

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

July 27, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

REQUEST FOR APPROVAL TO ADOPT TITLE 13, PART 2, BOATING,
SECTION 13-244-15.5, HAWAII ADMINISTRATIVE RULES (HAR),
OPERATION OF POWER DRIVEN VESSELS

BACKGROUND:

At its meeting on September 9, 2010, the Board of Land and Natural Resources (Board) approved the Division of Boating and Ocean Recreation's (DOBOR) request (Item J-2) to initiate rule making regarding amendments to Title 13, Subtitle 11, HAR.

At the December 1, 2010 Land Board meeting, DOBOR informed the Board that based on comments received and due to the size of the HAR amendment package, it would be prudent to break down the package into several smaller sections and proceed to public hearing on each section separately. The Board approved DOBOR's request.

Upon approval by the Board to proceed to public hearing with the proposed mandatory education rule 13-244-15.5, DOBOR went before the Small Business Regulatory Review Board and received their recommendation followed by the Governor's approval to proceed to public hearing. DOBOR placed legal ads in each of the major newspapers operating in the State according to Chapter 91 HRS, worked with the DLNR Public Information Office to issue press releases to all the major print and electronic media outlets, notified the DOBOR review panels to receive their feedback, posted the DOBOR harbor offices with notices/fliers of the upcoming public hearings (fliers also posted in Hilo town and at some Big Island piers), updated the division website to include a notice of public hearing, and included a notice of public hearing on every billing statement sent out to recreational boaters in the early part of February 2011.

Public meetings were held in Lihue, Kauai; Aiea, Oahu; Kahului, Maui; and Hilo and Kona, Hawaii Island on May 30 and 31, 2012. The deadline to provide written comments (including e-mail) was June 7, 2012. Most people attended the public hearings to ask questions and get additional information rather than testify. On Kauai, the general consensus was that a boating safety course should be required for those who operate in congested areas, such as the Kaneohe Sandbar, Waikiki, Wailua River, and Hanalei Bay. Other comments received stated that the proposed rule was poorly written, that courses cost too much and that there is no need of rules for existing boaters, just the new boaters. There were 35 e-mailed comments about the proposed rule that were received by the department. At the five public hearings conducted by the

department for the proposed rule, 197 people attended, 48 people provided oral testimony and ten submitted testimony in writing.

Any written testimony that echoed the oral testimony provided by an individual at the public hearings was not included in the tabulation of written testimony. Any single piece of written testimony signed by multiple parties was tabulated separately to reflect the number of individual signatures.

According to a study conducted by the National Association of State Boating Law Administrators (NASBLA) in 2007, the average fatality rate per 100,000 registered boats ranges from a high of 12.28 in states with no education requirement to 3.89 in states that have had mandatory education in place for 20 years or more. Hawaii, which only requires mandatory education for thrill craft operators, had a rate of 10.46 per 100,000 vessels in 2005. Water safety experts see this as a clear indication that boating safety education saves lives and reduces accidents. Additionally, for Hawaii, boating safety education is also an important tool in protecting our reefs, our shorelines, whales, turtles and other marine life. From 1979 to 2012 there have been 70 confirmed reports of vessels making non-incident contact with humpback whales in Hawaii waters. Any boating safety course designed specifically for Hawaii and approved by the state would include a section on rules pertaining to protected species.

According to the US Coast Guard recreational boating statistics for 2011, approximately 78% of the vessel operators involved in fatal accidents nationwide and in the US territories had no boating safety education. In stark contrast, 11% had taken a State boating safety course, 8% had taken an informal or Internet course and 3% had taken a formal classroom course offered by the USCG Aux, the US Power Squadron or the American Red Cross.

Having considered all the testimony received during the public hearing process for the aforementioned rule, DOBOR recommends making the following non-substantive changes:

- replace the term “valid license” with “merchant mariner credential” due to a change initiated by the regulatory agency,
- reduce the minimum age requirement for operating a vessel unsupervised from 15 to 12 years of age,
- exempt motor vessels propelled by engines of 10 horsepower or less,
- exempt operators of vessels in Hawaii's waters who voyage here from outside the state and remain in state waters less than 60 calendar days,
- exempt vessel renters (for the contract period) who receive a safety briefing from the boat livery operator that is approved (for content) by the State.

With these changes to the original language, DOBOR feels that the proposed HAR adequately addresses the concerns of the public and the needs of the Department and should be approved by the Board as shown in Exhibit A.

RECOMMENDATIONS:

That the Board approve and adopt Title 13, Part 2, Boating, Section 13-244-15.5, HAR, Operation of Power Driven Vessels shown in Exhibit A with suggested amendments, as per administrative rulemaking procedures, forward the HAR to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND RECREATION

Amendment to Title 13
Subtitle 11, Ocean Recreation and Coastal Areas
Chapter 13-244
Hawaii Administrative Rules

SUMMARY

1. Section 13-244-15.5 is added.

1. Chapter 13-244, Hawaii Administrative Rules, is amended by adding a new section 13-244-15.5 to read as follows:

"§13-244-15.5 Operation of power driven vessels.

(a) Any person operating a power driven vessel on the waters of the state shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators (NASBLA) approved course on the safe use and operation of a power driven vessel that contains a component on Hawaii waters approved by the department. Exempt from this requirement are persons who:

(1) Possess a valid license to operate a vessel issued for maritime personnel by the United States Coast Guard pursuant to 46 CFR Part 10, or

(2) Operate a thrill craft in a commercial thrill craft zone as authorized by the State.

(b) A person under fifteen (15) years of age shall not operate a power driven vessel on the waters of this state unless accompanied on-board and directly supervised by a person fifteen (15) years of age or older who holds the required certificate of completion.

(c) A person or the person's responsible managing employee or agent engaged in the business of renting or leasing power driven vessels shall not rent or lease a power driven vessel to any person for operation on the waters of the State unless the person:

(1) Meets all the requirements of this rule; and

(2) Is identified on the rental or lease agreement for a power driven vessel by name and age. A person or the person's agent or employee renting or leasing power driven vessels who fails to request and inspect certificates or evidence of exemption is in violation of this rule.

(d) A person who is operating a power driven vessel on any waters of the State and who is stopped

by a law enforcement officer shall present to the officer, upon request, a certificate of completion required by this rule or acceptable evidence of exemption from the required certificate. Failure to present a certificate of completion or acceptable evidence of exemption shall constitute a violation of this rule, unless the person presents the required certificate or evidence of exemption to a court of law and satisfies the court that this person held a proper certificate or was exempt at the time the person was asked to produce the certificate.

(e) A person who alters, forges, counterfeits or falsifies a certificate or other document used as evidence, or who possesses a certificate or other document that has been altered, forged, counterfeited or falsified, or who loans or permits that person's certificate or other document to be used by another person, shall be in violation of this rule.

(f) The department shall maintain a list of NASBLA approved courses that provide a department approved component on Hawaii waters, which shall include but not be limited to:

- (1) Local ocean safety principles and practices;
and
- (2) Any rules or laws pertaining to protected species and power driven vessel operation in the State.

(g) This rule shall be enforced beginning on the second anniversary date of the rule's effective date.

(h) Pursuant to section 200-25, Hawaii Revised Statutes, any person violating this rule shall be fined not less than \$50 and not more than \$1000 or sentenced to a term of imprisonment of not more than thirty days, or both, for each violation; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the court may deprive the offender of the privilege of operating any vessel in the waters of the State for a period of not more than thirty days." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25)

New material, except source notes is underscored.

This amendment to Title 13, Subtitle 11 Ocean Recreation and Coastal Areas, Chapter 13-244, 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 _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General