the filing of a petition, the corporation, with the approval of the chairperson, shall either deny the petition in writing stating its reasons therefor, or initiate public rulemaking procedures in accordance with chapter 91, HRS.

(b) Without limiting the generality of the foregoing, the corporation may deny any petition which:

- (1) Fails to substantially conform with the requirements of section 15-300-91;
- (2) Discloses insufficient reasons which would justify the institution of public rulemaking procedures; or
- (3) Is frivolous.

[Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-6)

§15-300-93 Additional facts or supplemental memorandum. The corporation may require the petitioner or any person to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-6)

§15-300-94 Notice of determination. The corporation shall promptly notify the petitioner in writing of its decision not to consider the petition, in the time prescribed by law, and the reasons for its denial. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §91-6)

§15-300-95 Determination final. Unless otherwise provided by law, the petitioner shall have no right to request the board to reconsider the action nor to seek judicial review of the action. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

SUBCHAPTER 6

OTHER PROVISIONS

§15-300-121 Forms. The corporation may prescribe and use such forms as it may reasonably require to carry out its functions. The corporation may at any time create, modify, amend, or delete any forms in order to effectuate the purposes herein. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-300-122 Gender and number. In any rule of the corporation, all words used in the masculine or singular shall extend to and include the feminine or plural. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §1-15)

§15-300-123 Severability. If any rule of the corporation is found in whole or in part by a court of competent jurisdiction to be invalid under law, such finding shall not affect the remaining rules or any part therein. [Eff JUN 15 2007] (Auth: HRS §201H-4) (Imp: HRS §1-23)

