

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Adoption of Chapter 15-38
Hawaii Administrative Rules

March 7, 2019

SUMMARY

Chapter 15-38, Hawaii Administrative Rules, entitled "Hawaii Research and Development Program", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM

SUBTITLE 6

HAWAII TECHNOLOGY DEVELOPMENT CORPORATION

CHAPTER 38

HAWAII RESEARCH AND DEVELOPMENT PROGRAM

Subchapter 1 Rules of General Applicability

- § 15-38-1 Purpose
- § 15-38-2 Definitions
- § 15-38-3 Purpose of program
- § 15-38-4 Grants; purpose; use of

Subchapter 2 Eligibility and Selection Process

- § 15-38-5 Eligibility requirements
- § 15-38-6 Application procedure
- § 15-38-7 Consideration and review of applications
- § 15-38-8 Preferences and priorities in making grants
- § 15-38-9 Maximum grant amount; disbursement

Subchapter 3 Inspection and Completion

- § 15-38-10 Inspection of premises and records
- § 15-38-11 Completion of surveys
- § 15-38-12 Acknowledgment

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-38-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii research and development program authorized by chapter 206M, HRS. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:

"Board" means the board of directors of the development corporation.

"Development corporation" means the Hawaii technology development corporation established by chapter 206M, HRS.

"Grant" means financial assistance provided to small businesses for optimizing research and development activities performed in the State of Hawaii under the terms and conditions provided in this chapter.

"Hawaii-based small business" shall have the same meaning as in section 206M-15.2(f) HRS.

"HRS" means the Hawaii Revised Statutes.

"Recipient" means any business receiving a grant under this chapter.

"Resident" shall have the same meaning as in section 235-1, HRS.

"State" means the State of Hawaii. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-3 Purpose of program. The purpose of the Hawaii research and development program is to build on the successes of Hawaii's science and technology industries and turn research and development into commercially viable products and services to expand and diversify Hawaii's economy. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-4 Grants; purpose; use of. (a) The development corporation may provide grants in accordance with section 206M-15.2, HRS.

(b) Grants may be used by any recipient for product development that

enables a qualified Hawaii-based small business to achieve significant product development and technical milestones.

(c) Grants shall not be used by any recipient for any of the following purposes:

- (1) Entertainment or lobbying activities; or
- (2) Payment for goods or services for which moneys were granted under the Hawaii small business innovation research and small business technology transfer program pursuant to section 206M-15, HRS, the alternative energy research and development program pursuant to Act 67, Session Laws of Hawaii 2018, or the manufacturing development program pursuant to section 206M-15.1, HRS. [Eff _____] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§15-38-5 Eligibility requirements. (a) Any business applying for a grant shall meet all of the following qualifications:

- (1) Headquartered in the State;
- (2) Doing business in the State for not less than five years;
- (3) Employing fifteen or more residents with income subject to taxation pursuant to chapter 235, HRS;
- (4) Can demonstrate financial viability of the business;
- (5) Is either incorporated under the laws of the State, or registered to do business in the State;
- (6) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;
- (7) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;
- (8) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and
- (9) Allows the development corporation, legislative committees and

their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant.

(b) The business shall be eligible to receive a grant in an amount up to the average of the federal tax credit received for the prior three tax years; [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-6 Application procedure. Any business applying for a grant shall provide as part of the application, copies of the small business Internal Revenue Service Form 6765 Credit for Increasing Research Activities as filed for the past three tax years as proof of the federal research and development tax credits received. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-7 Consideration and review of applications. (a) The development corporation shall cause the review of the application and resolution of any questions relating to the application through contact with the grant applicant.

(b) Following such review and resolution, the board shall consider and make a decision on qualified applications. [Eff AUG 17 2019] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-8 Preferences and priorities in making grants. (a) In determining the distribution of funds, the development corporation shall be guided by the nature and economic significance of the activity of each grant application, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State.

(b) Preference shall be given to businesses receiving their first research and development program award.

(c) Preference shall be given to businesses that agree to not claim the Hawaii tax credit for research activities for the same year that a Hawaii research and development program grant is awarded. [Eff AUG 17 2019] (Auth: HRS §206M-) (Imp: HRS §206M-15.2)

§15-38-9 Maximum grant amount; disbursement. (a) Maximum grant amounts shall not exceed \$300,000 or the average of the federal tax credit received for the prior three tax years, whichever is less.

(b) For awards greater than \$150,000, the grant amount shall be disbursed as payments based on milestones approved by the chief executive officer of the development corporation. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

SUBCHAPTER 3

INSPECTION AND COMPLETION

§15-38-10 Inspection of premises and records. The development corporation shall have the right to inspect at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any grant applicant either in the processing of the grant application or in the administration of the grant to the recipient. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-11 Completion of surveys. (a) Recipients shall complete surveys from the development corporation designed to measure the economic and employment impact of this program. The awardees names will be made public in an annual report provided to the legislature. Recipients shall complete the surveys annually for five years following the award.

(b) The development corporation may request recipients to provide information regarding issues encountered with the research and development program and recommendations for its improvement. [Eff] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

§15-38-12 Acknowledgment. Recipients shall acknowledge the development corporation in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the recipient's award for a period of two years following the award.

§15-38-12


Recipients shall provide such materials to the development corporation prior to their release to the public." [Eff AUG 17 2019] (Auth: HRS §206M-3)
(Imp: HRS §206M-15.2)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND
TOURISM


Chapter 15-38, Hawaii Administrative Rules, on the Summary Page dated March 7, 2019 was adopted on March 7, 2019 following a public hearing held on January 22, 2019, after public notice was given in the Star Advertiser, West Hawaii Today, The Garden Island, Hawaii Tribune Herald, and the Maui News on December 19, 2018.

The adoption of chapter 15-38 shall take effect ten days after filing with the office of the Lieutenant Governor.


DEREK LAU
Chair, Hawaii Technology Development
Corporation, Board of Directors


MIKE MCCARTNEY
Director, Department of Business, Economic
Development, and Tourism

APPROVED:


DAVID Y. IGE
Governor, State of Hawaii

Dated: 08-07-2019

APPROVED AS TO FORM:


Deputy Attorney General

Filed

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LIEUTENANT GOVERNOR'S
OFFICE

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1. Chapter 15-38, Hawaii Administrative Rules, entitled "Hawaii Research and Development Program", is adopted to read as follows:

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[Eff **AUG 17 2019**] (Auth: HRS §206M-3) (Imp: HRS §206M-15.2)

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- (6) Has bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;
 - (7) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;
 - (8) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability; and
 - (9) Allows the development corporation, legislative committees and their staff, and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditures of the grant.
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2. The adoption of chapter 15-38, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.


DEREK LAU
Chair, Hawaii Technology Development Corporation


MIKE MCCARTNEY
Director, Department of Business, Economic Development, and Tourism

APPROVED AS TO FORM:


Deputy Attorney General