



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov>

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

DTS201905300924LI

June 14, 2019

To: Hawaii Coastal Zone Management Program Agencies and the Public at Large

From: Mary Alice Evans, Director, State of Hawaii Office of Planning *Mary Alice Evans*

Subject: Notice of Routine Program Changes to the Hawaii Coastal Zone Management Program

On May 16, 2019, the Hawaii's Coastal Zone Management (CZM) Program received concurrence from the National Oceanic and Atmospheric Administration's (NOAA) Office for Coastal Management (OCM) with the Hawaii Coastal Zone Management (CZM) Program's submission for routine program changes (RPCs).

The submission includes changes to various statutes and regulations that are included within the Hawai'i CZM Program. Under OCM's review, HAR §§ 19-42-161 and 162 were found not to contain any standards applicable for reviewing federal actions for consistency under the state's CZM Act review authority. These two sections are approved by NOAA's OCM as changes to the Hawaii's CZM Program but are not to be used for CZM Act review purposes.

NOAA OCM concurs that the changes are RPCs and approves the incorporation of the changes as enforceable policies of the Hawaii CZM Program with the following list of changes.

HI-2019-1 Table of Approved Changes

Changes marked with an asterisk (*) are approved for incorporation but are not to be applied as enforceable policies for CZM Act Federal Consistency review purposes.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State	
ADDED				
1	HRS 342D-61 Household aerobic unit approval	• Added household aerobic unit approval	07/05/2017	07/05/2017
2	HRS § 342D-72 Cesspools; mandatory upgrade, conversion, or connection	• Added mandatory upgrade, conversion, or construction of cesspools	07/01/2017	07/01/2017
3	HAR Chapter 11-20 Public Water Systems, as amended	• Added the rules regulating all public water systems in the state. • Revisions to HAR Chapter 11-200 are entirely federally mandated.	12/28/2017	12/28/2017

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
4 HAR Chapter 11-260.1 Hazardous Waste Management: General Provisions, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
5 HAR Chapter 11-261.1 Hazardous Waste Management: Identification and Listing of Hazardous Waste, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
6 HAR Chapter 11-262.1 Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
7 HAR Chapter 11-263.1 Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
8 HAR Chapter 11-264.1 Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
9 HAR Chapter 11-265.1 Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
10 HAR Chapter 11-266.1 Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
11 HAR Chapter 11-268.1 Hazardous Waste Management: Land Disposal Restrictions, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
12 HAR Chapter 11-270.1 Hazardous Waste Management: The Hazardous Waste Permit Program, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
13 HAR Chapter 11-271.1 Hazardous Waste Management: Permit Procedures, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018

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14 HAR Chapter 11-273.1 Hazardous Waste Management: Standards for Universal Waste Management, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
15 HAR Chapter 11-279.1 Hazardous Waste Management: Standards for the Management of Used Oil, as amended	<ul style="list-style-type: none"> Added the updated rules regulating businesses that generate or handle hazardous wastes and used oil in Hawaii 	05/05/2017 03/01/2018	07/17/2017 09/30/2018
16 HAR Chapter 11-280.1 Underground Storage Tanks	<ul style="list-style-type: none"> Added the updated rules equivalent to and at least as stringent as the UST program's federal regulations 	06/22/2018	07/15/2018
17 HAR Chapter 13-86.1 Protected Marine Fisheries Resources Sea Cucumber Management	<ul style="list-style-type: none"> Added the rules regulating the harvest of sea cucumbers from state waters. 	01/14/2016	01/14/2016
18 HAR § 19-42-131 Dumping of Materials at Sea	<ul style="list-style-type: none"> Added a new section for vessel and harbor controls for requirements of dumping of sinkable materials at sea by hauling across, within or on the navigable and/or shore waters of the State. 	05/20/1982	05/20/1982
19 HAR § 19-42-136 Fueling	<ul style="list-style-type: none"> Added a new section for vessel and harbor controls to require all fueling operations shall be done in compliance with the stricter of any applicable federal, state, and county rules. 	05/20/1982	05/20/1982
*20 HAR § 19-42-161 Dredging, Filling, and Construction	<ul style="list-style-type: none"> Added a new section for vessel and harbor controls to require any person, firm, or corporation desiring to perform any dredging, filling, or erecting of any construction within commercial harbors and entrance channels belonging to or controlled by the State, shall first obtain a permit from the state department of transportation. 	05/20/1982	05/20/1982
*21 HAR § 19-42-162 Jurisdiction of other Agencies	<ul style="list-style-type: none"> Added a new section for vessel and harbor controls to ensure that the United States Army Corps of Engineers, the department of health, and the department of land and natural resources may have certain jurisdiction over navigable waters. 	05/20/1982	05/20/1982
22 HAR § 19-42-164 Construction of Structures	<ul style="list-style-type: none"> Added a new section for vessel and harbor controls to ensure that no buildings or structures of any nature shall be erected or constructed on state property, nor shall 	05/20/1982	05/20/1982

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	Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
		existing structures be modified, without obtaining the prior permission of the division and any other governmental agency as required by law.		
23	City and County of Honolulu Rules Chapter 20-3 Water Quality	<ul style="list-style-type: none"> New adopted rules Chapter 20-3 relating to water quality apply to all development and land disturbing activities within the City and County of Honolulu. 	08/16/2016	08/16/2017
MODIFIED				
24	HRS § 171-58.5 Prohibitions	<ul style="list-style-type: none"> Authorized the DLNR to prohibit the removal of sand and other beach or marine deposits seaward from the shoreline, except for materials inadvertently taken, and created an exemption for public emergencies and traditional cultural practices. 	06/14/2013	06/29/2013
25	HRS § 205A-22 Definitions	<ul style="list-style-type: none"> Required the counties to concurrently process subdivision and special management area use permits under certain conditions to ensure that a special management area use permit is processed before final subdivision approval. 	07/06/2012	07/06/2012
26	HRS § 205A-44(a) Prohibitions	<ul style="list-style-type: none"> Authorized the counties to prohibit against the removal of sand and other beach or marine deposits from the shoreline area except for materials inadvertently taken, and created an exemption for public emergencies and traditional cultural practices. 	06/14/2013	06/29/2013
27	HRS § 342D-6.5 Hawaiian loko i'a	<ul style="list-style-type: none"> Waives the requirement to obtain water quality certification under HRS Chapter 342D for any person that have received notice of authorization to proceed from the Department of Land and Natural Resources Office of Conservation and Coastal Lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of Hawaiian fishpond. 	07/13/2015	07/13/2015

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
<p>28</p> <p>SMA Rules of the County of Hawaii §§ 9-4(e)(2)(A) and(R), §§ 9-4(q) and (r), § 9-8, § 9-9, §§ 9-10(a), (b), (d), (e), (f) and (i), and § 9-11(b) Definitions; SMA Minor Permit; SMA Use Permit; Permits required for Development; Authority of the Development in the SMA; Assessment; Application.</p>	<ul style="list-style-type: none"> • Includes single-family residences with greater than 7,500 square feet of floor area as “development”. • Exempts the DOBOR, Department of Land and Natural Resources, from SMA permit requirements. • Raises the cost threshold between the SMA use permit and SMA minor permit from \$125,000 to \$500,000. • Ensures that SMA minor, use and emergency permits or exemptions validly issued. 	<p>11/22/2017</p>	<p>12/4/2017</p>
<p>29</p> <p>HAR §§ 13-60.4-2, 13-60.4-3, and 13-60.4-5 Geographical jurisdiction of chapter provisions; Definitions; Activities prohibited within selected areas</p>	<ul style="list-style-type: none"> • Amended by adding “Ka‘ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka‘ūpūlehu ahupua‘a, and to the south by the southern side of Kikaua Point. • Adding a series of definitions. • Amended by adding subsection (d), (e) and (f) for person to take any specimen of aquatic life, possess any other specimen of marine life, possess or use any fishing gear other than hook-and-line or kona crab nets or both, or deploy any fishing gears shoreward of the twenty-fathom depth contour within the Ka‘ūpūlehu marine reserve. 	<p>05/27/2016</p>	<p>07/29/2016</p>
<p>30</p> <p>HAR § 13-256-152 Kahaluu Bay Ocean Waters</p>	<ul style="list-style-type: none"> • Changes the title of “Kahaluu Bay Swimming Zone” to “Kahaluu Bay ocean waters”. • Modifies swim and surf designations, and limit commercial surf instruction in the Bay as well as introduce an updated exhibit map for Kahaluu Bay. 	<p>04/22/2016</p>	<p>04/22/2016</p>
DELETED			
<p>31</p> <p>HAR Chapter 11-260 Hazardous Waste Management: General Provisions</p>	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-260 	<p>05/05/2017</p>	<p>07/17/2017</p>
<p>32</p> <p>HAR Chapter 11-261 Hazardous Waste Management: Identification and Listing of Hazardous Waste</p>	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-261 	<p>05/05/2017</p>	<p>07/17/2017</p>

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33	HAR Chapter 11-262 Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-262 	05/05/2017	07/17/2017
34	HAR Chapter 11-263 Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-263 	05/05/2017	07/17/2017
35	HAR Chapter 11-264 Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-264 	05/05/2017	07/17/2017
36	HAR Chapter 11-265 Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-265 	05/05/2017	07/17/2017
37	HAR Chapter 11-266 Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-266 	05/05/2017	07/17/2017
38	HAR Chapter 11-268 Hazardous Waste Management: Land Disposal Restrictions	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-268 	05/05/2017	07/17/2017
39	HAR Chapter 11-270 Hazardous Waste Management: The Hazardous Waste Permit Program Provisions	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-270 	05/05/2017	07/17/2017
40	HAR Chapter 11-271 Hazardous Waste Management: Permit Procedures	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-271 	05/05/2017	07/17/2017
41	HAR Chapter 11-279 Hazardous Waste Management: Standards for the Management of Used Oil	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-279 	05/05/2017	07/17/2017
42	HAR Chapter 11-280 Hazardous Waste Management: Public Information	<ul style="list-style-type: none"> • Repealed HAR Chapter 11-280 	05/05/2017	07/17/2017

According to OCM's concurrence, as a standard qualification placed on all program change approvals, it is noted that states may not incorporate enforceable policies by reference. If

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an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by NOAA's OCM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZM Act. No referenced policies in these approved enforceable policies may be applied to determine the consistency of federal actions unless that referenced policy has been separately approved by NOAA's OCM.

In accordance with 15 C.F.R. § 923.84(b)(2), and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*, by mail and by publishing the notice on Hawaii CZM Program's website, the notice of the request for NOAA OCM's concurrence was given on March 28, 2019 to the general public and affected parties.

In accordance with 15 C.F.R. § 923.84(b)(4), and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*, the public notice of NOAA OCM's approval will be published on Hawaii CZM Program's website at <http://planning.hawaii.gov/czm/federal-consistency> on June 14, 2019. Federal Consistency to the approved enforceable policies takes effect on **June 14, 2019**.

For more information, please call the Hawaii CZM Program at (808) 587-2846.