



**DEPT. COMM. NO. 497**

DAVID Y. IGE  
GOVERNOR  
MIKE MCCARTNEY  
DIRECTOR

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

CHUNG I. CHANG  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

July 2, 2020

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 2020 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/>.

With aloha

Mike McCartney

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**

**2020**

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# SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813  
Mailing Address: P.O. Box 2359, Honolulu, HI 96804  
Email: [dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov)  
Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)

Tel: (808) 586-2419

**David Y. Ige**  
*Governor*

**Michael McCartney**  
*DBEDT Director*

### Members

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*Chairperson*  
*O'ahu*

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Director, DBEDT  
*Voting Ex Officio*

## MESSAGE FROM CHAIR



This Report consists of existing Hawaii Administrative Rules that both State and County departments have determined to impact small business and the reasons for the rules' continued implementation. It is in accordance with the Board's effort to reduce negative small business impact and to improve 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 recommended a full analysis on 49 of them. This has been narrowed down to 15 rules the Board believes warrant modifications. Pages 27 through 43 of this Report provide the Board's recommendations on the final 15 rules.

Board members continue to donate 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.

I extend a special Mahalo to Governor Ige, Director McCartney, and to all the State and County departments that submitted the requested information to this board.

*Robert Cundiff, Chair, SBRRB, 2020*

# 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.*

Response: In accordance with Section 201M-7(a), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) No later than June 30<sup>th</sup> 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 30<sup>th</sup> 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.

*(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), in May 2019, the SBRRB received the following “Regulation for Review” from Mr. Alton Miyasaka who requested that the Board review whether all bottomfish restricted fishing areas should be opened and/or disestablished under HAR Title 13 Chapter 94, Bottomfish Management.

The Board sent a letter to DLNR/BLNR suggesting that a periodic review be performed for HAR Section 13-94(8)(d), Bottomfish restricted fishing areas and for the conservation areas under “Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010” to determine how the restrictions may be less burdensome on small business.

Correspondence was received from DLNR stating, “pending careful monitoring over time of the impact of opening up four BRFAs on bottomfish stocks, both site-based and fisher-based, and the economics of the deep-7 bottomfish fisher, the judicious approach is to open these four, not all twelve, BRFAs at this time.”

In August 2019, the Board reviewed DLNR’s response and in September a letter was sent to Mr. Miyasaka with DLNR’s response, suggesting that he continue to gather additional facts and data to support discussions with DLNR.

*(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: In accordance with Section 201M-7(c), the SBRRB receives and reviews testimonies on proposed and amended Hawaii Administrative Rules (HAR) at monthly board meetings pursuant to Chapter 92, HRS.

## ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Hawaii Administrative Rules Submitted
<b>STATE DEPARTMENTS</b>	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	7
DEPARTMENT OF AGRICULTURE	7
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE	0
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	5
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	38
PUBLIC UTILITIES COMMISSION	24
DEPARTMENT OF DEFENSE	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH	19
DEPARTMENT OF HUMAN SERVICES	4
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	10
DEPARTMENT OF LAND AND NATURAL RESOURCES	2
DEPARTMENT OF PUBLIC SAFETY	0
DEPARTMENT OF TAXATION	10
DEPARTMENT OF TRANSPORTATION	2
UNIVERSITY OF HAWAII	0
<b>COUNTIES</b>	
HAWAII COUNTY	24
MAUI COUNTY	17
KAUAI COUNTY	2
CITY AND COUNTY OF HONOLULU	50



# 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 (DAGS)*

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying a rules' continued implementation:

### Stadium Authority

- 1. HAR Title 3 Chapter 70-7(a) and 70-8 – Processing of Applicants and Deposit**  
Justification - These two sections provide and define the procedure by which the Stadium Authority shall follow in its processing of applications and collection of deposits for proposed events held at Aloha Stadium. The amendment establishes a non-refundable portion of the deposit to ensure consistency in application by the Stadium Authority and commitment on the part of the Applicant in requesting to reserve a date for its event.

This section also expands on the options for acceptable deposit payment options to include those payments that are established by the Authority.

Continued implementation is necessary to ensure consistency in application of policies and procedures related to remittance of a deposit and the non-refundable portion, thereof.

- 2. HAR Title 3 Chapter 70-11(a) – Rental Charges, Payment**  
Justification - This amendment removes the word “proper” and expands both the Stadium Authority’s ability to partition areas and set rates for portions of the stadium that reside inside of the turnstile. Implementation of this amendment provides a wider range of space options for Applicants seeking areas to rent inside of the turnstile but not requiring the entire interior bowl area and its respective rental fee.

Continued implementation is necessary to offer a wider range of options for both the Applicant and the Stadium Authority at more reasonable rental rates.

- 3. HAR Title 3 Chapter 70-11(a)(8) – Rental Charges, Payment**  
Justification - This amendment expands the opportunity to increase utilization of the Stadium Authority’s Hospitality room during non-peak hours by establishing a tiered fee schedule based on the number of participants using the room. A tiered non-peak fee schedule is expected to incentivize user-groups to utilize the hospitality room at a rental rate that is commensurate with the size of their group.

Continued implementation provides the general public with more options at a more reasonable rental rate.

- 4. HAR Title 3 Chapter 70-11(a)(9) – Rental Charges, Payment**  
Justification - This amendment establishes a rate for areas of the stadium that are not specifically identified in the schedule of charges.

Continued implementation provides clarity and consistency when applying Chapter 3-70-11.

**5. HAR Title 3 Chapter 70-11(g) – Rental Charges, Payment**

Justification - This amendment specifically deletes “the National Football League Pro Bowl Game,” which has been determined to be redundant language that can already capture this event within the existing language of the section.

Continued implementation provides clarity and consistency in negotiating and applying rental fees with large national and international events as opposed to naming specific events in the HAR that are interested in having their event at the Aloha Stadium.

**6. HAR Title 3 Chapter 70-23(6) – Miscellaneous Provisions**

Justification - This amendment establishes and specifies bag policy, outerwear, and stroller policy and requirements.

Continued implementation is necessary to ensure the safety and security of the general public.

DAGS Stadium Authority Administrative Rules, as amended, do not affect small business.

**Central Services Division**

**7. HAR Title 3 Chapter 111 – State Facilities and Grounds**

Justification - Defines the allowable use and activities that may be held at Washington Place. Allows DAGS to make available, at a reasonable rental fee, for public, private and community use, Washington Place and its grounds. Allows the use of Washington Place and its grounds for activities that do not interfere with the normal and usual activities of the property and its occupants.

The rules, as amended, do not affect small business.

***Department of Agriculture***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules’ continued implementation:

**1. HAR Title 4 Chapter 71-1 – Objectives**

Justification - Adds “associated risks to animal and public health and safety” as an additional basis for restricting or prohibiting import of specific non-domestic animals.

**2. HAR Title 4 Chapter 71-2 – Definitions**

Justification – Replaces the word “chairman” in the definition of “advisory subcommittee” with the word “chairperson” to conform to the correct term used elsewhere in chapter 4-71, HAR. Also replaces the word “municipal” in section 4-71-3.1, “User permit fees,” with the broader term, “government,” to be consistent with amendments to section 4-71-6.5, HAR, “Permitted introductions,” regarding “government” zoos and “government use.”

Establishes a definition for "dangerous wild animals" and identifies specific species, including, but not limited to, lions, tigers, elephants, bears, and alligators, as "dangerous wild animals."

**3. HAR Title 4 Chapter 71-3 – Permits**

Justification – Clarifies that violation of permit conditions may result in citation or in cancellation of a permit, or both. Deletes "dangerous wild animals" from the animals allowed for import under short-term permit for performance or exhibition in circuses and carnivals but provides that "dangerous wild animals" may be imported for performance in commercial filming for television or movies, subject to qualification for the performance exemption and subject to permit conditions adequate to address any associated risks.

**4. HAR Title 4 Chapter 71-4.1 – Maximum time period for permit approvals**

Justification - Clarifies that short-term special permits, as well as short-term permits for certain animals, not just for performing animals, must be processed within 120 days.

**5. HAR Title 4 Chapter 71-5 – Notice of Quarantine**

Justification - Adds "risk to animal or public health and safety" as another consequence of uncontrolled introduction of non-domestic animals, in addition to danger to agricultural and related industries.

**6. HAR Title 4 Chapter 71-6.5 – Permitted Introductions**

Justification – Allows government agencies to import animals on the List of Conditionally Approved Animals, which includes animals allowed for import for individual possession, businesses, and institutions.

Expands the purposes for which animals on the List of Restricted Animals (Part B) may be imported from currently allowed purposes (i.e., private and commercial use, including zoological parks, or aquaculture production) to include government use.

Replaces the term "municipal" zoos with the broader term "government" zoos. Clarifies that, in addition to universities and government agencies, other institutions may import restricted list animals for research, and that universities and government agencies may import restricted list animals for medical and scientific purposes as well as for research, as determined by Board of Agriculture. Clarifies that permits may be approved by the chairperson, as well as by the branch chief or Board of Agriculture, as specified by rules.

Clarifies that site approval is required prior to the issuance of any permit issued for import of animals on the restricted lists and unlisted animals. Clarifies that the transfer or sale of unlisted animals under permit is allowed, provided the proposed transferee can satisfy conditions for transfer and obtain a permit for possession.

Restates, in the lists of restricted animals that contain the individual species designated as "dangerous wild animals," that these species are prohibited for short-term performance or exhibition in circuses, carnivals or state fairs, but are allowed for short-term performance for commercial filming, for exhibition in government zoos or for other purposes permitted in the rule. Updates section 4-71-6.5 to reflect the revised list. Deletes Nile tilapia, *Oreochromis niloticus*, from the List of Restricted Animals (Part A) and adds this fish to the List of Restricted Animals.

(Part B) to allow its import for aquaculture production. Deletes House cricket, *Acheta domesticus*, from the List of Restricted Animals (Part A) and adds this insect to the List of Restricted Animals (Part B) to allow its import as feed for certain insectivorous zoo animals.

**7. HAR Title 4 Chapter 71-7 – Bond of Certain Animals**

Justification - Deletes the word "performing" to expand the bond requirement to any animal used in a circus, carnival, or commercial filming, as appropriate.

***Department of the Attorney General***

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

***Department of Budget and Finance***

Department of Budget and Finance reports that no departmental administrative rules have been adopted during the prior year that affect small business.

***Department of Business, Economic Development, and Tourism***

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed based upon any new, amended or repealed statute:

Hawaii Technology Development Corporation

- 1. HAR Title 15 Chapter 32 – HI Small Business Innovation Research and Small Business Technology Transfer Grant Program (SBIR/STTR)**
- 2. HAR Title 15 Chapter 34 – Alternative Energy Research and Development Program (Office of Naval Research)**
- 3. HAR Title 15 Chapter 35 – Research & Development Grant Program (R&D Tax Credit Grant)**
- 4. HAR Title 15 Chapter 33 – Hawaii Manufacturing Development Program (Manufacturing Grant)**

State Energy Office

- 5. HAR Title 15 Chapter 37 -- Solar Water Heater Variance**  
Justification - DBEDT is obligated to follow the final judgment of Circuit Court Judge Jeffrey Crabtree in "Hawaii Solar Energy Association and Sierra Club v. DBEDT," Civil No. 18-1-1398-09 (JPC), ordered on April 29, 2019. According to the final judgment, the public purposes are to increase the use of renewable energy to protect our environment, reduce pollution, make housing more affordable, enhance Hawaii's local economy and reduce the installation of gas-tankless instantaneous water heaters in new Hawaii single-family dwellings.

The amendments include three new requirements for using the gas-tankless instantaneous water heater as justification for a solar water heater variance: 1) The party making the request will be paying the utility bill; 2) The applicant demonstrated that a Solar Water Heater is not as cost effective; and 3) The gas-tankless instantaneous water heater is approved by Underwriters Laboratories, Inc.

UPDATE: As of 2020, the amendments to Chapter 15-37 are in the process of revisions. Therefore, new proposed amendments will be forthcoming to the SBRRB.

## ***Department of Commerce and Consumer Affairs***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

### Professional and Vocational Licensing Division

#### **1. HAR Title 16 Chapter 89 – Nurses**

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 better serve and protect the community. A Small Business Impact Statement dated November 27, 2017 was sent to the SBRRB; on November 28, 2017, the SBRRB raised no objections to the proposed rule amendments, stating that the rules do not fall under its purview.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

### Division of Financial Institutions (DFI)

#### **2. 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.

#### **3. 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.

#### **4. HAR Title 16 Chapter 28 – Escrow Depositories**

Rules 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.

#### **5. 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.

Professional and Vocational Licensing Division

**6. HAR Title 16 Chapter 71 - Certified Public Accountants and Public Accountants**

The Board drafted amendments to the rules, which have been reviewed by LRB, and will be submitted to the SBRRB in 2020 for review.

**7. HAR Title 16 Chapter 72 – Acupuncture Practitioners**

The Board is currently working on a draft.

**8. 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. They 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**

As of 2020, the Board plans to work on a draft.

**9. 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**

DCCA 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. 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.

The Commission is working on a draft to amend the boxing rules by: (1) updating the rules to conform with current practices in the sport as the rules haven't been amended since 1991; (2) removing unnecessary amateur rules as the Commission has delegated the supervision of amateur boxing to a nationally recognized amateur athletic association as allowed under HRS section 440-30; and (3) making amendments throughout the chapter for clarity and style. The targeted date for transmitting the rule package to the Department of the Attorney General for review was fall 2019.

#### **10. HAR Title 16 Chapter 76 – Chiropractors**

Discussions are underway to consider amendments.

#### **11. HAR Title 16 Chapter 77 – Contractors**

A public hearing was held in November 2017 (Work Incidental and Supplemental). Final version to be sent to Governor for signature. The Board is working on a set of draft rules to update the specialty contractor classifications.

#### **12. HAR Title 16 Chapter 78 – Cosmetology**

The Board is currently working on a draft.

#### **13. HAR Title 16 Chapter 79 - Dentists and Dental Hygienists**

The Board is currently working on a draft to clarify the anesthesia/sedation privilege and facility permit renewal.

#### **14. HAR Title 16 Chapter 81 – Elevator Mechanics**

The Board is currently working on a draft.

#### **15. 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 new examination by the International Hearing Society (considered the national examination) has been procured and shall be administered via the University of Hawaii testing centers and therefore the rules must be updated to: (1) incorporate the new examination, specify the examination provider or its successor, and to set forth examination filing and registration procedures in Subchapter S; (2) create a new subchapter 8 to address renewal and restoration requirements; create a new subchapter 6 to set forth and address the scope of practice of a hearing aid dealer and fitter; and (3) make other revisions throughout the chapter to update the rules to address current industry practices in the profession, and for clarity and style.

Anticipated completion of rule packet in fall 2020.

### **16. HAR Title 16 Chapter 84 – Massage Therapy**

The Board is currently working on a draft.

### **17. HAR Title 16 Chapter 85 – Medical Examiners**

Awaiting enactment of 2019 Senate Bill 1406, which deletes the need for rules.

### **18. New - Mixed Martial Arts**

The Program is currently working on a draft.

### **19. 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 old. Full analysis and update should be performed.

#### **Response from Agency**

Because the rules were last amended 13 years ago, SBRRB recommended 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**

As of 2020, the Board is currently working on a draft.

**20. 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. They 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**

As of 2020, the Board is currently working on a draft.

**21. HAR Title 16 Chapter 88 – Naturopaths**

The Board is currently discussing whether to proceed with rule amendments.

**22. HAR Title 16 Chapter 89 – Nurses**

10/17/18- Governor signed. 10/27/18 – adopted.

**23. HAR Title 16 Chapter 92 – Optometrists**

The Board is currently discussing proposed rule amendments.

- 24. HAR Title 16 Chapter 94 – Pest Control Operators**  
The Board received SBRRB approval and Governor's approval to hold a public hearing.
- 25. HAR Title 16 Chapter 95 – Pharmacy and Pharmacists**  
The Board is currently discussing whether to proceed with rule amendments.
- 26. HAR Title 16 Chapter 96 – Pilotage**  
The Board is currently working on a draft.
- 27. HAR Title 16 Chapter 97 – Private Detectives and Guards**  
The Board is currently working on a draft.
- 28. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**  
The Commission is currently working on drafts to repeal chapter 99 and replace it with 3 new chapters 99.1, 99.2, and 99.3.
- 29. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**  
The Board is currently discussing whether to proceed with rule amendments.
- 30. 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. They 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 by December 2009; SBRRB is in concurrence and will follow-up with the Agency.
- Final Commentary**  
As of 2020, the Board is currently working on a draft.
- 31. 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. They 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.

The Agency revealed that the rules are actively being worked on with the industry and that revisions are expected by June 2009; 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 industry concerns have been resolved. The amendment is expected to be finalized, but no date has been given.

As of 2020, the Board is currently working on a draft.

**32. HAR Title 16 Chapter 110 – Physical Therapy**

The Physical Therapy Board plans to work on a draft.

**33. HAR Title 16 Chapter 114 – Real Estate Appraisers**

The Board is currently working on a draft.

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

The Board is working on a draft to propose licensure for Fire Protection and Environmental engineers, and proposing CE requirements for architects.

**35. HAR Title 16 Chapter 116 – Travel Agencies**

The Program is working on a draft to propose housekeeping amendments to address branch offices and separate client trust accounts.

**36. HAR Title 16 Chapter 119 – Condominium**

The Commission is currently working on a draft, new chapter of rules.

Cable Television Division (CATV)**37. HAR Title 16 Chapter 131 – Designation and Selection of Access Organizations**

CATV continuing work on draft language to update chapter and amend HAR§ 16-131-70 to conform to HRS§ 440G-8.3, which allows the DCCA Director to designate public, educational, and governmental access organizations exempt from HRS Chapter 103D.

Business Registration Division (BREG)

**38. HAR Title 16 Chapter 39 - Securities**

BREG is currently working on a draft to address the use of senior designations, and changes to the federal securities laws.

***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). Because 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.

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

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

Moved from B&F to DCCA to change the numbers, required the simultaneous repeal of the existing chapters at B&F and adoption of new chapters in the DCCA. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

**2. HAR Title 6 Chapter 603 – 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. They 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 currently. 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**

As of 2020, moved from B&F Title 6 to DCCA Title 16.

To change the numbers required the simultaneous repeal of the existing chapters in the B&F title and adoption of new chapters in the DCCA title. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

### **3. 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. 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" does 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.

As of 2020, moved from B&F Title 6 to DCCA Title 16.

To change the numbers required the simultaneous repeal of the existing chapters in the B&F title and adoption of new chapters in the DCCA title. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

**4. HAR Title 16 Chapter 608 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**

Moved from B&F to DCCA to change the numbers, required the simultaneous repeal of the existing chapters at B&F and adoption of new chapters in the DCCA. This was necessary since Act 108, Session Laws of Hawaii 2014, moved the PUC from B&F to DCCA.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

**5. HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**6. 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. 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. Thus, 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**

As of 2020, to be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

- 7. HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 8. HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 9. HAR Title 6 Chapter 76 – Shared Tenant Service**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 10. HAR Title 6 Chapter 77 – Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards**  
To be repealed; superseded by statute (and Federal letter taking over). See Session Laws of Hawaii 2009, Act 25.
- 11. HAR Title 6 Chapter 79 – Aggregator and Operator Service**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 12. HAR Title 6 Chapter 80 – Competition in Telecommunications Services**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 13. HAR Title 6 Chapter 81 – Universal Service Fund**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.
- 14. HAR Title 6 Chapter 82 – Pay Telephone Service**  
To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**15. HAR Title 6 Chapter 83 - Hawaii One Call Center Subsurface Installation Damage Prevention Program**

To be repealed; contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014.

**16. HAR Title 16 Chapter 602 - Rules and Regulations to be Observed by Motor Carriers**

From Title 6-62, with changes. PUC is working on a draft which, among other things, is expected to: simplify insurance form requirements, update insurance coverage amounts, allow flexibility in vehicle marking requirements, clarify seating capacity definition, and make motor carrier fee language consistent with HRS 271-36.

**17. HAR Title 16 Chapter 610 – Water Service**

This will be a new chapter. Rules are under development.

**18. HAR Title 16 Chapter 630 – Wastewater Service**

This will be a new chapter. Rules are under development.

**19. HAR Title 16 Chapter 660 – Standard for Electric and Gas Utility Service**

From Title 6-60. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**20. HAR Title 16 Chapter 673 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**

From Title 6-73. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**21. HAR Title 16 Chapter 674 – Standards for Small Power Production and Co-generation\* (\*Pursuant to HRS§ 91-3(f), the Commission proposes to repeal HAR §6-74-7.)**

From Title 6-74. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**22. HAR Title 16 Chapter 676 – Shared Tenant Service**

From Title 6-76. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**23. HAR Title 16 Chapter 679 – Aggregator and Operator Service**

From Title 6-79. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**24. HAR 16 Chapter 680 – Competition in Telecommunications Services**

From Title 6-80. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**25. HAR 16 Chapter 681 – Universal Service Fund**

From Title 6-81. Rules will be reviewed for conformity with current codes, standards, and other requirements.



**26. HAR 16 Chapter 682 – Pay Telephone Service**

From Title 6-82. Rules will be reviewed for conformity with current codes, standards, and other requirements.

**27. HAR 16 Chapter 683 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**

From Title 6-83. Rules will be reviewed for conformity with current codes, standards, and other requirements.

***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 2017. In addition, a comprehensive survey of bills was introduced in 2018, sent to the Governor, and all Acts signed into law revealed none that would affect small business.

***Department of Hawaiian Home Lands (DHHL)***

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 the prior year.

***Department of Health (DOH)***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

**1. HAR Title 11 Chapter 11 – Sanitation**

Justification – No effect on small businesses; items included in this chapter are found in other Rules.

**2. HAR Title 11 Chapter 55 – Water Pollution Control**

Justification – The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are those businesses within the State of Hawaii that require coverage under an NPDES permit and are subject to HAR Chapter 11-55 and any revisions. This may include large, medium, and small businesses.

**3. HAR Title 11 Chapter 106 – Background Checks**

Justification – The proposed rule may positively affect small businesses which provide home-based residential care or care through agencies licensed or certified by the department by verifying compliance with minimum standards for the provision of care.

**4. HAR Title 11 Chapter 118 – Disinterment Permits**

Justification – No ascertainable small business impact as determined by the SBRRB.

**5. HAR Title 11 Chapter 25 – Certification of Public Water System Operators**

Justification – The proposed changes will not affect the agency's nor the operators' responsibilities, functions or operations, as they are administrative in nature with no change to federally mandated certification requirements. The proposed certification fee

increases will impact operators' or water systems' finances depending on the number of licenses held.

A Small Business Impact Statement was submitted on October 30, 2013, to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M. It was reviewed by the members who unanimously recommended that the proposed rules proceed to public hearing.

**6. HAR Title 11 Chapter 157 – Immunization and Examination**

Justification – DOH met with the SBRRB on July 19, 2017 regarding proposed amendments to this chapter. Upon review, board members unanimously agreed to support the proposal to proceed with public hearing. SBRRB has subsequently requested a "Post Hearing Statement," which was presented to SBRRB at the March 21, 2019 meeting.

**7. HAR Title 11 Chapter 160 – Medical Use of Cannabis**

Justification – The fiscal impacts of the rule amendments will be negligible. There may be an increase in the collection of registration fees from out-of-state patients. These fees are deposited into the Medical Cannabis Registry and Regulation Special Fund. DOH anticipates that the current staff positions and funding will be enough to handle the increase in application processing but will monitor the volume of additional work created by the out-of-state program.

The proposed rule amendments will allow visitors to continue their medical use of cannabis on their trips to Hawaii. Qualifying out-of-state patients and their caregivers will be permitted to purchase limited amounts of medical cannabis from Hawaii dispensaries. However, the overall economic impact to the State is unknown and expected to be limited.

**8. HAR Title 11 Chapter 178 – Clean and Sober Homes Registry**

Justification – No effect on small business.

**9. HAR Title 11 Chapter 186 – Certificate of Need**

Justification – No effect on small business.

**10. HAR Title 11 Chapter 200 – Environmental Impact Statement**

Justification – These rules affect small business. All concerns were brought to the SBRRB in DOH's report and the SBRRB approved the rules in its January 2019 meeting.

**11. HAR Title 11 Chapter 260.1 to 279.1 -- Solid Hazardous Waste**

Justification – No direct fiscal impact.

**12. HAR Title 11 Chapter 800 -- Home and Community Based Case Management Agencies and Community Care Foster Family Homes**

Justification – This chapter replaced HAR 17-1454 from the DHS, and duties were transferred to DOH.

**13. HAR Title 11 Chapter 700 – Home Care Agencies**

Justification – The rule may positively affect small businesses, which are home care agencies, by providing to the public a means of verifying compliance with minimum

standards for the provision of home care. The public may be more accepting of home care agencies and choose to become home care agency clients.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute.

**14. HAR Title 11 Chapter 100.2 & 100.1 – Adult Residential Care Homes**

Justification – These rules establish the minimum standards and requirements for the licensure of adult residential care homes (ARCH) and expanded ARCHs in order to protect the health, safety, welfare and civil rights of the residents residing in the ARCH and expanded ARCH.

No negative fiscal impacts are anticipated; there may be some fiscal impact to licensed care homes who currently do not have liability insurance and will need to obtain such insurance.

**15. HAR Title 11 Chapters 5 – Environmentally-related Illness and Injury Reporting**

Justification – Amendments update requirements for the reporting of designated heavy metal and pesticide lab results to include all results. This will allow the DOH to assess environmentally related illness and injury trends and patterns statewide. The amendments improve the quality of reported data and update the acceptable methods of reporting.

The proposed rule changes will save laboratories and health care professionals time by allowing electronic reporting. DOH already has Electronic laboratory reporting configured so it will add no additional costs to switch to electronic transmission. Point of Care users may need to spend approximately one-half hour every two weeks filling out a validated electronic spreadsheet or mailing their lab results to the department.

**16. HAR Title 11 Chapter 20 – Public Water Systems**

Justification – Amendments to this chapter were made to conform to federal regulations codified in the following subparts of Title 40, Part 141 Code of Federal Regulations, revised as of July 1, 2015. The consequence of not changing these rules is a loss of primary enforcement authority, or "primacy," for the State drinking water program. Right now, the State takes the lead in enforcing both federal and state drinking water requirements.

The implementation of the rule amendments will not create undesirable long- or short-term economic impacts to the public. On the contrary, the amendments will provide additional protection for affected consumers of the State's drinking water, thus further enhancing Hawaii's image as a pristine, world class tourist destination.

The new rules consist almost exclusively of federally mandated regulations which afford the State no discretion to consider less restrictive alternatives. The two State-specific changes are meant to correct: 1) a procedural error; and 2) an incorrect Federal reference.

**17. HAR Title 11 Chapters 148.1 - Certification of Adult Foster Homes**

Justification – Amendments provide clarity on certification requirements, includes requirements established by the legislature such as liability insurance coverage and requirements for unannounced inspections. It also includes language required by the

U.S. Centers for Medicare & Medicaid Services (CMS) on home and community based residential settings.

The new rules continue to establish minimum standards and requirements for the certification of AFH to protect the health, safety, welfare and civil rights of the residents residing in the AFH.

No negative fiscal impacts to DOH are anticipated. There may be some fiscal impacts to the adult foster home caregivers who do not have liability and automobile insurance to the covered amounts required.

**18. HAR Title 11 Chapters 218 - Communication Access Services for Persons who are Deaf, Hard of Hearing, and Deaf, Blind**

Justification – The amendments make improvements to the Hawaii Quality Assurance System (HQAS) test process; separate the issuance of a state credential from the issuance of a certification via the HQAS test; and implement changes to strengthen and emphasize the purpose of the rules, which is to establish guidelines to ensure the rights of consumers to effective communication.

The amendments will not add a significant economic burden on sign language interpreters who are independent contractors. Sign language interpreters charge a two-hour minimum fee ranging from \$27.00 to \$75.00 an hour, not including travel charges such as mileage and parking.

Enrollment in the continuing education program to maintain the Hawaii State Sign Language Interpreter Credential for two years is automatic upon the issuance of the credential, which is a \$50.00 fee. This will allow independent contractors with a Hawaii State Sign Language Interpreter Credential to continue operations of their own businesses.

**19. HAR Title 11 Chapter 280.1 – Underground Storage Tanks**

Justification – The primary purpose of the proposed changes is to further protect Hawaii's environment and natural resources, especially Hawaii's groundwater by requiring all large capacity underground storage tank (UST) systems to be located below, or makai of, the department's Underground Injection Control line.

Additional changes are proposed to make non-substantive corrections to improve the clarity of existing requirements; make edits to ensure that the state regulations are fully consistent with the federal UST regulations; clarify notification and reporting requirements; and integrate the existing statutory prohibition regarding USTs near the shoreline into the regulations.

The changes make the state regulations the same as the federal requirements for under-dispenser containments (UDC) in 40 CFR §280.20(f)(2), which require either visual access or monitoring with a sensor. It is difficult to predict the way in which this rulemaking effort will influence the United States Navy, as the operator of the tanks most likely to be affected by the proposed rules, with respect to their long-term strategic plans for the operation of military installations in Hawaii.

DOH is not required to prepare a Small Business Impact Statement for the proposed rule changes as they will not affect small businesses, as this is defined in A§201 M-1, HRS.

## ***Department of Human Services***

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

1. **HAR Title 17 Chapter 798.2** – Child Care Services
2. **HAR Title 17 Chapter 891.1** – Registration of Family Child Care Homes
3. **HAR Title 17 Chapter 895** – Licensing of Infant and Toddler Child Care Centers
4. **HAR Title 17 Chapter 896** – Licensing of Before and After School Child Care Facilities

### Hawai'i Public Housing Authority (HPHA)

HPHA does not have any administrative rules that affect small business.

## ***Department of Land and Natural Resources***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 13 Chapter 74 – Commercial Marine License and Dealer Report**  
Justification – Division of Aquatic Resources (DAR) amended its Commercial Marine License (CML) fee from \$50 to \$100. The public purpose for raising the fee was to ensure that DAR had enough funds to operate its Commercial Fisheries Program. The program was short on revenues because of a lawsuit and settlement that required DAR to reduce the nonresident CML fee from \$200 to \$50 to match the resident fee.
2. **HAR Title 13 Chapter 230-256 – Division of Boating & Ocean Recreation (DOBOR)**  
Justification – DOBOR amendments established a weekly reporting deadline for commercial marine dealers. The public purpose was to ensure timely catch reporting, particularly for the bottom fish fishery, which is jointly managed by State and Federal agencies and is currently under an annual catch limit (ACL).

It is critical to keep accurate and timely catch information to monitor the ACL to have a reliable prediction of when the limit is approaching and to take the steps to close the fishery before the ACL is reached. Timely dealer information verifies the reported catch information to ensure data accuracy.

## ***Department of Labor and Industrial Relations***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 12 Chapter 22 - Wage determinations and the administration and enforcement of Chapter 104**  
Justification - The amendment and compilation of Chapter 22 (effective 7/23/18) brought the rules in-line with the numerous statutory changes since the last update (4/1/96),

provided new rules for new statutory provisions, and modified the rules to improve the administration and enforcement of the statute.

- 2. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 50 General Provisions**  
Justification - Clarified one definition "Appeals Board."
- 3. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 52.1 Recording and Reporting Occupational Injuries and Illnesses**  
Justification - Updated the incorporation of the 2016 published edition of Title 29, Part 1904 of the Code of Federal Regulations (CFR) to the 2017 edition of Title 29, Part 1904 of the CFR.
- 4. HAR Title 12 Subtitle 8 Part 1 – General Legal and Administrative Provisions for Occupational Safety and Health, Chapter 56 Program Fees and Library Policies**  
Justification – Increased fees for federal conformance using the Bureau of Labor Statistics Consumer Price Index calculator.
- 5. HAR Title 12 Subtitle 8 Part 2 – General Industry Standard, Chapter 60 General Safety and Health**  
Justification – Lowers the exception number of employees an employer has to have for a required written Safety and Health Program from twenty-five (25) to ten (10), updates the incorporation of the 2012 published edition of Title 29, Part 191 O of the Code of Federal Regulations (CFR) to the 2017 edition of Title 29, Part 191 O of the CFR, and updates air contaminant limits for beryllium and beryllium compounds and updates CFR references for talc and tremolite.
- 6. HAR Title 12 Subtitle 8 Part 3 –Construction standards, Chapter 110 General Safety and Health Requirements**  
Justification – Lowers the exception number of employees an employer must have for a required written Safety and Health Program from twenty-five (25) to ten (10), adds an exception from having written records of the daily safety and health inspections is added for projects employing three (3) or less persons, and updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1926 of the CFR to the 2017 edition of Title 29, Part 1926 of the CFR.
- 7. HAR Title 12 Subtitle 8 Part 5 – Occupational Safety and Health Standards for Shipyard Employment, Chapter 170 Shipyards**  
Justification – Updates HIOSH's incorporation of the 2012 published edition of Title 29, Part 1915 of the CFR to the 2017 edition of Title 29, Part 1915 of the CFR.

8. **HAR Title 12 Subtitle 8 Part 6 – Marine Terminals, Chapter 180 Marine Terminals**  
Justification – Updates HIOSH's incorporation of the 2012 published edition of Title 29, Part 1917 of the CFR to the 2017 edition of Title 29, Part 1917 of the CFR.
9. **HAR Title 12 Subtitle 8 Part 7 – Safety and Health Regulations for Longshoring, Chapter 190, Longshoring**  
Justification – Updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1918 of the CFR to the 2017 edition of Title 29, Part 1918 of the CFR.
10. **HAR Title 12 Subtitle 8 Part 8 – Other Safety and Health Standards, Chapter 208 Occupational Safety and Health Standards for Agriculture**  
Justification – Updated HIOSH's incorporation of the 2012 published edition of Title 29, Part 1928 of the CFR to the 2017 edition of Title 29, Part 1928 of the CFR.

### ***Department of Public Safety (DPS)***

DPS does not have any information to provide as requested by the SBRRB. DPS follows statutes and rules administered by the DAGS and the State Procurement Office in dealing with small businesses.

### ***Department of Taxation (DoTax)***

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

1. **HAR Title 18 Chapter 231 - Administration of Taxes**  
Justification – Under prior rules, DoTax could only revoke an abandoned license by either mailing a notice of intent to revoke the license to the taxpayer or by publishing the intent to revoke the license in the newspaper for two consecutive weeks. DoTax must process hundreds of thousands of abandoned licenses and mailing notices or publishing notices in the newspaper is expensive and time consuming. These rules allow DoTax to revoke abandoned business tax licenses in a timely and cost-effective manner.

DoTax adopted administrative rules relating to revocation of tax licenses, effective March 17, 2018. The adopted rules amend section 18-231-3-14.17, HAR by allowing DoTax to revoke certain business tax licenses for abandonment by publishing notice of intent to revoke the licenses on DoTax's website for a period of 45 days prior to the revocation.

2. **HAR Title 18 Chapter 231 - Administration of Taxes**  
Justification - The adopted rule allows DoTax to create a registry of taxpayer representatives, which should benefit the public.

DoTax adopted a new administrative rule allowing it to require any person who represents a taxpayer in front of DoTax to register with DoTax, effective March 17, 2018; the new rule is section 18-231-3-14.26, HAR.

**3. HAR Title 18 Chapter 231 - Administration of Taxes**

Justification - Under prior rules, EFT Program participants were required to submit payments due on their periodic tax returns electronically, but any payments made as part of an annual reconciliation return were not required to be made electronically. The new rules require that payments made as part of annual reconciliation return also be made electronically.

DoTax adopted administrative rules related to electronic funds transfer (EFT Program), which became effective March 17, 2018. The rules amend section 18-231-9.9-03, HAR, to require participants in the EFT program to make all payments for applicable tax type(s), including those based on an annual return electronically.

**4. HAR Title 18 Chapter 235 - Income Tax Law**

Justification - The rules prevent taxpayers with substantially large gross business income from taking large business deductions to reduce net income below \$30,000 and receive Income and General Excise Tax benefits designed for persons and businesses incapable of generating substantial income for themselves due to disability.

DoTax adopted administrative rules related to persons totally disabled and substantial gainful business or occupation, which became effective April 20, 2019. The rules amend section 18-235-1.14(d), HAR, by amending the definition of the term "substantial gainful business or occupation."

Under prior rules, there was a presumption that any individual whose earned income is greater than \$30,000 in a taxable year is engaged in a substantial gainful business or occupation, and thus is not totally and permanently disabled. Earned income is defined to include net earnings from self-employment.

Under the new rules, the definition of earned income includes gross earnings from self-employment rather than net, if those gross earnings are \$60,000 or greater. The rules also specify that all entities shall be disregarded for purposes of calculating such gross or net earnings.

**5. HAR Title 18 Chapter 235 - Income Tax Law**

Justification - The rules treat all taxpayers equally regarding automatic extensions of time to file and clarify how to calculate properly estimated tax liability.

DoTax adopted administrative rules related to automatic extensions of time to file an income tax return, which became effective April 20, 2019. The rules amend section 18-235-98 HAR to allow corporations, LLCs, partnerships, and other non-individual taxpayers an automatic six-month extension to file their income tax returns without being required to file an application first.

Prior to these rules, individual taxpayers were granted the automatic six-month extension, but non-individuals were required to apply to be granted to the six-month extension. Additionally, the rules clarify how to calculate properly estimated tax liability, which must be paid on the due date prescribed for the filing of the return.

**6. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - The rules provide clarity for how to allocate gross income and gross proceeds to each county and eliminate unnecessary additional nexus analysis.



DoTax adopted administrative rules related to the county surcharge on general excise tax (GET), which became effective March 17, 2018. The adopted rules amend section 18-237-8.6-01 through 18-237-8.6-10, HAR, to provide the method of allocating gross income and gross proceeds to each county. The proposed rules simplify the allocation method by eliminating the "nexus" analysis.

**7. HAR Title 18 Chapter 237 - General Excise Law**

Justification - The rules provide clarity for how to determine whether gross income derived from service or contracting is exempt from the GET.

DoTax adopted administrative rules related to the exemption for gross income received from services exported out of state, which became effective March 17, 2018. The adopted rules add new sections 18-237-29.53-01 through 18-237-29.53-13, HAR, which clarify how to determine whether gross income derived from services or contracting is exempt from the GET as exported services or contracting. The rules include numerous examples for additional clarity.

**8. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - The rules provide clarity for how to determine where income from intangible property is sourced for GET purposes.

DoTax adopted administrative rules related to determining where intangible property is used, which became effective April 20, 2019. The adopted rules add a new section, 8-237-29.57-01, which defines where intangible property is used for purposes of the GET exemption for gross income received from intangible property used outside the State under section 237-29.57, HRS.

Specifically, the proposed rules define where intangible property is used based on whether the customer is a business, individual, military, or government.

**9. HAR Title 18 Chapter 237 - General Excise Tax Law**

Justification - In certain audit situations where a tax benefit is dependent on the actions of more than one taxpayer, such as a GET deduction for subcontracting, DoTax must examine more than one taxpayer's return to properly review and assess the appropriate tax. This rule codifies DoTax's position that such examination is allowed under the law and makes that position clear to the public.

DoTax adopted administrative rules related to disclosure of return information to persons with a material interest in a tax return, which became effective February 3, 2019. The adopted rules add a new section, 18-237-34-13 HAR, to define a "person with a material interest" in a return or return information to include persons whose tax liability is based on gross income, deductions, exemptions or tax liability reported by the taxpayer.

**10. HAR Title 18 Chapter 237D -Transient Accommodations Tax**

Justification - The rules provide clarity and public notice for how the Department will enforce Act 204. In addition, Act 204 gives DoTax the authority to issue citations and fines to operators of transient accommodations and operators of websites or publications who violate these requirements. As an appeal of such a citation would be considered a "contested case" under chapter 91, HRS, DoTax could not begin enforcing this law and

issuing citations until procedures for such an appeal were published by rule. The proposed rules provide that necessary appeal procedure.

DoTax adopted administrative rules related to Act 204, SLH 2015, which became effective February 3, 2019. The adopted rules make numerous amendments, additions and deletions to sections 18-237D-4-01 through 18-23 7D-4-35, HAR.

The rules implement Act 204, which requires that operators of transient accommodations designate an on island local contact and display that contact's name, phone number and email address inside the unit and provide that information either in online advertisements or to the guest upon check-in. Act 204 also requires that a unit's Transient Accommodations Tax license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link. These rules provide the procedures by which DoTax enforces the requirements of Act 204.

### ***Department of Transportation (DOT)***

Under Section 201M-7(a), the following outlines a list of 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 - A new subsection will be added to the rules that addresses the inspection of special interest vehicles. This change will make inspecting these vehicles easier for the inspectors because the rules will provide better guidance and more details pertaining to items to inspect on these vehicles. This change will have negligible impact on the stations that inspect special interest vehicles.

#### Airports Division

**2. HAR Title 19 Chapter 20.1 – Commercial Services at Public Airports**

Justification - This rule change clarifies that services provided or facilitated by digital network or a TNC may be permitted under Chapter 19-20.1 and will clarify the terms and conditions of the permits. In addition, the rule change will also address the expressed desires of the companies and air passengers to have these services available at the public airports.

The economic impact to the State is characterized by the revenue earned by the Airports Division, the increased opportunity for new companies and permittees to operate at the public airports, and most important, the increase in options relative to ground transportation services available to air passengers (both residents and visitors), who use the public airports. These public airports cannot be part of an efficient global air transportation organization if ground transportation options are limited. With this rule change, the Airports Division will be able to include TNC operations in the ground transportation choices available to arriving air passengers and the traveling public, meeting their expectations and demands.

## ***University of Hawaii (UH)***

UH confirms that it currently has no administrative rules affecting small business, and that it has not amended or repealed any rules in the past year based upon any new, amended, or repealed statute impacting small business.

However, UH is currently engaged in rulemaking to adopt a proposed new Chapter 26 of HAR Title 20, regarding public and commercial access to University-managed lands on Mauna Kea. When adopted, these rules will impact small business, as they provide in part for the regulation of commercial tour operators.

The proposed rules were discussed with the SBRRB at its meeting of June 20, 2018. At that time, SBRRB approved going forward with public hearings on the proposed rules. UH has subsequently conducted eight public hearings on the rules, as well as two consultation meetings with the current Mauna Kea commercial tour operators. A detailed report on these activities was provided to the Board; adoption occurred in the summer of 2019.

## Follow-up on Prior SBRRB Administrative Rule Reviews

The following fifteen (15) Hawaii Administrative Rules were previously reviewed by the SBRRB. Current updates are noted.

### *Department of Agriculture*

#### Division of Measurement Standards

##### **1. HAR Title 4 Chapter 93 – Packaging and Labeling**

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 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 revealed that the rules are in process of being reviewed and will be updated accordingly; no date for completion was determined.

As of the printing of this report, there were no changes or updates to the rules.

#### Division of Plant Industry

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

Justification - This rule provides for export plant and plant products inspectional and disinfestation 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.

As of the printing of this report, there were no changes or updates to the rules.

#### Division of Animal Industry

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

Justification - The rules refer to the regulation of cattle, sheep and goats. Proposed will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. 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.

2006 Recommendation - The rules are 25 years old; the rules are in process of being updated.

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

As of the printing of this report, there were no changes or updates to the rules.

#### **4. HAR Title 4 Chapter 17 – Swine**

Justification - This rule authorizes DoAg 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 the rules are in process of being amended.

2006 Recommendation - The rules are 25 years old; the rules are in 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.

As of 2020, there were no changes or updates to the rules.

#### **5. HAR Title 4 Chapter 23 – Horses**

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. As

most 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.

As of 2020, there were no changes or updates to the rules.

## ***Department of Commerce and Consumer Affairs***

### **6. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts**

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 recommended that a full analysis and update be performed. DCCA 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. DCCA'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 indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

As of 2020, there were no changes or updates to the rules.

### **7. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks**

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. DCCA has reviewed the rules and determined that no substantive amendments are necessary at this time. DCCA 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 DCCA. Although DCCA determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, it 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.

As of 2020, there were no changes or updates to the rules.

## Department of Health

### Medical Division

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

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. Reanalysis and update of rules should be performed.

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 2020, DOH's website continues to show the rules are "pending amendment & compilation."

**9. Chapter 11-95 – Freestanding Surgical Outpatient Facilities**

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.

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.

Final Commentary - As of 2020, DOH's website continues show the rules are "pending repeal and replacement by Chapter 92."

**10. Chapter 11-96 – Freestanding Adult Day Health Centers**

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 - As of 2020, there were no changes or updates to the rules.

## **11. Chapter 11-97 – Home Health Agencies**

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 - DOH 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 DOH 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 DOH outlining this request with a copy sent to the Governor.

Final Commentary - As of 2020, there were no changes or updates to the rules.

## **12. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded**

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 DOH 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 - As of 2020, there were no changes or updates to the rules.

## **Environmental Division**

### Noise, Radiation and Indoor Air Quality Branch

#### **13. Chapter 11-39 – Air Conditioning & Ventilation System**

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.

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 2020, DOH's website continues to show rules are "pending repeal/replacement by Chapter 48."

#### **14. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules**

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 - As of 2020, there were no changes or updates to the rules.

#### **15. Chapter 11-45 – “Radiation Control”**

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 2020, DOH’s website continues to show the rules are “pending amendment & compilation.”

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

## Hawaii County

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for 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, aid 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.

### Environmental Management

#### 3. Hawaii County Code Relating to Refuse, Chapter 20

Justification – Public health and safety; protect, preserve and enhance the environment.

#### Hawaii County Code Relating to Sewers, Chapter 21

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

### Department of Water Supply (DWS)

#### 4. Charter 8-2 (b), HRS 54 Water Systems Rules and Regulations of the DWS

Justification – Management, control, and operation of the waterworks of the County for the purpose of supplying water to the public in the County.

### Finance Department

#### 5. HRS 103D, Rule 4 – Purpose of Materials, Supplies, Equipment and Services

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

#### 6. HRS 103D, Rule 5 – Value Engineering Incentive

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

7. **HRS 286, Part VI, Rule 11 – Motor Vehicle Driver Licensing**  
Justification – Required for compliance with HRS 286. Provide licensing procedures.
8. **HRS 287, Rule 12 – Motor Vehicle Responsibility Act**  
Justification – Required for compliance with HRS 287. Insure drivers have financial responsibility.
9. **HRS 286-51, Rule 13 – Motor Vehicle Registrations**  
Justification – Required for compliance with HRS 286-51. Provide vehicle registration schedule.
10. **HRS 286-53 and 249, Rule 14 – License Plates**  
Justification – Required for compliance with HRS 286-53 and 249. Provide issuance procedures.
11. **HRS 249-9.1 and 249-9.2, Rule 15 & 16 – Special License Plates**  
Justification – Required for compliance with HRS 249. Provide issuance procedures.
12. **Hawaii County Code, Chapter 18, Rule 17 - Taxicabs**  
Justification – Required for compliance with Hawaii County Code 18. Public safety.
13. **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.
14. **HRS 289-7, Rule 19 – Licenses for Businesses Engaged in Purchasing or Selling Used Vehicle Parts, Vehicle Salvage, etc.**  
Justification – Provide requirements and procedures.
15. **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.
16. **Hawaii County Code 16-57, Rule 34 – Real Property Tax Non-Dedicated Agricultural Use**  
Justification – Required for compliance with HCC19-57. Provide requirements and procedures.
17. **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.
18. **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

### 19. 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.

### 20. Hawaii County Code – Chapter 26 – Article 2, Fireworks Code

Justification – Government regulation of the sale, distribution, storage, licensure, and prohibitions attributed to fireworks.

### 21. 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.

### 22. 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

### 23. Hawaii County Code Relating to Refuse, Chapter 20

Justification – Chapter 20, Article 6 – Ban of polystyrene containers used food service providers, 20-62

### 24. Hawaii County Code Relating to Sewers, Chapter 21

Justification – Chapter 21, Article 4 – Anticipate further amendment to address Recycled Water rates; Chapter 21, Article 1 – Add definition of “recycled water,” Section 21-2; Chapter 21, Article 6 – Add new article for “Recycled Water System and Connections.”

## City and County of Honolulu

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules’ continued implementation:

## Honolulu Fire Department

### 1. HAR Chapter 12-44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems

Justification - Adopted on March 13, 2018

## Budget and Fiscal Services Administration (BFS), Real Property Assessment Division

### 2. Agricultural Land Dedication Assessment – Title 4; Subtitle 5; Chapter 11; Sections 1-13

Justification –These rules are intended to implement the provisions of Section 8-7.3, Revised Ordinances of Honolulu, relating to the dedication of land for ranching or other agricultural uses. Agreement of the rules.

- 3. Tax Moratorium on Building – Rehabilitation Projects – Title 5; Subtitle 5; Chapter 12; Sections 1-7**  
Justification – These rules are intended to clarify and implement Section 8-7.1(g), of the Revised Ordinances of Honolulu, which provides that the assessed valuation of certain building shall not be increased if the increase is due to improvements on buildings undertaken or made by the owner-occupant pursuant to the requirements of any urban redevelopment, rehabilitation or conversation project under the provisions of Part II of Chapter 53, Hawaii Revised Statutes; the property tax moratorium being for a period of seven (7) years as prescribed in section 4-12-6 of these regulations.
- 4. Wasteland Development Classification Property Assessment – Title 4; Subtitle 5; Chapter 13; Sections 1-9**  
Justification – These rules are intended to clarify and implement the provisions of Sections 8-8.1 to 8-8.8, Revised Ordinances of Honolulu, relating to the development of land classified as wasteland development property.
- 5. Urban District Open Space Land Dedication – Title; Subtitle 5; Chapter 14; Sections 1-9**  
Justification – These rules are intended to clarify and implement the provisions of Section 8-10.13, Revised Ordinances of Honolulu, which exempts from real property taxation, such portions of land in urban districts which are dedicated for landscaping, open spaces, public recreation or other similar uses and are approved by the director for such use or uses.
- 6. Low and Moderate – Income Rental Housing Exemptions – Title 4; Subtitle 5; Chapter 15; Sections 1-9**  
Justification – These rules are intended to clarify and implement the provisions of Sections 8-10.20 and 8-10.21, Revised Ordinances of Honolulu, which exempt low and moderate-income rental housing projects developed, owned, and operated by a nonprofit or limited distribution mortgagor or by a qualified entity from taxation.
- 7. Historic Residential Property Dedications – Title 4; Subtitle 5; Chapter 16; Sections 1-11**  
Justification – These rules are intended to implement the exemption provisions of Section 8-10.22, Revised Ordinances of Honolulu 1990, as amended, (hereinafter referred to as “ROH”) relating to the dedication of historic residential properties. [Eff. SEP 25 2011] (Auth: ROH § 8-10.22, RCH § 4-105 )(Imp. ROH§ 8-1 0.22)
- 8. Assignment of Real Property Tax Appeal Cases – Title 4; Subtitle 5; Chapter 17; Sections 1-4**  
Justification – These rules are promulgated in compliance with Subsection 8-12.7(b), Revised Ordinances of Honolulu, and are intended to govern the assignment of real property tax appeal cases to the Boards of Review. In assigning appeal cases, the primary goa is to minimize delays in the appeal process and to reduce the backlog of appeal cases.
- 9. Assessment Notice and Assessment List – Title 4; Subtitle 5; Chapter 18; Sections 1-6**  
Justification – These rules are intended to establish the procedures relating to the preparation of the Notice of Assessment and the Assessment List under Section 8-2.1 and Section 8-2.2, respectively, Revised Ordinances of Honolulu 1978 (1983 Edition).



**10. Valuation of OFF-BASE Military Housing Projects – Subtitle 5; Chapter 21, Sections 1-7**

Justification –The purpose of this chapter is to implement and clarify the provisions of Section 8-10.18 Lessees of Exempt Real Property, Revised Ordinances of Honolulu 1990, as amended (“ROH”), pertaining to the assessment of exempt real property by establishing the methodology that shall be used to determine the fair market value of military housing projects situated on federal property lease to a private person that are located outside of a military base and are subject to the Nation Defense Authorization Act for Fiscal Year 2006, P.L. 104-106, Title XXVIII, Subtitle Military Housing Privatization Initiative (codified at 10 U.S.C Sections 2871-2885, as amended).

**11. Classification of Condominiums – Subtitle 5; Chapter 130; Sections 1-4**

Justification – The purpose of this chapter is to implement and clarify the provisions of Section 8-7.1(c)(3)(A), Revised Ordinances of Honolulu (“ROH”), relating to the classification of condominium units upon consideration of the unit’s actual use and the effect on classification of a condominium unit which is used by occupants in a manner similar to a short-term use by transient hotel guests, or which qualifies for a home exemption. [Eff SEP 2 9 2007] {Auth: ROH §8-7.1, RCH 4-105) (Imp. ROH §8-7.1)

**Department of Parks and Recreation (DPR)**

**12. Amended Rules and Regulations Governing Motorized and Glider Model Airplane Activities on City Park Properties**

Justification – The rules govern model airplane flying at designated park areas under the jurisdiction of the DPR.

**13. Rules and Regulations Governing the Use of the Koko Head District Park Bicycle Motor Cross (BMX) Track**

Justification – The rules govern the use of BMX Track.

**14. Rules and Regulations Governing Model Boat Activities On, In and Under any Situs Owned or Controlled by the City and County of Honolulu**

Justification – The rules govern model boat activities on, in and under any situs owned or controlled by the City and County of Honolulu.

**15. Camping**

Justification – The rules make public parks readily accessible to residents and the public at large; prevent camping in public parks that are not designated as campground; prevent the storage of personal property in public parks which interferes with the rights of others to use the public parks; provide equitable opportunities to use campgrounds through a reservation system.

**16. Rules and Regulations Governing the Construction and Operation of Canoe Shelters on City Park Properties**

Justification – The rules govern the construction and operation of canoe shelters on City park properties.

**17. Carnival Rules and Regulations**

Justification – The rules govern carnivals and any other recreational activities having amusement rides on a temporary or permanent basis held in public parks under the jurisdiction, management, and operation of the department of parks and recreation.

**18. Rules, Regulations, Charges and Fees for Use of Recreational Facilities for Special Events**

Justification – The rules establish fees and charges for the use of department recreational facilities for special events and to establish rules and regulations that govern issuance of special event permits.

**19. Recreation Child Care Programs**

Justification – The rules establish guidelines and procedures for recreation child care programs conducted by or on behalf of DPR to ensure that recreation child care programs are designed and conducted to promote the physical, emotional, and social well-being and development of children.

**20. Rules and Regulations on Procedures for the Closure of Designated City Parks at Night Due to Illegal Activities**

Justification – The objectives of the rules are to establish uniform procedures for closing designated problem City parks during the night hours; to prevent costly damages to City park recreational facilities, prevent disturbances to nearby residents, and to make the facilities a safer environment for all park users.

**21. Amended Rules and Regulations Relating to the Limited Commercial Use of Parks and Park Facilities**

Justification – The rules allow certain commercial activities in limited numbers and under controlled conditions within selected park areas under the management and control of the DPR.

**22. Amended Rules and Regulations Governing Commercial Scuba Diving (to include Snuba) and Snorkeling Activities in Hanauma Bay Nature Park**

Justification – The rules govern commercial scuba diving, snuba and snorkeling activities in Hanauma Bay Nature Park.

**23. Amended Rules and Regulations Governing Commercial Windsurfing Activities in Kailua Beach Park**

Justification – The rules govern commercial windsurfing activities in Kailua Beach Park.

**24. Amended Rules and Regulations Governing Commercial Filming (TV, Movie, Stills)**

Justification – The rules govern commercial filming activities in City parks properties.

**25. Amended Rules and Regulations Governing Commercial Scuba Diving (to include Snuba) and Snorkeling Activities in City Beach Parks Located in Other than State Conservation Districts**

Justification – The rules govern commercial scuba diving, snuba and snorkeling activities in City beach parks located within State Conservation Districts (except Hanauma Bay Nature Park, Koko Head Sandy Beach Park, and Makapuu Beach Park).

**26. Amended Rules and Regulations Governing Commercial Swimming and Surfing Instructions in City Beach Parks**

Justification – The rules govern commercial swimming and surfing instructions in City beach parks.

- 27. Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks**  
Justification – The rules govern recreational stops by commercial tour companies in city parks.
- 28. Rules and Regulations Governing Commercial Hiking Tours at Hanauma Bay and the Adjacent Area Within the Conservation District**  
Justification – The rules govern commercial hiking tours at Hanauma Bay and the adjacent area within the conservation district.
- 29. 1984 Amended Rules and Regulations for Community Recreational Gardening Program**  
Justification – The rules govern the operation and management of all community recreational gardening projects under the DPR.
- 30. Amended Rules and Regulations Relating to Craft Fairs and Art Marts Held on City Parks Properties**  
Justification – The objectives of the rules are to ensure that only bona fide, nonprofit organizations are granted temporary concessions to conduct craft fairs and art marts on City parks properties; and to ensure that the handcrafted items and works of art on sale are made, created or fashioned by the person selling them.
- 31. Rules and Regulations Relating to Rulemaking Proceeding, Declaratory Rulings, and Government Records and Information**  
Justification – The objective of the rules is to establish guidelines and procedures governing the manner which persons may obtain information from the department; petition for the adoption, amendment, or repeal of rules; or petition for a declaratory order by the director.
- 32. Rules Governing Dogs in Public Parks**  
Justification – This chapter governs dogs in public parks under the jurisdiction, management, and operation of the parks department and recreation.
- 33. Rules and Regulations Relating to the Limited Vehicular Traffic on the Access Road between the upper and lower portions of Hanauma Bay Beach Park**  
Justification – The purpose of these rules is to govern the use and to protect the health, safety and welfare of the park users and define the specific users authorized the use of the access road. It also provides through a concessionaire a means for the handicapped, elderly and others who choose to ride rather than negotiate the steep access road on foot.
- 34. Amended Rules and Regulations Relating to Visitor Use Levels and Controls at Hanauma Bay Nature Preserve**  
Justification – The purpose of the rules is to control usage of Hanauma Bay Nature Preserve and the level of visitors to insure preservation of unique resource.
- 35. Rules and Regulations Relating to Hang Glider and Ultra-Light Aircraft Activities held on City Parks Properties**  
Justification – The objective of the rules is to control hand glider and ultra-light aircraft activities held on City parks properties and to protect the City and County of Honolulu against liability.

**36. Rules and Regulations Governing Helicopter and Parachute Landings on City and County of Honolulu park Properties**

Justification – The rules apply to helicopter and parachute landings on public parks under the control, management and operation of the DPR.

**37. Rules for Ho’omaluhia**

Justification – The purpose of the rules is to govern the use and protection of the Ho’omaluhia system.

**38. Leisure Services Incentive Fund Rules and Regulations**

Justification – The purpose of the rules is to govern the establishment and administration of a Leisure Services Incentive Fund where City funds will be matched with community contributions for the improvement of recreation and park facilities.

**39. Amended Rules and Regulations Regarding Use of Malls**

Justification – The rules govern the effective control and coordination in the use of malls; use of malls to promote the safety, health, and welfare of the public; use of malls compliance with the purposes for which they were established; and use of malls to promote the interest of the malls district, or any other community endeavors sponsored, undertaken or promoted by duly established organizations.

**40. Rules and Regulations Governing Parking in City and County of Honolulu Park Properties**

Justification – The rules protect City park properties by providing control and to promote the safe enjoyment of public parks by the public by providing guidelines for use and reservation of parking facilities.

**41. Rules and Regulations for Participating Vendors of the People’s Open Market Program**

Justification – The rules govern the participating vendors of the People’s Open Market Program.

**42. Amended Rules and Regulations Governing Picnic Activities at City Parks**

Justification – The rules govern all picnic activities at City Parks.

**43. Rules and Regulations Governing Recreational Activities, Including Fund-raising Activities Sponsored by Community Organizations, Associations, Groups or Individuals; Sports Activities Conducted by Either a League, Organization, Association, Group or Individual; Meetings, Gatherings or Other Similar Activity held by Organizations, Associations or Groups, Nonrecreational Public Service Activities, Meetings, and Gathering held by Organizations, Communities or Groups on City Park Properties**

Justification – The rules govern recreational activities, including fund-raising activities sponsored by community organizations, associations, groups or individuals; sports activities conducted by either a league, organization, association, group or individual; meetings, gatherings or other similar activity held by organizations, associations or groups, nonrecreational public service activities, meetings, and gatherings held by organizations, communities or groups on City park properties.

**44. Rules and Regulations Governing Right-of-Entry to City Park Properties**

Justification - The rules regulate access to and the use of City park properties by contractors, utility companies, residents whose property abuts City park properties, and other government agencies for construction and repair work, including the installation and repair of utility lines.

**45. Sale or Distribution of Expressive Materials**

Justification - This chapter recognizes and sets forth the rights and privileges of individuals or groups to distribute expressive materials in parks designated in this chapter under the jurisdiction, management, and operation of DPR.

**46. Shore Water Events**

Justification – The rules govern the use of City beach parks and other beach properties under the control of the DPR to provide access to conduct shore water events.

**47. Rules and Regulations Relative to the Issuance of Reservation Permits for the Use of Public Tennis Courts Located in Public Parks of the City and County of Honolulu**

Justification – The rules govern the issuance of reservation permits for the use of public tennis courts located in public parks under the direct control, management and operation of DPR.

**48. Rules and Regulations Regarding the Pruning of Exceptional Trees**

Justification – The rules and govern the planting and maintenance of street trees.

**Department of Facility Maintenance (DFM)**

**49. Title 14, Chapter 6 – Storm Water System**

Justification – The proposed rules shall apply to the actions of the Director and Chief Engineer of the Department of Facility Maintenance in the administration and enforcement of Chapter 14, Revised Ordinances of Honolulu, 1990, as amended, governing the enforcement and appeals process for Storm Water Quality violations, as it relates to permits issued, illegal connections and illicit discharges that enter or tie into the City and County of Honolulu’s Municipal Separate Storm Sewer System (MS4).

**Department of Customer Services (CSD)**

**50. Title 9, Subtitle 1 Motor Vehicle, Licensing and Permits Part 1 Business Licenses and Permits Chapter 1 – Taxicabs**

Justification – The rules govern the procedures to be followed for the issuance of the taxicab business license and taxicab driver’s certificate, the design of the signs on taxicabs, and maximum fares, baggage charge, and airport surcharges.

**County of Maui**

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules’ continued implementation:

**Department of Parks and Recreation**

**1. Maui County Code 13.04A.300D; Parks and Recreational Facilities – Rules of Practice and Procedure for Commercial Ocean Recreational Activity Permits**

Justification - These rules regulate commercial ocean recreational activities in, on, or over County beach parks and other properties under the control of the department of parks and recreation. The interest served by these rules is that of the community to ensure equitable access and use of the county beach parks.

The rules apply specifically to businesses that have applied for this permit type and utilize county beach parks for lessons and as an available access point for the ocean.

### **Department of Public Works**

**2. Maui County Code 16.26B.105.3.3; Title MC-15, Subtitle 01, Chapter 101 – Rules Pertaining to Plan Review Waiver Building Permits**

Justification - The rules set forth the procedures for obtaining plan review waiver building permits. The rules have a positive effect on small business as they are often used for tenant improvements so that businesses can get started faster.

### **Department of Water Supply**

**3. Maui County Code 14.01.060; County Water Code General Provisions – Water source development agreements with private entities**

Justification – The rules describe requirement for council approval by resolution for any water source development agreement with private entities

**4. Maui County Code 14.04.010; County Water Code Water Services – General Conditions**

Justification – The rules are necessary to obtain water service.

**5. Maui County Code 14.04.020; County Water Code Services – Fire Protection Requirements for Building Permit Applications**

Justification - The rules describe adequate fire protection review and administration as it relates to building permit applications.

**6. Maui County Code 14.04.030; County Water Code Services – Water service – Application**

Justification – The rules require the water service application process.

**7. Maui County Code 14.04.040; County Water Code Services – Water service – Installation**

Justification - The rules describe requirements for water service installation.

**8. Maui County Code 14.04.050; County Water Code Services – Water pressure and elevation conditions**

Justification – The rules describe responsibility for maintenance of adequate pressure in the water distribution system.

**9. Maui County Code 14.04.060; County Water Code Water Services – Responsibility for equipment**

Justification - The rules describe conditions and consequences of consumer related equipment installation and maintenance.

10. **Maui County Code 14.05; County Water Code Subdivision Water System Requirements – Rules for Subdivision Water System Requirements**  
Justification - These rules provide processes, standards, and related penalties for subdivision water systems.
11. **Maui County Code 14.06A; County Water Code Water Conservation and Control of Water Usage During Water Shortage – Water Conservation and Control of Water Usage During Water Shortage**  
Justification – These rules provide definitions, policies, procedures and related penalties for water shortage events.
12. **Maui County Code 14.07; County Water Code Water System Development Fees – Water System Development Fees**  
Justification - The rules authorize the department to collect fees for water system improvements and establish related accounting mechanisms.
13. **Maui County Code 14.08; County Water Code Restrictions on Use of Potable Water for Golf Courses – Restrictions on Use of Potable Water for Golf Courses**  
Justification - The rules prohibit use of potable water for irrigation and other nondomestic uses at new golf courses.
14. **Maui County Code 14.10; County Water Code Water Rates and Fees – Water Rates and Fees**  
Justification – The rules describe rates, fees, waivers, and other charges for water service.
15. **Maui County Code 14.11; County Water Code Appeals to the Board of Water Supply – Appeals to the Board of Water Supply**  
Justification – The rules describe the appeal process.
16. **Maui County Code 14.12; County Water Code Water Availability – Water Availability Policy**  
Justification - The rules describe verification of reliable water supply before subdivision approval and related exemptions.

#### Department of Liquor Control

17. **HAR Title 8 Chapter 101, 102 – Rules Governing the Manufacture and Sale of Intoxicating Liquor of the City of Maui**  
Justification – The board reviewed the proposed amendments after public hearing. Upon review, the members unanimously agreed to forward amendments for adoption.

### County of Kaua'i

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2017 through June 30, 2019, with reasons for justifying the rules' continued implementation:

#### Department of Liquor Control

1. **Rule 2.5 License application; notice of hearing; affidavits**

Justification – The rules remove the requirement of obtaining tax clearance from the Internal Revenue Service.

**Office of Economic Development**

**2. Ordinance 1041, Bill No. 2720 Chapter 23-3.8 – Chapter 23, Kaua'i County Code 1987, as Amended, Relating to Sunshine Markets**

Justification – The ordinance governs the addition of products able to be sold at the County of Kaua'i Sunshine Markets and adds definitions.





Department of Business, Economic Development & Tourism  
**Small Business Regulatory Review Board**

***No. 1 Capitol District Building  
250 South Hotel Street, 5<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Telephone (808) 586-2419  
Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)  
Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)***