



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DEPT. COMM. NO. 329
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December 14, 2018

The Honorable Ronald D. Kouchi,
President and Members of the
Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the 2018 SBRRB Periodic Review and Evaluation Report, as required by Section 201M-7, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:
<http://dbedt.hawaii.gov/overview/annual-reports-reports-to-the-legislature/>

Sincerely,

Mary Alice Evans

Enclosure

c: Legislative Reference Bureau



HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

Periodic Review; Evaluation Report

**In Compliance with
Regulatory Flexibility Act
Section 201M –7,
Hawaii Revised Statutes**

2018

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SMALL BUSINESS REGULATORY REVIEW BOARD

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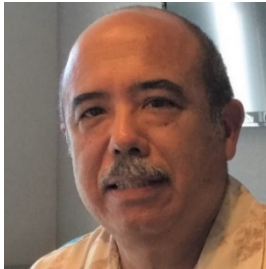
David Y. Ige
Governor

MESSAGE FROM THE CHAIR

Mary Alice Evans
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu



Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio

This 210M-7 report consists of existing administrative rules that both State and County departments have determined impact small business and the reasons for the rules' continued implementation. This is in accordance with our effort to reduce negative small business impact and to improve our rule-making procedures.

In 2003, the Board began its state-wide rule-review process with fourteen departments submitting 345 rules that impact small business and the purpose for their continuation. After modification of many of these rules in 2005, eleven departments provided the Board with 237 rules. Upon the review of each of the 237 rules, the Board members recommended a full analysis on 49 of them. This has, subsequently, been narrowed to 27 rules the Board believes warrant modifications. Pages 24 through 40 of this Report provides this Board's recommendations and responses from the departments on the final 27 rules.

Overall, the SBRRB members have donated numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the economic climate for small businesses in Hawaii. I congratulate each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

On behalf of this Board, I extend a special Mahalo to our Governor, our State Legislators, and to all the State and Counties departments that submitted the requested information on time.

Anthony Borge, Chair, SBRRB, 2018

OVERVIEW

Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

Pursuant to Section 201M-7 (a), HRS, the SBRRB requested from the State and County agencies the following:

- 1) No later than June 30th of each year, a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) No later than June 30th of each odd-numbered year, a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Response: The information in this Report is a compilation of the responses and justifications received.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has

considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

Response: In accordance with Section 201M-7(b), the SBRRB provided communication to the Director of Hawaii Department of Transportation (DOT) regarding concern over alleged unfairness and inequitable treatment of small business drivers allowed to operate at the Honolulu International Airport. In response, DOT submitted amendments, under HAR Chapter 20.1, "Commercial Services at Public Airports," which the SBRRB subsequently recommended for public hearing and adoption; HAR Chapter 20.1 become effective in August 2018.

(c) The board may solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.

Response: The SBRRB did not specifically solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to Chapter 92, HRS. However, the SBRRB does receive and review testimonies on administrative rules that are proposed or amended during the monthly board meetings; each testimony is handled accordingly.

ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Existing Rules, Rules that were Amended or to be Amended, and Rules to be Repealed (July 2016 to June 2018)
STATE DEPARTMENTS	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	8
DEPARTMENT OF AGRICULTURE	NA
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE – FINANCIAL ADMINISTRATION DIVISION	NA
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	3
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS PUBLIC UTILITIES COMMISSION	30 12
DEPARTMENT OF DEFENSE	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH MEDICAL DIVISION ENVIRONMENTAL DIVISION	5 9
DEPARTMENT OF HUMAN SERVICES	5
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	5
DEPARTMENT OF LAND AND NATURAL RESOURCES	9
DEPARTMENT OF TAXATION	2
DEPARTMENT OF TRANSPORTATION	5
UNIVERSITY OF HAWAII	2
COUNTY DEPARTMENTS	
HAWAII COUNTY	37
MAUI COUNTY	5
KAUAI COUNTY	NA
CITY AND COUNTY OF HONOLULU	21

STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Department of Accounting and General Services

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, with reasons for justifying the rules' continued implementation:

State Procurement Office (SPO)

- 1. HAR Title 3 Chapter 120-4 – Procurements exempt from chapter 103D, HRS**
Justification – The purpose of amending exemption #6 is to avoid ambiguity from the previous inclusion of “etc.” The application of “etc.” is unclear. The use of “etc.” may be interpreted in several ways and has opened the door for expanding the scope of this exemption, creating confusion and uncertainty and procurement officers. Removing “etc.” will limit the exception to situations that “are advantageous and available on short notice through an auction, bankruptcy, or foreclosure.”

Continued implementation is necessary to allow to avoid confusion and ambiguity. SPO does not view this amendment to affect small business.

- 2. HAR Title 3 Chapter 122-14 – Exempted Items**

Justification – Section 3-122-14 was amended to read as follows:
Section 3-122-14 Exempted Items – Purchasing agencies are granted the authority to prepare specifications for goods, services and construction procured under sections 103D-102 and 103D-304, HRS. However, all public employees are responsible for adhering to remaining ethical considerations in public procurement, as guided by relevant provisions in section 103D-101, HRS and section 3-131-1.02.

SPO does not view this amendment to affect small business. The amendment is to provide clarity in the HAR that regardless of being exempt from HRS 103D, there are always ethical and contractual requirements, and that State employees still must do their due diligence and be responsible. Continued implementation is necessary because it provides clarification guidance on ethics throughout the acquisition life cycle.

- 3. HAR Title 3 Chapter 122-66 – Waiver to requirement for procurement of professional services**

Justification – Waiver to requirement for procurement of professional services, has been invalidated by the Hawaii Supreme Court in Asato v. Procurement Policy Board Hawaii, 2014. The purpose of this repeal is to align HAR with current law, clarifying that HAR Section 3-122-66 is no longer able to be utilized when procuring professional services. This amendment repealed HAR Section 3-122-66 that allows for an option in procurement of professional services pursuant to HRS Section 103D-304(g), for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria.

This waiver has been in effect since December 15, 1995, with the establishment of Title 3, Subtitle 11, Hawaii Administrative Rules for Chapter 103D, HRS. It is not known how the repeal of this waiver will adversely affect or benefit small business.

4. HAR Title 3 Chapter 130 – Inventory Management

Justification – The purpose of amending this rule is to align inventory accountability designations with statute and make other inventory management clarifications. These amendments clarify that inventory accountability is the responsibility of “the head of the department or head of the board or commission, agency, bureau, or office of the State.” The SPO also recommended changes, such as the repeal of rules that still mention inventory, and the streamlining of the management process.

These changes have no direct or indirect effect on small business. Implementation is necessary as it provides guidance on inventory accountability for State and County agencies.

Stadium Authority

5. HAR Title 3 Chapter 70-11 – Rental charges, payment

Justification – This section clarifies and reprices the rental charge language, eliminates and restructures rental rate categories, updates rental rates for facility use as well as rates for events held in parking areas, adds a new subsection for charitable, religious, and other events or activities, and adds subsections and rates for commercial media and non-commercial media events.

The restructuring and repricing of rental categories and its respective rates is necessary to accurately reflect the market, the type of events that utilize the Aloha Stadium facility, and to align categories that would provide for best user fit. It is also necessary to ensure that the rate fee structure is adequate to help support the operations and solvency of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority’s ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

6. HAR Title 3 Chapter 70-20 – Parking rates, parking stalls

Justification – The purpose is to implement an increase in vehicular users’ parking rates/fees for all events and shows.

The restructuring and repricing of parking fees by category is necessary to accurately reflect the market, the types of events that utilize the Aloha Stadium facility, and to provide “unit pricing” that will help to support the continued operation of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing

so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority's ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

State Building Code Council

7. HAR Title 3 Chapter 181 – State Energy Conservation Code

Justification – The purpose of repealing Chapter 3-181, HAR, and replacing it with a new rule, Chapter 3-181.1, is to base the new rules on a model national building code (2015 International Energy Conservation Code) amended by the State Building Code Council to address situations specific to Hawaii and required by Section 107-25, HRS.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to be able to apply consistent standards.

8. HAR Title 3 Chapter 182 – State Electrical Code

Justification – The purpose of repealing Chapter 3-182, HAR, and replacing it with a new rule, Chapter 3-182.1, is to base the new rules on a model national building code (2014 National Electrical Code) with amendments to ensure recognition of new methods and installation practices for safely distributing electrical power, safe interaction with electrical systems, address safety concerns, and put new requirements in place that facilitates the safe implementation of new technology. Additionally, this is required by Section 107-25, HAR.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to apply consistent standards.

Department of Agriculture

As of the date of this report, the Department of Agriculture has not responded to the Board's requests.

Department of the Attorney General

The Department of the Attorney General has indicated it has no plans to amend or repeal any rule based upon any new, amended, or repealed statute, and has not adopted any rules during the prior year that affect small businesses. Therefore, there is no report describing the specific public purpose or interest for the adoption of the rules.

Department of Budget and Finance

As of the date of this report, the Department of Budget and Finance has not responded to the Board's requests.

Department of Business, Economic Development, and Tourism

The following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Business Development & Support Division

1. HAR Title 15 Chapter 126 – Relating to the Hawaii Community-based Economic Development Technical and Financial Assistance Program

Justification – Amends the definition of “community-based organization.” Amends the qualifications for community-based economic development grants to include technical assistance to community-based organizations. Reduces the number of Community-Based Economic Development Advisory Council members from twelve to ten.

Hawaii Housing Finance & Development Corporation

2. HAR Title 15 Chapter 169 – Down payment Loan Program”

Justification – Because of Act 123, SLH 2017, Relating to Homebuyer Assistance, this chapter requires amendments.

3. HAR Title 15 Chapter 307 – State Assisted Land and Housing Development Program

Justification – Because of the enactment of Act 159, SLH 2017, Relating to Affordable Housing, this chapter requires amendment.

Department of Commerce and Consumer Affairs

The following outlines specific public purpose for adopting the rules and other reasons to justify continued implementation - only rules adopted between 7/1/16 to 6/30/17 are included:

Professional and Vocational Licensing Division (PVL)

1. HAR Title 16 Chapter 53 – Fees Relating to Boards and Commissions

Justification – The purpose of this chapter is to establish and update fees for the 49 regulatory areas under the purview the PVL Division and the Regulated Industries Complaints Office. The rule amendments apply to the fee structures for the 49 licensing areas. A Small Business Impact Statement dated November 30, 2015 was sent to the SBRRB; on February 4, 2016, no official action was taken on this matter, as three SBRRB members were required to recuse themselves due to a direct financial impact under the Hawaii State Ethics Code.

2. HAR Title 16 Chapter 85 – Medical Examiners

Justification – The purpose of this chapter is to implement licensing and regulation of this profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to better serve the community and to reflect national trends by licensing three classes of emergency medical service personnel: Emergency Medical Technician, Advanced Emergency Medical Technician, and Paramedic. A Small Business Impact Statement dated February 23, 2016 was sent to the SBRRB; the SBRRB raised no objections to the proposed rule amendments.

3. HAR Title 16 Chapter 99 – Relating to Real Estate Brokers and Salespersons

Justification – The purpose of this chapter is to implement licensing and regulation of the professions. The rules are needed because they facilitate licensing and enforcement of

the licensing law. The purpose of the amendments is to create a new definition for solicitation materials. A Small Business Impact Statement dated February 19, 2015 was sent to the SBRRB; on March 18, 2015, the SBRRB raised no objections to the proposed rule amendments.

4. HAR Title 16 Chapter 114 – Relating to Real Estate Appraisers

Justification – The purpose of this chapter is to implement licensing and regulation of the profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to incorporate appraiser trainee regulations to comply with federal requirements. A Small Business Impact Statement dated April 1, 2016 was sent to the SBRRB, and on April 28, 2016, a response from the SBRRB stated that these rules did not fall under its purview.

5. HAR Title 16 Chapter 255 – Relating to Post-Secondary Education Authorization Program

Justification – The purpose of this chapter is to facilitate authorization and regulation of accredited, degree-granting post-secondary educational institutions under the authorizing law. A Small Business Impact Statement dated April 25, 2016 was sent to the SBRRB; on May 13, 2016, the SBRRB determined that the proposed rules would not be heard at an SBRRB meeting as they do not negatively impact small businesses and are in-line with, and are not more restrictive than, the Federal rules.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2017:

Division of Financial Institutions (DFI)

6. HAR Title 16 Chapter 24 – Money Transmitters

DFI plans to work on a draft to update provisions concerning bond and security device requirements, and the hourly exam fee for consistency with Chapter 489D, the Money Transmitters Act.

7. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions

DFI plans to work on a draft to delete references to fees that are subsumed by Hawaii financial institutions yearly assessment in Section 412:2-105.2, HRS.

8. HAR Title 16 Chapter 28 – Escrow Depositories

DFI plans to work on a draft to update net capital bond, fidelity bond, and E & O sections for consistency with Chapter 449, the Escrow Depositories law.

9. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)

On 3/23/2015, the SBRRB issued a memo supporting a public hearing for the proposed rules relating to Chapter 454F, HRS, the Secure and Fair Enforcement for Mortgage Licensing Act. Thereafter, Act 122 (2016) was enacted and section 18 partially obviated the need for the proposed rules. DFI plans to move forward with a public hearing pending consultation with the departmental advisory committee on small business.

Professional and Vocational Licensing Division

10. HAR Title 16 Chapter 72 – Acupuncture

The Board is currently working on a draft.

- 11. HAR Title 16 Chapter 73 – Barbers**
The Board plans to work on a draft.
- 12. HAR Title 16 Chapter 76 – Chiropractors**
The Board plans to work on a draft.
- 13. HAR Title 16 Chapter 77 – Contractors**
A memo requesting to hold a public hearing was sent to the Governor’s Office on March 28, 2017. The Board is also currently working on two sets of draft rules.
- 14. HAR Title 16 Chapter 78 – Cosmetology**
The Board is currently working on a draft.
- 15. HAR Title 16 Chapter 79 - Dentists and Dental Hygienists**
The Board is currently working on a draft.
- 16. HAR Title 16 Chapter 81 – Elevator Mechanics**
The Board is currently working on a draft.
- 17. HAR Title 16 Chapter 84 – Massage Therapy**
The Board is currently working on a draft.
- 18. HAR Title 16 Chapter 85 – Medical Examiners**
The Board plans to work on a draft relating to physician assistants.
- 19. HAR Title 16 Chapter 88 – Naturopaths**
The Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**
The Board is currently working on a draft.
- 21. HAR Title 16 Chapter 92 – Optometrists**
The Board is currently discussing proposed rule amendments.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**
The Board is currently working on a draft.
- 23. HAR Title 16 Chapter 97 – Private Detectives and Guards**
The Board is currently discussing proposed rule amendments.
- 24. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**
The Board is currently working on a draft.
- 25. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**
The Board is currently discussing whether to proceed with rule amendments.
- 26. HAR Title 16 Chapter 101 – Veterinarians**
The Board is currently working on a draft.
- 27. HAR Title 16 Chapter 106 – Timesharing**
The Program is currently working on a draft.

28. HAR Title 16 Chapter 110 – Physical Therapy

The Physical Therapy Board plans to work on a draft.

29. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects

The appropriate Board is currently working on a draft.

Cable Television Division

30. HAR Title 16 Chapter 131 – Designation and Selection of Access Organizations

Amend rule to conform to HRS Section 440G-8.3, pursuant to Act 93, SLH 2014, which allows the DCCA Director to designate public, educational, and governmental (PEG) access organizations exempt from HRS Chapter 103D. Currently, HAR Section 131-70 requires PEG designations in compliance with HRS Chapter 103D. Division is working on draft language.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2018:

1. HAR Title 16 Chapter 39 – Securities

Currently working on a draft to address crowdfunding, use of senior designations, and changes to the federal securities laws.

2. HAR Title 16 Chapter 131 – Hawaii Cable Communication Systems

Division is working on draft language to update chapter and amend HAR § 16-131-70 to conform with HRS § 440G-8.3, which allows the Director to designate public, educational, and governmental access organizations exempt from the requirements of HRS Chapter 103D.

3. HAR Title 16 Chapter 24 – Money Transmitters

Rules are being reviewed for updates needed to conform to HRS Chapter 489D and DFI's current processes. Anticipated areas of amendment include bond and security device requirements, hourly exam fee, and application processes.

4. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions

Rules are being reviewed for updates needed to conform to HRS Chapter 412 and DFI's current processes. Anticipated areas of amendment include deleting outdated references to certain fees, and application processes.

5. HAR Title 16 Chapter 28 – Escrow Depositories

Rule are being reviewed for updates needed to conform to HRS Chapter 449 and DFI's current processes. Anticipated areas of amendment include fidelity bond and E&O provisions, and application processes.

6. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)

DFI plans to move forward with a public hearing on proposed rules for Chapter 454F, HRS. The rules primarily concern the Mortgage Loan Recovery Fund and have been reviewed by the SBRRB.

- 7. HAR Title 16 Chapter 71 – Accountancy**
The appropriate Board is currently working on a draft.
- 8. HAR Title 16 Chapter 72 – Acupuncture Practitioners**
The appropriate Board is currently working on a draft.
- 9. HAR Title 16 Chapter 73 – Barbers**
The appropriate Board plans to work on a draft.
- 10. HAR Title 16 Chapter 74 – Boxing**
The Commission is currently working on a draft.
- 11. HAR Title 16 Chapter 76 – Chiropractors**
The appropriate Board plans to work on a draft.
- 12. HAR Title 16 Chapter 77 – Contractors**
A public hearing was held in November 2017 (Work Incidental and Supplemental). The Board is also currently working on two sets of draft rules.
- 13. HAR Title 16 Chapter 78 – Cosmetology**
The appropriate Board is currently working on a draft.
- 14. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists**
The appropriate Board is currently working on a draft.
- 15. HAR Title 16 Chapter 81 – Elevator Mechanics**
The appropriate Board is planning to work on a draft.
- 16. HAR Title 16 Chapter 84 – Massage Therapy**
The appropriate Board is currently working on a draft.
- 17. HAR Title 16 Chapter 85 – Medical Examiners**
The appropriate Board is currently working on a draft relating to physician assistants.
- 18. HAR Title 16 Chapter 8 – Motor Vehicle Industry**
The appropriate Board is planning to work on a draft.
- 19. HAR Title 16 Chapter 88 – Naturopaths**
The appropriate Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**
The appropriate Board, on May 25, 2018, sent a request to the Governor to hold a public hearing.
- 21. HAR Title 16 Chapter 92 – Optometrists**
The appropriate Board is currently working on a draft.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**
The appropriate Board received SBRRB approval and is being prepped to send to the Governor for approval to hold a public hearing.

- 23. HAR Title 16 Chapter 95 – Pharmacy and Pharmacists**
The Board is currently discussing whether to proceed with rule amendments.
- 24. HAR Title 16 Chapter 97 – Private Detectives and Guards**
The Board is currently working on a draft.
- 25. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**
The Commission is currently working on a draft.
- 26. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**
The Board is currently discussing whether to proceed with rule amendments.
- 27. HAR Title 16 Chapter 106 – Timesharing**
The Program is currently working on a draft.
- 28. HAR Title 16 Chapter 110 – Physical Therapy**
The Board is currently working on a draft.
- 29. HAR Title 16 Chapter 114 – Real Estate Appraisers**
The Program is currently working on a draft.
- 30. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects**
The Board is currently working on a draft.
- 31. HAR Title 16 Chapter 116 – Travel Agencies**
The Program is currently working on a draft.
- 32. HAR Title 16 Chapter 119 – Condominium (514B)**
The Commission is currently working on a new chapter of rules.

Public Utility Commission

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F) to Department of Commerce and Consumer Affairs (DCCA). The numbering system for the Hawaii Administrative Rules uses different numbers for different departments. The B&F rules are in Title 6, and the DCCA rules are in Title 16.

The complete list of PUC's rules is shown below. The rules will move in stages, starting with the ones that can move as-is and that are referenced by other sections.

- 1. HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**
To be moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii (SLH) 2014; review required.
- 2. HAR Title 6 Chapter 61 – Rules of Practice and Procedure**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

3. **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.
4. **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.
5. **HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**
To be moved from Chapter Title 6 to Title 16 per Act 108, SLH 2014; review required.
6. **HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
7. **HAR Title 6 Chapter 76 – Shared Tenant Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
8. **HAR Title 6 Chapter 79 – Aggregator and Operator Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
9. **HAR Title 6 Chapter 80 – Competition in Telecommunications Services**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
10. **HAR Title 6 Chapter 81 – Universal Service Fund**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
11. **HAR Title 6 Chapter 82 – Pay Telephone Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
12. **HAR Title 6 Chapter 83 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.

Phase 1 – Move 4 chapters substantially as-is

Four of the chapters will move, substantially as-is, from B&F (Title 6) to DCCA (Title 16). To change the numbers requires the simultaneous repeal of the existing chapters (in the B&F title) and adoption of new chapters (in the DCCA title). The existing and new chapters are provided below:

Repeal: **HAR Title 6 Chapter 61 – Rules of Practice and Procedure before the Public Utilities Commission**

Adopt: **HAR Title 16 Chapter 601 – Rules of Practice and Procedure before the Public Utilities Commission**

Repeal: **HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules**

Adopt: **HAR Title 16 Chapter 603 – Motor Carrier Tariffs and Schedules**

Repeal: **HAR Title 6 Chapter 65 – Water Carriers**

Adopt: **HAR Title 16 Chapter 605 – Water Carriers**

Repeal: **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
Adopt: **HAR Title 16 Chapter 608 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**

Two of these chapters are broadly applicable (Rules of Practice and Procedure, and Enforcement), referenced by and affecting the other sections and all regulated entities. Once these two chapters are moved into the proper title, they can be referenced by the other industry-specific sections and any changes to the other sections can be reviewed in context.

The other two chapters (6-63 and 6-65) were referenced by number in the policies and procedures chapter (6-61). By moving chapters 6-63 and 6-65 at the same time, the correct chapter numbers (16-603 and 16-605) could be referenced by the new policies and procedures chapter (16-601).

Phase 2 – Review ALL sections for updates; propose relevant amendments, with input from the affected entities.

Once the basic sections (Rules of Practice and Procedure, and Enforcement) are in place with their proper numbers, the industry-specific chapters can be reviewed and amended, repealed, or new rules put into place, as appropriate and other actions take place, it will be possible to use the correct section numbers when referring to the practice and procedure or enforcement chapters:

1. **HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**
2. **HAR Title 6 Chapter 62 – Rules and Regulations to be Observed by Motor Carriers**
3. **HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules**
4. **HAR Title 6 Chapter 65 – Water Carriers**
5. **HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**
6. **HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**
7. **HAR Title 6 Chapter 76 – Shared Tenant Service**
8. **HAR Title 6 Chapter 79 – Aggregator and Operator Service**
9. **HAR Title 6 Chapter 80 – Competition in Telecommunications Services**
10. **HAR Title 6 Chapter 81 – Universal Service Fund**
11. **HAR Title 6 Chapter 82 – Pay Telephone Service**
12. **HAR Title 6 Chapter 83 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**

The two chapters of general applicability that moved over without changes to content (16-601 and 16-608) will also be reviewed and updated, as appropriate.

Department of Defense

Department of Defense performed an extensive review of existing rules and statutes that resulted in the conclusion that there were no amendments or repeals made during 2016. In addition, a comprehensive survey of bills was introduced in 2017, sent to the Governor, and all Acts signed into law revealed none that would affect small business.

Department of Hawaiian Home Lands

Department of Hawaiian Home Lands (DHHL) currently does not have any administrative rules to be amended or repealed, based upon any new, amended, or repealed statute; and DHHL did not adopt any rules during 2016.

Department of Health

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Medical Division

- 1. HAR Title 11 Chapter 50 – Food Safety Code**
Justification – Impact to small business; SBRRB reviewed and approved; currently waiting for approval by the Governor on final rules.
- 2. HAR Title 11 Chapter 103 – Licensure and Certification Fees for Health Care Facilities and Agencies**
Justification – Impact to small business; SBRRB reviewed and approved; Governor approved for hearing, hearing to be scheduled.
- 3. HAR Title 11 Chapter 143 – Licensure and Certification Fees for Health Care Facilities and Agencies**
Justification – No small business impact; amendment increases the fee for the newborn screening kit from \$55.00 to \$99.00 and adds Severe Combined Immunodeficiency Disease to Hawaii's panel of test.
- 4. HAR Title 11 Chapter 216 – Disability and Communication Access Board Rules of Practice and Procedures**
Justification – No small business impact; final rules have been approved. Amendment clarifies that the Disability and Communication Access Board shall review public accommodations and commercial facilities on public land and projects that are intended to be transferred to the State or a County.

Environmental Division

- 5. HAR Title 11 Chapter 25 – Certification of Public Water System Operators**
Justification – Impact to small business; SBRRB reviewed and approved. Awaiting approval by the Governor on final rules (new and amendments to rules).

A list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Medical Division

- 6. HAR Title 11 Chapter 106 – Background Check**
Justification – Consolidation of all background check rules is proposed. Office of Health Care Assurance is working on background check rules along with Office of Human Services. Rules are drafted but DOH would like to consolidate background check rules for continuity. This may help to save time and costs for background check services for the department and providers of services.

Environmental Division

7. HAR Title 11 Chapters 72 and 72.1 – State Comprehensive Emergency Medical Services System

Justification – Update existing rules, repeal of HAR 72, adopt HAR 72.1 Comprehensive Emergency Medical Services System; finalizing draft rules.

8. HAR Title 11 Chapter 110.1 – Certification of Adult Foster Homes

Justification – Updating rules due to Federal Statutory changes; finalizing draft rules.

9. HAR Title 11 Chapters 117 and 117.1 – Vital Statistics

Justification – Updating existing rules, repeal of HAR 117, adopt 117.1. Financial draft rules.

10. HAR Title 11 Chapters 177 and 177.1 - Certification Standards for Substance Abuse

Justification – Drafting new rules pursuant to repeal of HAR 177, adoption of new rules HAR 177.1; finalizing draft rules.

11. HAR Title 11 Chapter 157 – Examination and Immunization

Justification – To be heard before the SBRRB, July 19, 2017 due to impact on small business.

12. HAR Title 11 Chapter 164.2 – Tuberculosis

Justification – Obtaining public hearing approval by Governor.

13. HAR Title 11 Chapter 200 - Title

Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.

14. HAR Title 11 Chapter 201 - Title

Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.

Department of Human Services

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

1. HAR Title 17 Chapter 795 – Supporting Employment Empowerment (SEE) Program

Justification – The SEE Program is a business-friendly program that transforms lives by helping Temporary Assistance for Needy Families (TANF) cash assistance recipients break multi-generational cycles of poverty, find rewarding jobs in the private sector, and stay engaged in gainful employment. SEE Program provides on-the-job training and employment opportunities with private sector employers for First-To-Work (FTW) Program participants who may have little or no work experience or basic work skills. DHS subsidizes a portion of the participant's wages and direct/indirect costs that the

employer may incur such as fringe benefits, training, transportation, etc. Participating employers set and pay SEE employees' (FTW participants) wages and benefits.

Chapter 17-795 standardizes and outlines the requirements that businesses must meet to become a SEE employer; the payment process for participating employers to claim reimbursements for the wages that were paid to the participants; and the review process to resolve an employer's payment dispute.

Small businesses that wish to participate in the SEE Program as an employer are required to comply with Chapter 17-795. The rules do not adversely affect any small businesses as the requirements are aligned with the federal, state and/or county regulations that businesses are mandated to comply with to operate in Hawaii.

Rules to be amended or repealed, based upon any new, amended or repealed statute:

2. **HAR Title 17 Chapter 891.1 – Registration of Family Child Care Homes**
3. **HAR Title 17 Chapter 892.1 – Licensing of Group Child Care Centers and Group Child Care Homes**
4. **HAR Title 17 Chapter 895 – Licensing of Infant and Toddler Child Care Centers**
5. **HAR Title 17 Chapter 896 – Licensing of Before and After School Child Care Facilities**

There are reported to be no rules adopted during 7/1/2016 to 6/30/2017 that affect small businesses.

Department of Labor and Industrial Relations

A list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation:

1. **HAR Title 12 Chapter 229 – General, Administrative and Legal Provisions**
Justification – Chapter 12-229 and 123-230.1 administered by the Hawaii Occupational Safety and Health Branch (HIOSH) – updates to the elevator rules with a mixed effect on small businesses, see detailed explanation in attached memorandum.
2. **HAR Title 12 Chapter 52.1 – Recording and Reporting Occupational Injuries and Illnesses**
Justification – HIOSH also amended this chapter to maintain conformity to federal law and to ensure continue federal funding.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

3. **HAR Title 12 Chapter 15 – Medical Fee Schedule Rules**
Justification – Physicians and Providers of service other than physicians – Act 153 amends the definition of physician to include advanced practice registered nurses.

Providers of service other than physicians also require an amendment due to Act 1010 (SLH, 2016) which added a new section 386-21.1, HRS, to Workers' Compensation law that will allow physicians and providers of service to other than physicians for workers'

compensation claims to transmit treatment plans by mail or facsimile to an address provided by the employer.

Section 386-21(d) requires periodic updates to allowable workers' compensation medical charges which is in the process of being amended and intended to take effect on January 1, 2018.

Department of Land and Natural Resources

The following outlines a list of rules that affect small business to be amended, based on any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 1. Chapter 13 Title 74 Section 20 - Commercial Marine License Fee Increases**
- 2. Chapter 13- title 74 Section 46 - Marine Dealer Reporting Deadline**

The following outlines a list of rules that affect small business to be repealed based upon any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 3. Title 13 Chapter 256 Section 16 - Thrill Craft Operations; General Provisions and Section 17 - Recreational Thrill Craft Operations**

The following outlines a list of rules adopted (period of July 1, 2015 through June 30, 2017) that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

- 4. HAR Title 13 Chapter 16 – Relating to Conveyances**

Justification – The reason for the rule changes was to encourage broader use of electronic recording and to update the fee schedule to simplify the fees charged and more accurately reflect the staff time involved.

The rules predominately affect individuals involved in any transaction (e.g. the person seeking a mortgage ends up paying the filing fee, a creditor often passes on the filing fee to the debtor, etc.) The proposed rule changes were sent to interested parties, such as the Hawaii Land Title Association and Hawaii Escrow Association throughout the amendment process. A public hearing was held, and no members of the public attended, and no testimony was provided.

The amendments are anticipated to result in increased e-recording for documents, which should over the long-term, save both time and expense for those needing to record documents with the Bureau of Conveyances (Bureau). The amendments updating the fee schedule are anticipated to clarify the filing fees associated with a transaction to facilitate compliance with the Federal Truth in Lending Act and support the Bureau's ability to maintain an efficient and effective state recording office.

- 5. HAR Title 13 Chapter 60.4 – Ka'upulehu Marine Reserve**

Justification – This was a community-based proposal to establish a Marine Reserve at Ka'upulehu, West Hawaii. The purpose was to provide a 10-year “no take” rest period to allow for the recovery of reef fish stocks prior to the implementation of a subsistence fishery management plan for the area. The 10-year duration of the Reserve is important

to give the Department enough time to monitor the recovery of fish stocks to assess the effectiveness of the rule.

6. HAR Title 13 Chapter 86.1 Sea Cucumbers

Justification – The new rules went into effect on January 10, 2016 and addressed the recent spike in the commercial consumptive harvest of sea cucumbers and generally managed the various other uses of these species. Specifically, the rules generally prohibited the take of sea cucumbers for sale for human consumption or for any other commercial purpose. There is a narrow exception carved out to allow for limited commercial harvest for aquarium purposes. This exception, which allows licensed commercial aquarium collectors to harvest two species of sea cucumber from Oahu waters only up to 20 per person per day and up to 3,600 per year for the entire fisher, is intended to keep the small commercial aquarium fishery open at the current level of take. The rules would also allow a small level of take for personal, non-commercial use.

The new rules had the desired effect in that the large scale commercial harvest of sea cucumbers for consumption was closed but still allowed some existing commercial aquarium to take to continue at a sustainable level. It is expected that the rule would need to continue in existence to prevent any new commercial food business from starting a sea cucumber fishery. It will take at least five years to determine what a reasonable take might be for this fishery, depending on resources to make an assessment, and the threat of a new business would be concerning.

7. HAR Title 13 Chapter 256-73.13 Ahu O Laka (Oahu) Safety Zone

Justification – Alcohol and illegal drugs have a much more powerful effect on people when combined with dehydration and the effects of the sun and ocean. Numerous incidents had resulted in serious injuries when large crowds of people gathered at the “sand bar” in Kaneohe Bay where, because of loopholes in local laws, people could drink alcoholic beverages in public without being cited. The Ahu O Laka Safety Zone was conceived as an area where alcohol and illegal drugs would be banned to reduce fighting and disorderly conduct on three three-day weekends in a year (Memorial Day, Independence Day and Labor Day), the weekends when most problems occurred.

This prohibition on possession and consumption of alcohol, narcotics and illegal drugs in the specified safety zone in Kaneohe Bay evolved from an emergency rule, to a rule with a sunset date, and finally into a permanent rule.

8. HAR Title 13 Chapter 256-162 – Kahalu’u Bay (Oahu) Ocean Waters

Justification – The Division of Boating and Ocean Recreation (DOBOR) initiated this rule amendment in response to community feedback about safety issues caused by a proliferation of commercial activity in the bay (predominantly surf schools), overcrowding in the water, and illegal vehicular parking issues.

The rule, as approved by the Board of Land and Natural Resources, modified the swim and surf zone designations and allowed for a total of four commercial surf instruction permits for this waterway. It also contained surf instruction to the surf zone and prohibited vessels in the swim zones. In the context of DOBOR rules, the definition of “vessel” includes surfboards.

The consensus of the public was that the controls placed on commercial activity in Kahalu’u Bay through this rule amendment would provide more opportunity for residents

to enjoy the Bay. The rule, drafted in cooperation with several community groups, was intended to “maintain the integrity of the bay as a popular recreational site.”

Department of Taxation

1. HAR Title 18 Chapter 231- Administration of Taxes

Justification – The adopted rules add an additional method for the Department and taxpayers to reach agreement before or during a tax appeal. Decreasing the number of outstanding tax controversies also decreases the administrative burden on the Tax Board or Review and the Tax Appeal Court.

DoTax adopted administrative rules relating to audit reconsideration, effective March 26, 2016. The adopted rules added two new sections which created an administrative mechanism for taxpayers to request the Department reconsider an assessment based on documentation or evidence that was not provided during the audit examination which led to the assessment or denial for refund.

2. HAR Title 18 Chapter 251, Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax

Justification – The adopted rules are necessary to clarify how car-sharing organizations can report and pay the Car-Sharing Vehicle Surcharge Tax.

The Department adopted administrative rules relating to the Car-Sharing Vehicle Surcharge Tax, effective April 8, 2016. The adopted rules specify how to determine whether an entity is a “car-sharing organization” under section 251-1, HRS, specify how to determine when a rental period has begun and ended, and specify how to calculate the length of a rental period.

Department of Transportation

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

Highways Division

1. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles

Justification - Relates to motor vehicle inspections.

2. HAR Title 19 Chapter 135 – Periodic Inspection of Mopeds

Justification - Relates to the inspection of mopeds.

3. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Regulations. This is a way of ensuring that the State complies with the regulations.

4. HAR Title 19 Chapter 142 – Periodic Safety Inspection of Motor Carrier Vehicles

Justification - Relates to the inspection of heavy vehicles which are motor carrier vehicles.

5. HAR Title 19 Chapter 145 – Hazardous Materials Regulations

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Safety Regulations that relate to the transportation of hazardous materials in quantities

large enough to require the transporting vehicle to be placarded. Adopting the regulations ensures that the State complies with the regulations.

University of Hawaii

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

1. HAR Title 20 Chapter 42 – Hawaii State Postsecondary Review Program

Justification – The University intends to repeal Chapter 20-42, which sets forth the rules and procedures governing the Hawaii Postsecondary Review Program established by Part II of HRS Chapter 305H. HRS Chapter 305H was repealed in 2006 and the postsecondary review responsibilities of the former program were moved to the Hawaii Department of Commerce and Consumer Affairs (DCCA) in 2013 when HRS Chapter 305AJ was enacted. Considering the review responsibilities to the DCCA, Chapter 20-42 serves no purpose and has been approved by Board of Regents for repeal.

The University believes that the repeal of Chapter 20-42 does not affect small business. On December 8, 2016, the University was informed that the Chair of the Small Business Regulatory Review Board (SBRRB) determined that the repeal of Chapter 20-42 does not pose an impact to small business, and therefore, did not require that a small business impact statement be submitted for review. With the approval of the Governor, public notice to repeal Chapter 20-42 was published, and there were no petitions filed during the public notice period which ended on May 31, 2017. Process to effectuate the repeal of this chapter is underway.

2. HAR Title 20 Chapter 25 – Hawaii Educator Loan Program

Justification – The University intends to amend Chapter 20-25, which provides guidelines and procedures for the administration of the Hawaii Educator Loan Program in conformance with the guidelines established in HRS Section 304A-701. The University seeks to amend Chapter 20-25 in response to statutory changes that were approved by the Hawaii State Legislature in 2007. In 2007, the Hawaii State Legislature changed the loan repayment period and the teaching service requirement from six years to seven years. Although the University has already implemented the changes, HAR Chapter 20-25 needs to be updated to provide consistency with the HRS.

The University believes that the amendments of Chapter 20-25 do not affect small business. On December 8, 2016, the University was informed that the chair of SBRRB had reviewed the proposed amendments to Chapter 20-25 and determined that said amendments do not pose an impact to small business. SBRRB, therefore, does not require that a small business impact statement be submitted for review. Given HRS Section 304A-701 specifically exempts the adoption of rules pertaining to the Hawaii Educator Loan Program from public notice and public hearing requirements of HRS Chapter 91, the proposed amendments to Chapter 20-25 are pending Governor's final approval.

The University did not adopt any rules during the period of July 1, 2016 through June 30, 2017.

Follow-up on Prior SBRRB Administrative Rule Reviews

The following twenty-seven (27) Hawaii Administrative Rules were previously reviewed by the SBRRB; current updates/final commentary are noted below:

Department of Agriculture

Division of Measurement Standards

1. HAR Title 4 Chapter 93 – Packaging and Labeling

Agency's Justification

This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

2006 Recommendation

Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future plans to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

A discussion with DOA in 2018 reveals that the rules are in the process of being reviewed and will be updated accordingly; no date for completion has been determined.

Division of Plant Industry

2. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules

Agency's Recommendations

This rule provides for export plant and plant products inspectional and dis-infestation treatment services that meet the requirements of the state or country of destination.

Agriculture is an important economic industry to the State of Hawaii.

From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country. To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule. Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

2006 Recommendation

Rule amendments were submitted to the SBRRB in 2006; however, the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB agrees the rule should be reviewed and revised.

Response from Agency

This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries. The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

Final Commentary

A discussion with DOA in 2018 revealed that the rules are currently "frozen" in terms of modification however because the statute governing these rules reflect a change in fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

Division of Animal Industry

3. HAR Title 4 Chapter 16 – Cattle, Sheep, and Goats

Agency's Justification

The rules refer to the regulation of cattle, sheep and goats. Proposed rule amendments will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. The amendments will also update the existing rules to allow Hawaii to remain consistent with the National Scrapie Eradication Program, require additional testing for incoming cattle, and additional permit requirements for incoming livestock as well as qualifications.

A quarantine order put in place for the intrastate movement of sheep and goats has

reduced the urgency to amend the rules as the Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2008.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The SBRRB will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updating for several years; a completion of the updates is expected in 2020.

4. HAR Title 4 Chapter 17 – Swine

Agency's Justification

This rule authorizes the department to undertake disease control measures intended to control and eradicate certain disease of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the agency has indicated that the rules are in the process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

5. HAR Title 4 Chapter 23 – Horses

Agency's Justification

This rule controls the importation of diseases and pests that affect horses. Preventing

the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. Since the majority of horses in Hawaii are pets, there is little impact on small business by these import requirements. The rules were established in 1949 and last amended in 1981. On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

Department of Commerce and Consumer Affairs

6. HAR Title 16 Chapter 73 – Barbers

Agency's Justification

The purpose of the rules is to implement licensing and regulation of barbers and rules under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1994.

2006 Recommendation

The Agency indicated that the rules are in the process of being amended and are expected to be finalized within two years. The SBRRB is in concurrence with the Agency that the rules should be amended.

Response from Agency

The Agency plans to amend the rules to address public health and safety issues such as the exclusion or controlled use of implements, equipment, and activities that have been shown to adversely affect consumers if used or if used improperly. Additionally, descriptions of allowable exceptions to the place of practice will be expanded, and descriptions of exemptions from licensure will be included. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007. The Agency has since updated this date by the latest, December 2009, and indicated that there has been activity on the amendments. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-73 Barbers has not been updated.

7. HAR Title 16 Chapter 74 - Boxing

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1981 and amended in 1991.

2006 Recommendation

The rules are arduous and long; the Agency has indicated that the rules are in the process of being amended and are expected to be finalized within a year. The Review Board is in concurrence with the Agency that the rules should be amended.

Response from Agency

The SBRRB expressed concerns that the rules are arduous and long. The Agency intends to amend the rules to: (1) remove outdated requirements that are no longer relevant; (2) update and conform the rules to the Federal Boxing Safety Act of 1996; and (3) implement statutory changes made by Act 135, Session Laws of Hawaii (SLH) 2004. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007. The SBRRB is in concurrence with the Agency.

Final Commentary

A discussion with DCCA in 2018 indicated the following – The Boxing Commission has met only a few times since 2011 due to the lack of boxing events. Amendments were drafted, however, the Commissioners termed out and the new Commissioners requested that the process begin all over again. Another new draft is currently being worked on; no timeframe for completion has been given.

8. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

2006 Recommendation

This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency

The SBRRB indicated that the industry has had its share of publicity and recommended that a full analysis and update be performed. The Agency plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008.

The SBRRB is in concurrence with the Agency.

Final Commentary

A discussion with DCCA in 2018 has indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

9. HAR Title 16 Chapter 83 – Hearing Aid Dealers and Fitters

Agency's Justification

The purpose of the rules is to implement licensing and regulation of hearing aid dealers and fitters under the department's regulatory authority. The rules are necessary as they

facilitate licensing and enforcement. The rules were established in 1982 and amended in 1994.

2006 Recommendation

Since the rules were last amended 12 years ago, there have been huge changes in the industry. Full analysis and update should be performed.

Response from Agency

The SBRRB expressed concerns that the rules were last amended 12 years ago. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency intends to amend the rules to: (1) conform to the changes made by Act 88, SLH 1997 relating to establishing experience requirements for licensure and clarifying provisions for direct supervision of unlicensed individuals; (2) identify and clarify the examination and passing score required for licensure; (3) repeal references relating to re-examination; and (4) clarify the license renewal and license restoration requirements. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was November 2008. An update by the Agency has revealed that the rule revisions are complete and are expected to be provided to the Review Board by June 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

A discussion with DCCA in 2018 has indicated that amendments to the rules are moving forward with revisions, which include amending Subchapter 5, Examination, by repealing reference to re-examination, identifying the provider of the exam to include language "or its successor itself, and making changes to the renew and forfeiture sections. The amendments are "at the initial AG memo stage of the process."

10. HAR Title 16 Chapter 86 – Motor Vehicle Dealers and Salesmen

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle dealers and salesmen under the department's regulatory authority; they are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1993.

2006 Recommendation

The rules were last amended 13 years ago. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 13 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not envision submitting proposed rules sooner than December 2008 due to pending issues for the Motor Vehicle Industry Licensing Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "dealer" (issues such as wholesale, retail, more than two vehicle sales per year, etc.), "premise" (issues such as approved zoning), "salesperson" (the effects of disclosure relating to criminal conviction), "consumer consultant," and "bond".

An update from the Agency revealed that the rule revisions are actively being worked on every other month when the board meets; a draft is expected to be provided to the Review Board by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-86 Motor Vehicle Dealers and Salesmen has not been updated.

11. HAR Title 16 Chapter 87 – Motor Vehicle Repair Dealers and Mechanics

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1976 and amended in 1989.

2006 Recommendation

The rules were last amended 15 years ago. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 15 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not anticipate submitting proposed rules sooner than November 2008 due to pending issues for the Motor Vehicle Repair Industry Board requiring further research and analysis. However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "mechanic" (license types, motorcycle examination and experience requirements, etc.), "repair dealer" (requirements for place of business), "written estimate required and waiver of estimate," and "supervisory mechanic or head mechanic."

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009.

The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-87, Motor Vehicle Repair Dealers and Mechanics has not been updated.

12. HAR Title 16 Chapter 101 – Veterinarians

Agency's Justification

The purpose of the rules is to implement licensing and regulation of veterinarians under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1967 and amended in 1986.

2006 Recommendation

The rules were last amended 20 years ago. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 20 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency intends to align the rules with changes that have been made to licensing qualifications on the national level relating to

the: (1) content and format of the national licensing examination; (2) nationally-recognized foreign graduate program; and (3) qualifications of graduates of veterinary medical programs at schools outside of the U.S. and those that are not approved by the American Veterinary Medical Association. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007.

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-101 Veterinarians has not been updated.

13. HAR Title 16 Chapter 106 – Timesharing

Agency's Justification

The purpose of the rules is to implement licensing and regulation of timesharing under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1980 and amended in 1990.

2006 Recommendation

The rules are necessary to protect the general; the rules were last amended 16 years ago. Full Analysis and update should be performed.

Response from Agency

Because the rules were last amended 16 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency plans to propose amendments that will: (1) simplify requirements (e.g. repeal certain renewal requirements such as submitting a title report for developers); (2) repeal unnecessary requirements (e.g. no longer require the filing of advertising and promotional materials); and (3) delete requirement that were repealed in the statute. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was August 2008.

An update from the Agency revealed that the rules are actively being worked on with the industry and that rule revisions are expected to be provided to the SBRRB by June 2009. The SBRRB is in concurrence and will follow-up with the Agency

Final Commentary

A discussion with DCCA in 2018 has indicated that the amendments of the rules were stalled but currently the industry concerns have been resolved. The amendment is expected to be finalized, but no date has been given.

14. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks

Agency's Justification

The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

2006 Recommendation

There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

Response from Agency

The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency has reviewed the rules and determined that no substantive amendments are necessary at this time. The Agency has received an average of 18 complaints a year (there are approximately 325 registered activity desks) over the past four years. (Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company).

The SBRRB is in concurrence with the Agency at this time. Although the Agency determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, the Agency will, again, be approached by the SBRRB.

Final Commentary

A discussion with DCCA in 2018 indicated that these rules are not in the process of being amended. They will be reviewed in the near future; at that time, a determination will be made if modifications are warranted.

Public Utilities Commission

15. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers

Agency's Justification

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS Section 271-1. The rules were established in 1992.

2006 Recommendation

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required; amendments likely.

16. HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules

Agency's Justification

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically, those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. The rules were established in 1994.

2006 Recommendation

Rules are twelve years old. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

17. HAR Title 6 Chapter 65 – Water Carriers

Agency's Justification

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. It appears the rules have not been amended since first promulgated in 1976.

2006 Recommendation

Rules are over 30 years old; full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Commission has determined that HAR Chapter 6-65, "Water Carriers" do not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

Department of Health

Medical Division

18. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes

Agency's Justification

The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities.

These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

2006 Recommendation

Standards have changed, and enforcement of the rules is different since the rules were established in 1992. Therefore, some provisions should be deleted. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of the printing of this report, DOH's website states that under Chapter 11-89, Services for Developmental Disabilities Domiciliary Homes, the rules are "pending amendment & compilation."

19. Chapter 11-95 – Freestanding Surgical Outpatient Facilities

Agency's Justification

The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised and federal reimbursement will not be realized. The rules were established in 1986.

2006 Recommendation

Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

Updated/Current Commentary

As of the printing of this report, DOH's website states that under Chapter 11-95, Freestanding Surgical Outpatient Facilities rules are "pending repeal and replacement by Chapter 92."

20. Chapter 11-96 – Freestanding Adult Day Health Centers

Agency's Justification

The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees and the public. The rules were established in 1991.

2006 Recommendation

The Agency has indicated that the rules need revisions; rules are 15 years old. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding. The SBRRB concurs.

Final Commentary

To date, Chapter 11-96 Freestanding Adult Day Health Centers has not been updated.

21. Chapter 11-97 – Home Health Agencies

Agency's Justification

These rules outline licensing requirements for Home Health Agencies (HHA) and defines penalty for those who violate this chapter. HHA has the option of being Medicare/Medicaid certified to receive reimbursement, and there is an increasing interest for HHA's that receive private funding, to be licensed, to be reimbursed by private insurance and/or long-term care insurance. Such licensing not only insures the health and safety of patients, employees and the public, but also looks toward reducing the abuse and exploitation of the elderly. The rules were established in 1982.

2006 Recommendation

Agency indicated the rules need revisions; rules are 25 years old and exhibit inconsistent standards – standards and accreditation need to be in place. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Currently, procedures are being enforced that are not reflected in the rules. If enforcement is being sought, those procedures should be incorporated in the rules. The SBRRB strongly recommends that these rules are amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

To date, Chapter 11-97 Home Health Agencies has not been updated.

22. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded

Agency’s Justification

The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

2006 Recommendation

Agency has indicated that the rules need revisions; rules are over 20 years old. The SBRRB agrees with Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB’s recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules are updated because there is a greater population within the community so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

To date, Chapter 11-99 Intermediate Care Facilities for the Mentally Retarded Agency’s Justification has not been updated.

Environmental Division

Noise, Radiation and Indoor Air Quality Branch

23. Chapter 11-39 – Air Conditioning & Ventilation System

Agency’s Justification

The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

2006 Recommendation

The rules need updating. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending repeal and replacement by chapter 48.

Response from Agency

HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Final Commentary

As of the printing of this report, DOH's website states that under Chapter 11-39, Air Conditioning & Ventilating rules are "pending repeal/replacement by Chapter 48."

**24. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules
Agency's Justification**

The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

2006 Recommendation

These rules need updating. Re-analysis and update of rules should be performed.

Response from Agency

A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to public hearing.

Final Commentary

To date, Chapter 11-44 Radiologic Technology Board and Radiologic Technology Rules has not been updated.

25. Chapter 11-45 – "Radiation Control"

Agency's Justification

The rules are required for core public health. The rules set minimum standards for all

persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

2006 Recommendation

The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency

This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Final Commentary

As of the printing of this report, DOH's website states that under Chapter 11-45, Radiation Control, the rules are "pending amendment & compilation."

Department of Transportation

Harbors Division

26. Chapter 19-43 - Motor Vehicles

Agency's Justification

These rules govern the applicability of statutes, traffic codes and ordinances; jurisdiction of harbormaster over vehicles; licensing, safety inspection and insurance; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; and parking by permit; violations. The rules were established in 1974.

The rules authorize the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

2006 Recommendation

The rules are 32 years old. Rules should be reviewed and updated.

Response from Agency

This rule authorizes the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

These rules also governing applicability of statutes, traffic codes and ordinances; jurisdiction of harbor master over vehicles; licensing, safety inspection and inspection; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; parking by permit; and violations.

A meeting held on November 30, 2007 with Director Barry Fukunaga, revealed that these rules will be updated regarding implications due to security in 1 – 2 years. The SBRRB is in concurrence and will follow-up with the Agency for the status of the amendments.

Final Commentary

In 2018, DOT indicated “there have been no plans to initiate the formal procedures to update Chapter 19-43.” However, DOT is currently preparing draft rule amendments for a series of sections of the rules, including several in Chapter 19-43.

Highways Division

27. Chapter 19-105 - Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways

Agency’s Justification

The purpose of the rules is to necessitate compliance with state and federal requirements by issuing a permit which is a costly item. The rules were established in 1981. The rules impact small business and are federally mandated by 23 CFR Chapter 1, Part 645.

2006 Recommendation

The rules are 25 years old. Rules should be reviewed and updated.

Response from Agency

This rule will have an impact on small business. It is necessary to follow state and federal regulations; permit is issued to do work which is a costly item. This rule is to be amended; no target date has been set. The SBRRB is in concurrence and will follow-up with the Agency for the status of the amendments.

Final Commentary

In 2018, DOT indicated “there are no plans currently to change or modify Chapter 19-105. The content regarding this chapter has not changed since it was approved in 1981.”

COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Hawaii County

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Office of the Prosecuting Attorney

1. Hawaii County Charter Article IX, Chapter 28 - HRS 28-1

Justification – The Office of the Prosecuting Attorney is the legal agency responsible for prosecuting all violations of State and County laws, ordinances, rules and/or regulations on behalf of the Big Island Community.

The purpose of this chapter is to seek accountability for those who violate the law in our county, provide assistance to those impacted by criminal conduct, and work with the community to solve crime related problems.

Department of Liquor Control

2. Hawaii County Charter Chapter 13-7 / HRS 281 Intoxicating Liquor

Justification – Rules and regulations of the Liquor Commission of the Department of Liquor Control of the County of Hawaii, State of Hawaii. Rules and Regulations of the Liquor Control Adjudication Board of the Department of Liquor Control of the County of Hawaii.

Post prohibition government regulation for the responsible and safe manufacture, distribution and sale of intoxicating liquor.

Parks & Recreation

3. Rule 16 – Rules Relating to Mauna Kea Recreation Area – Section 5

Justification – Regulation of stargazing activity.

Police Department

4. Article 34, Section 2-171 through Section 2-175.1

Justification – Fees and charges for special duty services of the Hawaii County Police Department.

Environmental Management

5. Hawaii County Code Relating to Refuse, Chapter 20

Justification – A majority of the Code section is applicable due to public health and safety.

6. Hawaii County Code Relating to Sewers, Chapter 21

Justification – A majority of the Code section is applicable due to public health and safety.

Research & Development

7. Hawaii County Code, Article 8, Section 2.37

Justification – Research & Development does not currently have a Sustainability Committee.

Department of Water Supply (DWS)

8. Charter 8-2, HRS Chapter 54-51, 54-63

Justification – Permits Boards to establish rates and manage operation of waterworks. Centralizes control of limited resource for public health and safety.

9. Charter 8-2, HRS Chapter 54

Justification – Rule 3-1(2) pertaining to establishment of capital assessment fees. Obligation to make public waterworks self-supporting.

10. Charter 8-2, HRS Chapter 54

Justification – Rule 3-2(2) pertaining to conservation measures. DWS can shut water off if wasteful use occurs. Protection of limited resource for public health and safety.

11. Charter 8-2, HRS Chapter 54

Justification – Rule 3-3; 3-21. Elevation agreement and backflow prevention. Ensures distribution of water to all requisite consumers, health and safety compliance.

12. Charter 8-2, HRS Chapter 54

Justification – Rule 3-4. \$150 deposit requirement for credit purposes. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. Charge for service lateral at cost determined by board, connection to shut off valve to be borne by applicant. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. DWS to shut off in emergency at expense of customer. Prevent loss of resources, i.e., can't get in touch with consumer who has leak.

Justification – Rule 3-6. Facilities charge, when applicable. Defray costs of capital expenditures for public water system and debt service payments on bonds.

Justification – Rule 3-8. Payment of Bills – Now 21 days to pay bill, if not within 30 days and possible discontinuance. Late penalty at 1% per month. Obligation to make public waterworks self-supporting and discourage late payments.

Justification – Rule 3-11. Water service may be discontinued for nonpayment, noncompliance with rules, and wasteful use, among other things. Preservation and conservation of limited public resource.

Justification – Rule 3-12. Restoration of water service. Customer responsible for reinstallation charges, labor, etc. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-14. Customer responsible for damage to DWS' property, meters. Dissuade public from damaging DWS property.

Justification – Rule 3-23. Fees for harbor facilities providing water service. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-29. Agricultural use rates, establishment of an application fee. Support farming practices, standards for lower ag rates.

Justification – Rule 4-1. Capital assessment fee for required improvements in proposed development. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-2 and 4-3. Developer to bear cost of onsite and offsite water system requirements. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-5. Private water system inspection costs – DWS to review, developer to pay for. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-6. Facilities charge and capital assessment fees for developers. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-7. Developers to pay for connection to storage tanks and installation. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-12. Requirement to have developer bond water system improvements. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-13. Establishes water commitment fee at \$150 per lot. Public health and safety compliance, obligation to make system self-supporting.

Finance Department

13. HRS 103D - Rule 4 – Purpose of Materials, Supplies, Equipment and Services

Justification – Required for compliance with HRS 103D. Promote fair procurement practices.

14. HRS 103D - Rule 5 – Value Engineering Incentive

Justification – Required for compliance with HRS 103D. Provide savings to the County.

15. HRS 286, Part VI – Rule 11 – Motor Vehicle Driver Licensing

Justification – Required for compliance with HRS 286. Provide licensing procedures.

16. HRS 287, Rule 12 – Motor Vehicle Responsibility Act

Justification – Required for compliance with HRS 287. Insure drivers have financial responsibility.

17. HRS 286-51, Rule 13 – Motor Vehicle Registrations

Justification – Required for compliance with HRS 286-51. Provide vehicle registration schedule.

- 18. HRS 286 and 249 - Rule 14 – License Plates**
Justification – Required for compliance with HRS 286-53 and 249. Provide issuance procedures.
- 19. HRS 249-9.1 and 249-9.2 – Rule 15 & 16 – Special License Plates**
Justification – Required for compliance with HRS 249. Provide issuance procedures.
- 20. Hawaii County Code, Chapter 18 – Rule 17 - Taxicabs**
Justification – Required for compliance with Hawaii County Code 18. Public safety.
- 21. HRS 286-53.5, 53.6 – Rule 18 – Registration of Fleet Vehicles**
Justification – Required for compliance with HRS 286-53.5, 53.6. Provide issuance procedures.
- 22. HRS 289-7 - Rule 19 – Licenses for Businesses Engaged in Purchasing or Selling Used Vehicle Parts, Vehicle Salvage, etc.**
Justification – Provide requirements and procedures.
- 23. Hawaii County Code 19-60 - Rule 30 – Real Property Tax Dedicated Agricultural Use**
Justification – Required for compliance with HCC 19-60. Provide requirements and procedures.
- 24. Hawaii County Code 19-57 – Rule 34 – Real Property Tax Non-Dedicated Agricultural Use**
Justification – Required for compliance with HCC19-57. Provide requirements and procedures.
- 25. Hawaii County Code, Chapter 19 – Rule 35 – Real Property Tax Exemption for Certain Improvements**
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.
- 26. Hawaii County Code, Chapter 19 – Rule 38 – Real Property Tax Designation as Wasteland Development Property**
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.

Hawaii Fire Department

- 27. Hawaii County Code – Chapter 26 – Article 1, Hawaii County Fire Code**
Justification – Government regulation of the sale, distribution, standby, maintenance, permitting, access, notification requirements of structures, private and commercial.
- 28. Hawaii County Code – Chapter 26 – Article 2, Fireworks Code**
Justification – Government regulation of the sale, distribution, storage, licensure, and prohibitions attributed to fireworks.
- 29. Hawaii County Code – Chapter 132 – Fire Protection**
Justification – Government regulation regarding powers of the Fire Chief, investigation rights, entry, duties of owners, penalties, submission of building plans.

30. Hawaii County Code – 132D – Fireworks

Justification – Government regulation regarding the permission and prohibitions of fireworks use, sale, distribution, permitting, storage, display fireworks, pyrotechnics, and liabilities.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

Environmental Management

31. Hawaii County Code Relating to Refuse, Chapter 20

Justification – Section 20-46, Disposal Fees – Article 6, Polystyrene.

32. Hawaii County Code Relating to Sewers, Chapter 21

Justification – Chapter 21, Article 4 – Anticipate amending Article 4, Section 21-36.1.

Research & Development

33. Hawaii County Code, Article 8 Section 2.37

Justification – None.

Department of Water Supply

34. Chapter 8-2, Rule 3-8, HRS 54-51

Justification – Reduces bill payable time from 30 to 21 days. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

35. Chapter 8-2, Rule 3-10, HRS 54-51

Justification – Caps leak adjustment to half the average above prior three bills (previously 6) and limits leak adjustment to one every 3 years. Sets adjustment to less than 50% of bill if due to 3P criminal act. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

36. Chapter 8-2, Rule 3-11(2)(e)

Justification – DWS can shut off water if service detrimental to others or exceeds usage allotted to consumer. Previously required both. Policy to continue to protect valuable resource for public health and safety reasons.

37. Chapter 8-2, Rule 3-21(6)

Justification – For temporary meter installations, shifts burden from DWS to consumer to install reduced pressure principle backflow preventer. Public health and safety reasons, supports obligation to make water system self-supporting.

City and County of Honolulu

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Board of Water Supply (BWS)

- 1. BWS Rules and Regulations Chapter I – V; City Charter (2017) Article VII Section 7-101-119; Chapter 54, HRS**

Justification – Permits the Board to manage, control, and operate the waterworks and all property thereof, for supplying water to the public; and shall collect, receive, expend, and account for all sums of money derived from the operation thereof and all other moneys provided for the use or benefit of the waterworks and all property used for or held in connection therewith.

Centralizes control of the BWS water resource for public health and safety, reliability, affordability and sustainability. Provides the BWS full and complete authority to manage, control and operate the water systems/properties used or useful about such systems.

2. BWS Rules and Regulations Charter 7-105-109; HRS CH. 54

Justification – Under the general requirements of this section of the rules, extensions from and connections to the public water system shall be approved by the BWS where pressure conditions permit; provided that the water meters are within the service limit except as provided for in Sec. 2-217, Elevation Agreement of the rules. The developer will be required to pay for and install, in accordance with these rules and regulations and the standards of the BWS, adequate water system facilities for the development.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

3. BWS Rules; Charter 7-105-109; HRS CH. 54

Justification – A WSFC shall be levied against all new developments requiring water supplies from the BWS system or additional water supplies from the existing services. The WSFC will not be levied in developments where the developer has installed as hit cost a complete water system.

Obligation to make public waterworks self-supporting.

4. Rules; Charter 7; HRS CH. 54

Justification – When the developer is required to install a larger size main to provide for the existing or future services beyond the boundaries of a development. The eligible portion of cost reimbursement shall be left to the discretion of the BWS.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

5. BWS Rules; Charter 7-109; HRS CH. 54

Justification – Permits the Board to fix and adjust reasonable rates and charges for the furnishing of water and for water services so that revenues derived therefrom shall be sufficient to make the BWS self-supporting. Rules Chapter 11-§2-201. Application for Water Service. The BWS may require a deposit from any consumer or prospective consumer to guarantee payment of bills for service or other obligations to the BWS. There may be applicable waivers to be determined by the BWS.

Obligation to make public waterworks self-supporting. Such revenues shall be sufficient to meet all necessary expenditures, including expenditures for a) operating and maintenance; b) repairs, replacements, additions and extensions; c) accident reserve, pension charges and compensation insurance; d) payment of principal and interest on all bonds, including reserves therefor, issued for the acquisition or construction of

waterworks and extensions thereto, and e) reserve funds under Section 7-112 of the charter.

6. Rules; Charter 7; HRS CH. 54

Justification – Installation charge(s) (lateral and meter) to the applicant shall be based on the cost of Installation as established by the BWS. In addition, a water system facilities charge shall be levied against all new water service connections to the system or connections requiring additional water supplies from existing water services.

Defray costs of operating and maintenance, capital costs for public water system and debt service payments on bonds.

7. Rules; Charter 7; HRS CH. 54

Justification – All water supplied by the BWS will be measured by means of suitable meters registering in gallons. If a meter cannot be read, an estimated bill will be rendered, said bill to be calculated whenever possible on prior consumption.

Obligation to make public waterworks self-supporting.

8. Rules; Charter 7; HRS CH. 54

Justification – All bills shall be payable within 30 days after the date of the bill; after 30 days the bill shall be deemed delinquent. Water service may be discontinued five business days after written notice is given to customer. A late payment charge at one percent (1%) for each month or fraction thereof against the delinquent balance payable to the BWS.

Obligation to make public waterworks self-supporting and discourage late payments.

9. Rules; Charter 7; HRS CH. 54

Justification – Water service may be discontinued for nonpayment, noncompliance with rules and regulations, unauthorized use of water, wasteful use of water, among other things. Prior to the proposed shut-off, the BWS shall give the consumer at least five (5) business days' notice.

Obligation to make public waterworks self-supporting.

10. Rules; Charter 7; HRS CH. 54

Justification – Before water is restored, all outstanding accounts must be paid by the consumer. A reinstatement charge based on the cost of turning on the water service must be paid by the consumer; said charge shall be as established by the BWS.

Obligation to make public waterworks self-supporting.

11. Rules; Charter 7; HRS CH. 54

Justification – If a meter fails to register due to any cause except nonuse of water, an average bill may be rendered and subject to equitable adjustment, considering all factors before, during, and after the period of said bill.

Obligation to make public waterworks self-supporting.

12. Rules; Charter 7; HRS CH. 54

Justification – Any consumer who questions the accuracy of the meter serving his premises, may request a test of the meter. If the meter is found to register more than 2% fast under conditions of normal operation, the BWS will refund to the consumer the overcharge based on past consumption under the conditions stated in the rules. Underground leak adjustments may be granted.

Caps leak adjustment to one-half (1/2) of the excess consumption over a normal bill and will be granted only when repairs are made within two weeks after the consumer has been notified of the underground leak. For good cause shown to the BWS, an extension of time to make repairs may be granted.

13. Rules Chapter II - III; Charter 7-105; HRS CH. 54

Justification – BWS can shut water off if wasteful use of water exists on any premises. The BWS may restrict the use of water by any means or method of control whenever special conservation measures are, in the opinion of the BWS, advisable.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

14. BWS Rules Chapter II - III; Charter 7-105, 109; HRS CH. 54

Justification – When the pressure of the BWS' supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The BWS shall not be liable for damage due to pressure conditions caused by or arising out of the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

15. Rules; Charter 7; HRS CH. 54

Justification – The consumer shall be liable for any damage to a meter or other equipment or property owned by the BWS caused by the consumer or his tenants, agents, employees, contractors, licensees or permittees, and the BWS shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor.

Discourage or dis-usage consumer or public from damaging BWS property.

16. Rules; Charter 7-105; HRS CH. 54

Justification – To comply with federal and state rules and regulations, the BWS prohibits certain connections and installations as described in this section of the rules. Failure on the part of the consumer to comply with the BWS requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water services.

Ensure distribution of water to all requisite consumers; health and safety compliance; and be compliant with the applicable statutes, rules and regulations of the United States Environmental Protection Agency (EPA).

17. Rules; Charter 7-105; HRS CH. 54

Justification – Fire service will be furnished as a public service only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire connection shall be paid for by the consumer. Any water lost through leakage or used in violation of the conditions shall be paid by the consumer at the regular schedule of water rates and charges.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

18. Rules; Charter 7-105; HRS CH. 54

Justification – Any use of a fire hydrant for purposes other than fire protection is prohibited. Damage to hydrant or property shall be paid for by the person or legal entity responsible for the damage. The BWS must give prior approval for a change in location of a hydrant and such cost of all labor, material, equipment, etc. are paid by the person requesting the change. The consumer shall, at his own expense, test periodically and maintain in good and safe working condition all private hydrants under his control and not under the jurisdiction of the BWS.

Public health and safety compliance. Prevent loss of resources.

19. Rules; Charter 7-105; HRS CH. 54

Justification – Under the provisions of this section of the rules, the consumer shall permit the BWS to inspect the installation of the water system for compliance with BWS requirements and shall enter into an agreement with the BWS agreeing to accept such water service as the system is able to provide and to hold the BWS harmless for all claims due to any inadequacy of water supply.

Public health and safety compliance, obligation to make system self-supporting.

20. Rules; Charter 7; HRS CH. 54

Justification – BWS to shut off water service for emergencies at expense to the customer.

Public health and safety compliance.

21. Rules; Charter 7-105; HRS CH. 54

Justification – Special rates and charges may apply during a critical low groundwater condition period.

Prevent loss of resources.

County of Maui

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Department of Public Works

- 1. Maui County Code 18.20.130A; Rules for the Design of Storm Drainage Facilities in the County of Maui, Title MC-15, Subtitle 01, Chapter 4**
Justification – These rules govern the design of storm drainage facilities in the County of Maui. No effect on small businesses.
- 2. Maui County Code 16.26B.3900, and 18.20.135; Rules for the Design of Storm Water Treatment Best Management Practices, Title MC-15, Subtitle 01, Chapter 111**
Justification – These rules establish controls on the timing and rate of discharge of storm water runoff to reduce storm water runoff pollution from private property over one acre in size. No effect on small businesses.
- 3. Maui County Code 18.20.060; Street Lighting Standards, Title MC-15, Subtitle 02, Chapter 201**
Justification – These rules provide standards for outdoor lighting to provide a level of safety for the vehicular and pedestrian traffic while not excessively interfering with nighttime viewing nor trespass onto private property. No effect on small business.
- 4. Maui County Code 18.32.030; Rules for Flexible Design Standards, Title MC-15, Subtitle 01, Chapter 107**
Justification – These rules establish a process for approving flexible design standards in certain developments when deviation from normal subdivision standards is appropriate to encourage and implement smart growth principles. No effect on small business.
- 5. Maui County Code 16.26B.105.3.3; Rules Pertaining to Plan Review Waiver Building Permits, Title MC-15, Subtitle 01, Chapter 101**
Justification – These rules set forth the procedures for obtaining plan review waiver building permits. These rules have a positive effect on small business as these rules are often used for tenant improvements so businesses can get started faster.

County of Kauai

As of the printing of this report, the County of Kauai has not submitted information in response to the SBRRB's request.



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