

DEPT. COMM. NO. 91

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December 19, 2016

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

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

For your information and consideration, I am transmitting a copy of the 2016 Small Business Regulatory Review Board Annual Report, as required by Section 201M-5(f), Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:
<http://dbedt.hawaii.gov/overview/annual-reports-reports-to-the-legislature/>.

Sincerely,



Luis P. Salaveria

Enclosure

c: Legislative Reference Bureau

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Department of Budget and Finance: DBFLeg.DIR@hawaii.gov



**HAWAII
SMALL BUSINESS
REGULATORY REVIEW
BOARD**

Periodic Review; Evaluation Report

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

2016

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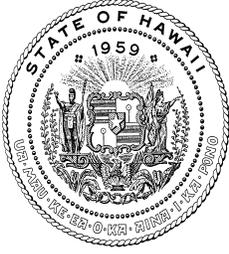
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MESSAGE FROM DIRECTOR



On behalf of the Department of Business, Economic Development and Tourism, I want to extend my sincere appreciation to the Small Business Regulatory Review Board members for their hard work, and commitment to Hawaii's small business community.

Luis P. Salaveria
Director



SMALL BUSINESS REGULATORY REVIEW

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Kyoko Y. Kimura
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Nancy Atmospera-Walch
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Robert Cundiff
Oahu

Garth Yamanaka
Hawaii County

Director, DBEDT
Voting Ex Officio

MESSAGE FROM CHAIR



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

I am honored and proud of our SBRRB members who have donated countless hours of their valuable time, business acumen, and have remained committed to the cause of improving the economic climate for small businesses here in Hawaii. I congratulate each Board Member for their tireless effort, team play, and for keeping our mission front and center.

On behalf of this Board, I extend a special thank you to our Governor, our State Legislators, our State Departments, DBEDT Director Luis Salaveria, Deputy Director Mary Alice Evans and our SBRRB Senior Staffer, Ms. Dori Palcovich for their steadfast support of our Board's work.

Thank you.

Anthony Borge, Chair, SBRRB, 2016

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 by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board; provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended or repealed statute. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

Pursuant to Section 201M-7 (a), HRS, at the beginning of 2015, the SBRRB requested from the State agencies a list of existing administrative rules that affect small business, a report describing the specific public purpose or interest for adopting the respective rules, and any other reasons to justify the rules' continued implementation for the period of July 1, 2013 through June 30, 2015. The information in this Report is a compilation of the responses and justifications received from the State agencies.

(b) The small business regulatory review 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.

The SBRRB did not provide the head of each agency a list of rules adopted by the agencies that affect small business or generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority.

(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 next regular session of the legislature. 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.

The SBRRB did not solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92, HRS.

ADMINISTRATIVE RULE REVIEW MATRIX

State Department	Rules Amended, to be Amended, and to be Repealed (July 2013 to June 2015)
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	3
2. DEPARTMENT OF AGRICULTURE	4
3. DEPARTMENT OF THE ATTORNEY GENERAL	1
4. DEPARTMENT OF BUDGET AND FINANCE – FINANCIAL ADMINISTRATION DIVISION	0
5. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	8
6. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS PUBLIC UTILITIES COMMISSION	32 0
7. DEPARTMENT OF HAWAIIAN HOME LANDS	1
8. DEPARTMENT OF HEALTH MEDICAL DIVISION ENVIRONMENTAL DIVISION	4 2
9. DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT	0
10. DEPARTMENT OF HUMAN SERVICES	25
11. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	12
12. DEPARTMENT OF LAND AND NATURAL RESOURCES	9
13. DEPARTMENT OF TAXATION	2
14. DEPARTMENT OF TRANSPORTATION	10
15. UNIVERSITY OF HAWAII	0

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

State Procurement Office

1. **HAR Title 3 Chapter 120-4 and Exhibit A – “Etc.” and Exemption Language**
Justification – The Procurement Policy Board amended this Section and Exhibit A through interim rulemaking on October 30, 2104 to avoid ambiguity from the previous inclusion of “etc.,” on Exhibit A’s Exemption Number 6, as well as to clarify remaining ethical and contractual obligations for procurements exempted from HRS Chapter 103D.
2. **HAR Title 3 Chapter 122-14 – Exemption Language**
Justification – The Procurement Policy Board amended this section through interim rulemaking on October 30, 2104 to clarify remaining ethical and contractual obligations of procurements exempted from HRS Chapter 103D.
3. **HAR Title 3 Chapter 122 Section 26 – Professional Services**
Justification – The Procurement Policy Board amended this section through interim rulemaking on October 30, 2104, due to the Hawaii Supreme Court decision in Asato v. Procurement Policy Board (2014), which invalidated this section.

Department of Agriculture (DoAg)

Quality Assurance Division

1. **HAR Title 4 Chapter 60 Section 10 – Minimum Prices in the Hawaii Milk Shed**
Justification – Amended Section 4-60-10, HAR, which allows milk produced to request for a waiver to the minimum price of milk sold to the processor provided that the lower price will take into consideration the standards for setting the minimum price within the Hawaii Revised Statutes (HRS);
 - a. The price to producers is necessary to assure the production of an adequate supply of wholesome milk for the market;
 - b. The price is necessary to return to the producer, the producer’s cost of production, plus a fair return on the producer’s invested capital, the producer’s family labor and the producer’s management skills;
 - c. The costs incurred in obtaining, feeding, managing and maintaining dairy animals at optimum production capacity;
 - d. The prevailing wages and perquisites of employees; and

- e. The ordinary fixed charges and operating expenses incident to the ownership, operations and management of the dairy.

2. HAR Title 4 Chapter 143 – Standards for Coffee

Justification – Act 328, SLH 2012, made the offense of false labeling as to the geographic origin of Hawaii-grown coffee a class C felony under the Chapter 708, HRS, (Penal Code). The Act also authorized DoAg to adopt administrative rules relating to the inspection and documentation of the geographic origin of Hawaii-grown green coffee beans, removes the requirement that all Hawaii-grown green coffee beans shall be inspected by rules of the department and requires that no Hawaii-grown coffee beans shall be shipped outside the area of their geographic origin approved by DoAg.

The amendments to Chapter 4-143 reflect the changes per Act 328, SLH 2012, and includes the amendments to Prime grade; addition of Hawaii Island and Oahu Coffee, Natural Prime grade standards, and other housekeeping changes.

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

Plant Industry Division

3. HAR Title 4 Chapter 70 – Plant Import Rules

DoAg plans to amend these rules, based on 2008 statutory amendments.

4. HAR Title 4 Chapter 71 – Microorganism Import Rules

DoAg plans to amend these rules, based on 2003 statutory amendments.

Department of the Attorney General

1. HAR Title 5 Chapter 11 – Notaries Public

Justification – The rules were originally adopted to implement the statute requiring the Attorney General to issue commissions to notaries public, to regulate their conduct and impose sanctions for violations of laws and rules, and to set a schedule of fees, fines and penalties that apply to the regulation of notaries. These rules remain necessary given the continued existence of the statutory duties imposed upon the Attorney General by Chapter 456, HRS.

Department of Budget and Finance

The Department of Budget and Finance has not adopted any Administrative Rules in its Financial Administration Division during the period of July 1, 2013 through June 30, 2015 that affects small business.

Department of Business, Economic Development, and Tourism

Business Development and Support Division

1. HAR Title 15 Chapter 6 – Enterprise Zones

Justification – Rule clarification and clean-up based on legislation passed on previous years; made rules more business friendly by eliminating ambiguity.

Hawaii Community Development Authority (HCDA)

2. HAR Title 15 Chapter – To Be Determined / To be Adopted

Justification – Pursuant to HRS, Chapter 206E-5, pertaining to Designation of Community Development Districts (CDD); Community Development Plans, HCDA is required to develop a community development plan for the Heeia CDD. The plan shall include but not be limited to community development guidance policies, district-wide improvement program and community development rules.

Hawaii Housing Finance & Development Corporation (HHFDC)

3. HAR Title 15 Chapter 306 – General Excise Tax Exemptions

Justification – SB 971, SD1, HD1, CD1, passed legislature, which clarifies that affordable rental housing projects using HHFDC assistance must remain affordable for specified minimum periods of time. This would ensure that any improvements to the project that are exempted from GET will accrue to the benefit of lower income households for a reasonable period of time.

4. HAR Title 15 Chapter 315 – Mortgage Credit Certificate Program

Justification – In addition to housekeeping measures, changes to the rules include new program fees payable by the mortgage lender to HHFDC, which looked at fees charged across the county for best practice purposes and found that small businesses would not be overly burdened with the proposed increase in fees as they are comparable and not considered exorbitant.

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

5. HAR Title 15 Chapter 215 – Kalaeloa

Justification – Implementation of the subject rules have revealed some discrepancies and omissions. In addition, changes to HCDA's enabling statutes, Chapter 206E, HRS, have affected permitting procedures and timing of the permitting process. In view of this, HCDA staff believes it is now timely to correct and clarify the rules which will enhance the effectiveness of this chapter.

- 6. HAR Title 15 Chapter 216 – Kalaeloa Reserved Housing Rules**
Justification – Implementation of the subject rules have revealed some discrepancies and omissions. In addition, changes to HCDA’s enabling statutes, Chapter 206E, HRS, have affected permitting procedures and timing of the permitting process. In view of this, HCDA staff believes it is now timely to correct and clarify the rules which will enhance the effectiveness of this chapter.

- 7. HAR Title 15 Chapter 217 – Mauka Area Rules**
Justification – Implementation of the subject rules have revealed some discrepancies and omissions. In addition, changes to HCDA’s enabling statutes, Chapter 206E, HRS, have affected permitting procedures and timing of the permitting process. In view of this, HCDA staff believes it is now timely to correct and clarify the rules which will enhance the effectiveness of this chapter.

- 8. HAR Title 15 Chapter 218 – Kakaako Reserved Housing Rules**
Justification – Implementation of the subject rules have revealed some discrepancies and omissions. In addition, changes to HCDA’s enabling statutes, Chapter 206E, HRS, have affected permitting procedures and timing of the permitting process. In view of this, HCDA staff believes it is now timely to correct and clarify the rules which will enhance the effectiveness of this chapter.

Department of Commerce and Consumer Affairs (DCCA)

Professional and Vocational Licensing Division

- 1. HAR Title 16 Chapter 69 – Dentists and Dental Hygienists**
Justification – The purpose of this chapter is to implement licensing and regulation of the profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to provide clarity and updates to the State’s Board of Dental Examiner’s policies and provisions based on statutory requirements, national guidelines, and industry practices. A small business impact statement, dated March 25, 2013, was sent to the SBRRB; in a memo dated May 21, 2013, the SBRRB raised no objections to the proposed rule amendments. Adopted January 16, 2014.

- 2. HAR Title 16 Chapter 85 – Medical Examiners**
Justification – The purpose of this chapter is to implement licensing and regulation of this profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the proposed amendment is to delete the provision that requires applicants for a medical license to pass all three steps of the United States Medical Licensing Examination within seven years. A small business impact statement, dated June 12, 2014, was sent to SBRRB; on February 12, 2015, the SBRRB raised no objections to the proposed rule amendments. Adopted February 8, 2015.

3. HAR Title 16 Chapter 85 Section 49 – Degree of Supervision

Justification – The purpose of this chapter is to implement licensing and regulation of physician assistants. The rules are needed because they facilitate licensing and enforcement of the licensing law. The amendments would allow physician assistants to treat patients and prescribe hydrocodone combination products, thereby allowing their supervising physicians more time to attend to other patients with more serious conditions. A small business impact statement, dated October 23, 2014, was sent to the SBRRB; on November 19, 2014, the SBRRB raised no objections to the proposed rule amendments. Adopted April 2, 2015.

4. HAR Title 16 Chapter 88 – Naturopaths

Justification – The purpose of this chapter is to implement licensing and regulation of this profession. The rules are needed because they will allow individuals who do not take the examination on homeopathy the opportunity to qualify for licensure. In addition, clarifying parenteral therapy will increase consumer freedom to choose healthcare providers. Consumers will be able to receive therapeutic injections from their naturopathic physicians. A small business impact statement, dated July 1, 2013, was sent to the SBRRB; on August 22, 2013, the SBRRB raised no objections to the proposed rule amendments. Adopted January 6, 2014.

5. HAR Title 16 Chapter 95 – Pharmacists and Pharmacies

Justification – The purpose of this chapter is to implement the licensing and regulation of pharmacists and pharmacies. The rules are needed because they facilitate licensing and enforcement of the licensing law. The amendments will provide guidance and clarification for the public, for those in the pharmacy industry, and for the Regulated Industries Complaints Office, which is charged with enforcing the Board's laws and rules. A small business impact statement, dated October 27, 2014, was sent to the SBRRB; on November 19, 2014, and May 20, 2015, the SBRRB raised no objections to the proposed rule amendments. Adopted June 12, 2015.

6. HAR Title 16 Chapter 110 – Physical Therapy

Justification – The purpose of this chapter is to implement licensing and regulation of physical therapist assistants (PTA's), in addition to physical therapists. The rules are needed because they facilitate licensing and enforcement of the licensing law. The amendments implement Act 220, SLH 2013, which established licensure for PTA's. Prior to Act 220, PTAs were not regulated, certified or licensed. A small business impact statement, dated July 3, 2014, was sent to the SBRRB; on July 16, 2014, the SBRRB raised no objections to the proposed rule amendments. Adopted February 18, 2015.

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

Insurance Division

- 7. HAR Title 16 Chapter 17 – Captive Insurance Companies**
Under review by the Attorney General; sent on June 2, 2015.

Division of Financial Institutions

- 8. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act**
Sent to the Legislative Reference Bureau for review and SBRRB in February 2015.

Business Registration Division

- 9. HAR Title 16 Chapter 37 – Rules Under the Franchise Investment Law**
Under review by the Attorney General for housekeeping measures only; sent on January 20, 2105.
- 10. HAR Title 15 Chapter 39 – Securities**
Under review by the Attorney General for housekeeping measures only; sent on January 20, 2105.

Professional and Vocational Licensing Division

- 11. HAR Title 16 Chapter 53 – Fees**
The Division is currently working on a draft.
- 12. HAR Title 16 Chapter 72 – Acupuncture**
The Board is currently working on a draft.
- 13. HAR Title 16 Chapter 73 – Barbers**
The Board is currently working on a draft.
- 14. HAR Title 16 Chapter 76 – Chiropractors**
The Board plans to work on a draft.
- 15. HAR Title 16 Chapter 77 – Contractors**
The Board is currently working on a draft to address “work incidental and supplemental.”
- 16. HAR Title 16 Chapter 78 – Cosmetology**
Section 2, Definitions and Section 59, Enrollment: A small business impact statement, dated February 4, 2015, was sent to the SBRRB, and on March 18, the SBRRB raised no objections to the proposed rule amendments. Public hearing was scheduled for July 13, 2015.

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

17. HAR Title 16 Chapter 79 – Dental Examiners

Under review by the Attorney General; sent March 6, 2015.

18. HAR Title 16 Chapter 84 – Massage Therapy

The Board is currently working on a draft.

19. HAR Title 16 Chapter 85 – Medical Examiners – EMTs

The Board is currently working on a draft.

20. HAR Title 16 Chapter 88 – Naturopaths

The Board is currently working on a draft.

21. HAR Title 16 Chapter 89 – Nurses

The Board is currently working on a draft.

22. HAR Title 16 Chapter 94 – Pest Control

The Board is currently working on a draft.

23. HAR Title 16 Chapter 95 – Pharmacy

The Board is currently working on a draft.

24. HAR Title 16 Chapter 96 – Pilotage

The Executive Officer is currently working on a draft.

25. HAR Title 16 Chapter 98 – Psychology

The Board is currently working on a draft.

26. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons

A small business impact statement, dated December 23, 2014, was sent to the SBRRB; on February 12, 2015, the SBRRB raised no objections to the proposed rule amendments. The rules are currently pending the Attorney General's approval as to form.

27. HAR Title 16 Chapter 101 – Veterinary Examiners

The Board plans to work on a draft.

28. HAR Title 16 Chapter 106 – Time Share

The Executive Officer is currently working on a draft.

29. HAR Title 16 Chapter 110 – Physical Therapy

The Board is currently working on a draft.

30. HAR Title 16 Chapter 114 – Real Estate Appraisers

The Executive Officer plans to work on a draft.

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

Under review by the Attorney General; sent on June 10, 2015.

32. HAR Title 16 Chapter 117 – Activity Desks

The Executive Officer is currently working on a draft to incorporate changes pursuant to Act 61, SLH 2015.

Cable Television Division

33. HAR Title 16 Chapter 131 – Hawaii Cable Communications Systems

Justification – HAR Section 16-131-70 to be amended to conform to HRS Section 440G-8.3, pursuant to Act 93, SLH 2014, allowing the DCCA Director to designate public, educational, and governmental access organizations exempt from Chapter 103D. Currently, HAR Section 16-131-70 requires designation in compliance with Chapter 103D.

Public Utilities Commission (PUC)

Department of Budget and Finance reported that it was not providing information on administrative rules for the PUC as PUC was administratively transferred to the DCCA, effective July 1, 2015.

Department of Hawaiian Home Lands (DHHL)

1. HAR Title 10 Chapter 4 Section 3 – General Lease; extension of term

Justification – DHHL added to its administrative rules section 10-4-3, effective November 29, 2014. The rule was adopted to implement Section 228 of the Hawaiian Homes Commission Act 1920, which provides for the extension of lease terms for commercial and multi-purpose project leases.

HAR 10-4-3 will affect small businesses that operate commercial and multi-purpose projects on general leased parcels of Hawaiian home lands that may be eligible for an extension of lease term. Longer lease terms can be beneficial to small businesses because it provides added regularity and predictability, and should aid in the ability to finance improvements to the leased land. Moreover, by establishing guidelines for the evaluation and approval of requests for extensions of qualified general leases, Section 10-4-3 ensures consistency and transparency of process for all interested parties.

The State of Hawaii has a fiduciary obligation, bound by compact with the United States, to manage the Hawaiian Home Lands Trust for the betterment of native Hawaiians. The financial health and stability of DHHL and the Trust are, therefore, in the public interest. Lease extensions provide both income and cost savings for DHHL. The ability to extend lease terms add an attractive component

to DHHL's general leases, which can translate into increased steady and long-term revenue streams. The revenue generated funds various programs, functions, operations, and activities promoting the betterment of native Hawaiians and upholding the Hawaiian Home Lands Trust. General lease extensions also encourage reinvestment in DHHL's general leased properties. When tenants have an interest in improving and maintaining leased property, DHHL realizes a cost savings.

In addition, although DHHL anticipates undertaking rulemaking, it is currently uncertain whether any rules will be amended or repealed, based on any new, or repealed statute.

Department of Health (DOH)

Medical

Development Disabilities Division

1. HAR Title 11 Chapter 88.1 – Services for Persons with Developmental or Intellectual Disabilities

Justification – Amended June 22, 2015. Updates eligibility, scope of services, appeals, referrals, and general requirements of home- and community-based service providers. Incidental impact to service providers of the developmentally or intellectually disabled populations.

2. HAR Title 11 Chapter 88.2 – Emergency Rules Relating to Citizens of COFA Nations and Legal Permanent Residents Present for Less than Five Years

Justification – Promulgated November 19, 2014. Permits continuity of services to certain individuals with developmental or intellectual disabilities following federal Appeals Court ruling on state healthcare obligations for COFA migrants. To be repealed.

Environmental

Clean Water Branch

3. HAR Title 11 Chapter 54 – Water Quality Standards

Justification – Amended November 15, 2014 to comply with federal water quality regulations, including those related to intake credits and specifications of minimum number of samples for recreational water criteria. Impact to underground storage tank operators and larger businesses involved with sewage treatment or off-shore discharges.

4. HAR Title 11 Chapter 55 – Water Pollution Control

Justification – Amended November 15, 2014 to comply with federal court decision National Cotton v. EPA regarding pesticide discharge into State waters. Impact to agricultural businesses that use pesticides.

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

5. Medical Marijuana Registry Program

Promulgated in July 2015. The public purpose or intent was to establish medical marijuana patient registry program at DOH following transfer from Department of Public Safety (whose rules were repealed.) No impact to small business anticipated.

6. Medical Marijuana Dispensaries Program

Interim rules promulgated in December 2015; final rules expected no later than April 2018. The public purpose or intent is to establish a system of licensed-medical marijuana dispensaries. Significant impact to medical marijuana cultivation and retail business.

Department of Human Resources Development

Department of Human Resources Development reported that it did not have any rules affecting small business, and that it had not adopted any new rules since 2003.

Department of Human Services (DHS)

Social Services Division (SSD)

1. HAR Title 17 Chapter 1443 – State-Approved Feeding Assistant Training Program

Justification – State-Approved Feeding Assistant Training Program is necessary because the administration of the feeding assistant training program was transferred from the MedQUEST Division (MQD) to SSD. Chapter 17-1443 establishes a uniform process by which nursing facilities could receive State approval for the feeding assistant training programs within their facilities. There are no alternatives to rulemaking to ensure that nursing facilities meet Federal and State requirements in establishing the feeding assistant training programs and to ensure that requirements for training, supervising, and monitoring of feeding assistants are met. This chapter was written to make the approval process clearer and more easily understood.

2. HAR Title 17 Chapter 1444 – Nurse Aide Training and Competency Evaluation Programs

Justification – Nurse Aide Training and Competency Evaluation Programs is necessary because the administration of the nurse aide training and competency evaluation programs was transferred from MQD to SSD. This chapter describes a uniform process by which nurse aide training and competency evaluation programs (NATCEP's) could obtain State certification and recertification of their programs as required by Federal statutes. There are no alternatives to rulemaking because DHS is the State's single Medicaid agency required by

Federal statutes to approve NATCEP's and to ensure all NATCEP's meet Federal and State requirements for certification and recertification.

3. HAR Title 17 Chapter 1445 – Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings

Justification – Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings is necessary because the administration of the nurse aide recertification program was transferred from MQD to SSD. This chapter describes the new process by which a nurse aide employed in a State-licensed or State-certified health care setting could request recertification to comply with applicable Federal and State statutes. The nurse aide could choose to be recertified to maintain his/her credentials as a certified nurse aide, or the nurse aide's employer could require that the nurse aide be certified and recertified to meet licensing or certification requirements of the health care setting.

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

4. HAR Title 17 Chapter 1420 – Homemaker Services for Community Long-Term Care Programs
5. HAR Title 17 Chapter 1438 – Nursing Home Without Walls Program
6. HAR Title 17 Chapter 1440 – Home and Community-Based Services for Elderly Foster Family Community Care Program
7. HAR Title 17 Chapter 1441 – Personal Care Services
8. HAR Title 17 Chapter 1442 – HIV Community Care Program

Med-QUEST Division

The following chapters were amended to incorporate the Affordable Care Act of 2010, which simplified eligibility requirements through the establishment of coverage groups as opposed to specific programs, and for housekeeping measures. The amendments promote timely and less intensive future administrative rule amendment processing thereby promoting transparency, operational and program efficiencies, and clarifies the Federal regulations.

a. Twenty-six (26) new Chapters:

17-1700.1, 17-1703.1, 17-1711.1, 17-1712.1, 17-1713.1, 17-1714.1, 17-1715, 17-1715.1, 17-1716, 17-1717. 17-1717.1, 17-1718. 17-1719, 17-1720, 17-1720.1, 17-1723.1, 17-1723.2, 17-1723.3, 17-1724.1, 17-1724.2, 17-1725.1, 17-1730.1, 17-1733.1, 17-1734.1, 17-1735.1, 17-1735.2

b. Twenty-two (22) repealed Chapters:

17-1700, 17-1703, 17-1711, 17-1712, 17-1713, 17-1714, 17-1721, 17-1721.1, 17-1722.1, 17-1722.2, 17-1723, 17-1724, 17-1725, 17-1726, 17-1727, 17-1728, 17-1728.1, 17-1730, 17-1732, 17-1733, 17-1734, 17-1735; and

c. Seventeen (17) housekeeping Chapters:

17-1701, 17-1702, 17-1704, 17-1705, 17-1706, 17-1722, 17-1722.3, 17-1736, 17-1737, 17-1738, 17-1739, 17-1739.1, 17-1739.2, 17-1740.1, 17-1741, 17-1744, 17-1745

9. HAR Title 17-1719.1 – State-Funded ABD Program

Justification – Effective November 5, 2014, this new chapter was adopted to establish the State-Funded ABD Program, which covers certain lawfully present non-pregnant adult non-citizens, who were ABD and not eligible for the Federal Medicaid Program due to the immigration status. The State-funded ABD Program provides medical assistance benefits that are identical to the benefits received by ABD individuals under the Medicaid Program.

10. HAR Title 17 Chapter 1722.3 – Basic Health Hawaii (BHH)

Justification – Effective September 30, 2013, this chapter was amended to create a new subchapter 1.5, entitled, “Emergency Administrative Rules Relating to State Medical Assistance for Certain Lawfully Present Non-Citizen.” Certain lawfully present non-pregnant adult non-citizens who are ineligible for federal medical assistance due to their immigration status, including citizens of island nations with a Compact of Free Association with the United States, were receiving state medical assistance benefits that exceeded the BHH benefits defined under this chapter because of an injunction order issued in 2010 by the United States District Court for the District of Hawaii. The injunction order was vacated on November 3, 2014, and these emergency rules were necessary to avoid imminent peril to the public health and safety of current beneficiaries and certain other non-citizen adults who are Aged, Blind or Disabled (ABD), and were at risk of losing or facing a reduction of state-funded medical assistance benefits.

The new Subchapter 1.5 provided temporary and emergency relief to current beneficiaries by continuing, for no more than 120 days, the same health coverage that they were receiving at the time the Subchapter was adopted, pending adoption by DHS of permanent rules establishing a state-funded Medical Assistance Program for ABD lawfully present non-pregnant adult non-citizens, and transition of certain current beneficiaries who are not ABD to the Hawaii Health Insurance Exchange (called the “Hawaii Health Connector” (HHC) or “the Connector”) to determine their eligibility for federal tax credits.

Effective February 27, 2015, this chapter was repealed to terminate the BHH program because the emergency rule established in Subchapter 1.5 of this Chapter was soon to expire. In addition, DHS adopted permanent rules establishing a state-funded medical assistance program for ABD lawfully present non-pregnant adult non-citizens and the transition of certain current beneficiaries who were not ABD to the HHC to determine their eligibility for federal tax credits, which provided continuing health coverage for beneficiaries participating in the BHH program.

11. HAR Title 17-1731 – Premium Assistance Program

Justification – Effective February 27, 2015, a new chapter 17-1731, was adopted to establish the Premium Assistance Program, which covers certain lawfully present non-pregnant adult non-citizens, who were not ABD and not eligible for the federal Medicaid Program due to immigration status. DHS pays the eligible individual's share of the premium to the 94% actuarial value qualified health plan in which the individual is enrolled through the HHC, when certain requirements are met and information necessary to verify eligibility is provided by the HHC to the individual's qualified health plan.

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

12. HAR Title 17-1700.1 – Definitions

13. HAR Title 17-1704 – Fraud Provisions

14. HAR Title 17-1705 – Medical Assistance Recovery

15. HAR Title 17-1714.1 – General Eligibility Requirements for Medical Assistance

16. HAR Title 17-1715 – Children Group

17. HAR Title 17-1715.1 – Former Foster Care Children Group

18. HAR Title 17-1716 – Pregnant Women Group

19. HAR Title 17-1717 – Parents and Other Caretaker Relatives Group

20. HAR Title 17-1718 – Adults Group

21. HAR Title 17-1719 – Aged, Blind and Disabled Group

22. HAR Title 17-1720 – Benefits

23. HAR Title 17-1724.1 – Modified Adjusted Gross Income (MAGI)-Excepted Based Methodology

24. HAR Title 17-1724.2 – Modified Adjusted Gross Income Methodology

25. HAR Title 17-1739 – Authorization, Payment, and Claims in the Fee for Service Medical Assistance Program

Department of Labor and Industrial Relations (DLIR)

Disability Compensation Division

1. HAR Title 12 Chapter 15-90(b) – Exhibit to the Workers' Compensation Medical Fee Schedule and Exhibit A

Justification – Section 12-15-90(b) was amended on December 30, 2013 to change the effective date of the supplemental medical fee schedule to January 1, 2014 because Section 386-21(c), HRS, requires the Director to update the schedules no less than every three years.

Section 12-15-90 Exhibit A to the Workers' Compensation Medical Fee Schedule was amended on January 1, 2014 to change the selected Unit Values of Procedure codes because Section 386-21(c), HRS, requires the Director to update the schedules no less than every three years.

Hawaii Civil Rights Commission (HCRC)

- 2. HAR Title 12 Chapter 46 Section 1 – Hawaii Civil Rights Commission**
Justification – Adopted to conform to Hawaii state law protections against housing discrimination to the federal Fair Housing Act (FHA).
- 3. HAR Title 12 Chapter 46 Section 11**
Justification – Adopted to conform Hawaii state law provisions to the FHA provisions to allow an aggrieved person to file a civil action within two years of a discriminatory practice, and to allow the HCRC to dismiss the administrative complaints that allege similar facts of a civil action.
- 4. HAR Title 12 Chapter 46 Section 20**
Justification – Adopted to conform Hawaii state law protections against housing discrimination to the FHA to allow an aggrieved person to file a civil action within two years of a discriminatory practice, and to allow the HCRC to dismiss the administrative complaints that allege similar facts of a civil action.
- 5. HAR Title 12 Chapter 46 Section 302**
Justification – Adopted to conform the definition of “assistance animal” to Housing and Urban Development (HUD) regulations.
- 6. HAR Title 12 Chapter 46 Section 306**
Justification – Adopted to conform provision regarding assistance of animals to the HUD regulations.
- 7. HAR Title 12 Chapter 46 Section 313**
Justification – Adopted to clarify the tight living exemptions.
- 8. HAR Title 12 Chapter 46 Section 318**
Justification – Adopted to conform provision regarding assistance of animals to HUD regulations.

Occupational Safety and Health Division

- 9. Elevators & Relating Systems** - Amended Section 12-8-11 to update the national consensus standards (elevator codes)
- 10.** Amended Section 12-229 and 240 (Elevators)
- 11.** Repealed chapters 12-230 to 12-239 (Elevators)
- 12.** Adopted new Chapters 12-230.1, 12-232.1, and 12-234.1 (Elevators)

The adoption of the rules brought forth the applicable code of elevator standards up to the 2010 American Society of Mechanical Engineers (ASME) A17.1 standards (national consensus standards) for many elevators, and clarified that the application code for older elevators is the code in effect at the time of installation. The previous rules use ASME A17.1 from 1996, which has been updated four times since, but Hawaii has not

adopted any of the updates. The administrative rules for elevator safety were last updated in 1998 when DLIR incorporated the 1996 code.

Hawaii Labor Relations Board (HLRB)

HLRB has not adopted any new rules, amended or repealed. HLRB is in the process of implementing Sections 377-4.6 and 377-4.7, passed in 2009. HLRB has submitted proposed draft rules that were approved by the Attorney General to the SBRRB and the Department of Business, Economic Development & Tourism. The Board received approval from both agencies to proceed with public hearings. Currently, HLRB is awaiting the Governor's approval to proceed with public hearings.

HLRB's rules in Section 89 were adopted in 1981 and Section 377 in 1983. Since 1985, the Legislature has repealed, amended, or created statutes in both chapters. HLRB has been working on drafts, but has no timeline on when these drafts will be completed.

In 2002, the Legislature amended the definition of "Appeals Board" in Section 396-3 to the HLRB. In 2013, Section 396-11.5 was amended. At present, HLRB is not in the process of working on draft rules implementing Section 306-11.5

State Fire Council

Adopted Section 12-45.3 because Sections 132-3 and 107-25, HRS, required that the State Fire Council adopt a state fire code that sets forth minimum requirements relative to the protection of persons and property from fire loss. Section 12-45.2 was repealed because of the previously adopted State Fire Code.

Wage Standards

Wage Standards has not adopted any new, amended or repealed rules. Wage Standards is in the process of amending various rules in Section 12-20 and 12-22 because of changes to Sections 387-1 and 387, HRS.

Department of Land and Natural Resources (DLNR)

Division of Aquatic Resources

1. HAR Title 13 Chapter 60.4 – West Hawaii Regional Fisheries Management Area

Justification – The rules were adopted to ensure continued resource sustainability, enhance nearshore resources, and minimize user conflicts. The rules impose greater restrictions on the take of aquatic life, which would potentially impact small businesses engaged in the collection of aquatic life for commercial sale. However, the greater assurance of resource sustainability provided by the rules will result in long-term benefits to these small businesses and industries.

2. HAR Title 13 Chapter 60.8 – Haena Community-Based Subsistence Fishing Area

Justification – These rules were adopted pursuant to statutory mandate HRS 188-22.9, to ensure the sustainability of traditional and customary native Hawaiian subsistence fishing practices within the ahupuaa of Haena, Kauai. The rules will help ensure the long-term sustainability of nearshore ocean resources in the Area for subsistence and recreational use.

3. HAR Title 13 Chapter 3-77 – Oahu Aquarium Life Management

Justification – These rules were adopted to ensure long-term management of the aquarium fishers on Oahu by establishing gear, species, commercial bag limits, and prohibited species restrictions. The new rule was industry sponsored and was intended to minimize waste in the fishery by preventing overcrowding of the captured marine life while in transport to the dealers, on the use of less net gears to prevent damage to marine life during capture, and to prohibit the take of certain fish species due to their restricted coral eating diets; the taking of corals is prohibited by state law under a separate provision.

4. HAR Title 13 Chapter 95.1 – Island-Based Fisheries

Justification – These rules establish new bag limits and minimum size limits for two highly-targeted fish groups, uhu (parrotfish) and goatfish, on the Island of Maui. The new bag limits may have an impact on commercial fishers who catch these species, but the Division of Aquatic Resources has determined that it is critically important to establish greater protection for these species to improve long-term sustainability.

Division of Boating and Ocean Recreation

5. HAR Title 13 Chapters 231, 251, 253, and Sections 13-256-3, 13-256-4 - Commercial Rules Package

Justification – Rule amendments or new rules formalized by the Department's Division of Boating and Ocean Recreation (DOBOR) in fiscal years 2014 and 2015 were designed to make small boat harbor operation and management of marine related activities more efficient and enforceable. In the long run, more efficiently managed harbors will benefit small businesses.

The amendments to HAR 13-230, 13-231, 13-251, 13-253, and 13-256-4 encompassed a wide variety of administrative rules that include, but are not limited to, commercial use permits, vehicle parking requirements, definitions, mooring, requirements, ocean recreation management area, business transfer fees and catamaran registration permits.

6. HAR Title 13 Chapter 233-26 – Parking Charges

Justification – The amendment clarifies that the rate charged for parking may be based on a County rate or a State rate. This allows boating to charge for parking at comparable rates in each jurisdiction it operates in.

7. HAR Title 13 Chapter 13-256-3 – Commercial Use Permit for State Ocean Waters

Justification – Updates the rules to require all commercial boats operating on State ocean waters to obtain a permit from the DOBOR. This allows DOBOR to more efficiently and effectively track and regulate commercial ocean recreation activity. In the long-run, this will help to better manage ocean uses and reduce ocean conflicts.

8. HAR Title 13 Chapter 256-4 – Decals on Commercial Equipment

Justification – Commercial watersports equipment must have decals indicating commercial use to make it easier for enforcement officials to determine who has a permit or not. In the long-run, this will help to better manage ocean uses and reduce ocean conflicts.

9. HAR Title 13 Chapter 256-16 - Thrill Craft Education

Justification – Clarifies that thrill craft users only need to complete a thrill craft education course unless individuals also intend to operate a boat, in which case, he/she will also be required to take a boater education course pursuant to HAR Section 13-244-15.5. The rules ensure ocean safety.

Department of Taxation (DoTax)

1. HAR Title 18 Chapter 231- Administration of Taxes

DoTax adopted administrative rules regarding (1) compromises and (2) cash economy; enforcement.

Compromises

This rule was amended by adding a third basis for compromise of tax liabilities under section 18-231-3-10(a). Compromises may now be considered if the compromise promotes effective tax administration.

Justification - The rule allows DoTax greater discretion in entering into offers to compromise tax liabilities. DoTax believes there may be situations where there is neither doubt as to liability nor collectability of tax and yet a compromise of the liability may be in the best interest of effective tax administration. The rules allow DoTax wider discretion in entering into compromises in such situations.

Cash Economy; Enforcement

The Cash Economy Enforcement Act, found in Sections 231-91 through 100, HRS, authorizes DoTax to issue cease and desist citations to persons who are not in compliance with Hawaii's tax laws, particularly those businesses that deal largely in cash and which fail to report and pay taxes that are legally due. The new rules specify the conduct that gives rise to a monetary fine, the amount of such fine, and provide cited persons with constitutionally required procedural safeguards, including notice and opportunity for a hearing and appeal rights from an unfavorable decision.

Justification - In order to effectively administer the Cash Economy Enforcement Act, these rules are necessary to provide specific guidance to the public regarding what conduct specifically gives rise to issuance of cease and desist citations, the manner in which a citation may be appealed, and the manner in which a hearing for an appealed citation will be carried out.

2. HAR Title 18 Chapter 235 – Income Tax Law

DoTax adopted new administrative rules relating to renewable energy technology income tax credit.

Renewable Energy Technology Income Tax Credit

These new rules (1) Add definitions for multiple terms used in Section 235-12.5, HRS, as well as in the newly adopted HAR; (2) Set forth the “total output capacity requirements” for solar energy systems as follows: (a) Single-family residential property – 5 kilowatts per system, (b) Multi-family residential property – 0.360 kilowatts per unit per system, and (c) Commercial property – 1,000 kilowatts per system; and (3) Provides exceptions from the “total output capacity” requirements where only one system has been installed and placed in service and where more than one system has been installed and placed in service, but only one of those systems fails to meet the “total output capacity” requirements.

Justification – The rules are necessary to provide objective clarity as to when a taxpayer is allowed to claim the credit as well as the number of credits that may be claimed.

Department of Transportation (DOT)

During the reporting period from July 1, 2013 to June 30, 2015, the DOT, consisting of the Airports, Harbors and Highways Divisions, did not amend or repeal any administrative rules affecting small business. When rules were sent to the Governor for approval to have a public hearing, copies were sent to the SBRRB; the SBRRB sent letters of agreement that the proposed rule changes did not affect small businesses.

Below are the rules that were amended during the above time period:

- 1. HAR Title 19 Chapter 122 – Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver’s Licenses and Instruction Permits** – last amendment was January 17, 2014.
- 2. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles** – last amendment was October 15, 2013.
- 3. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations** - last amendment was December 23, 2013.
- 4. HAR Title 19 Chapter 142 – Periodic Safety Inspection of Motor Carrier Vehicles** - public hearing is scheduled for July 9, 2015.
- 5. HAR Title 19 Chapter 145 – Hazardous Materials Regulations** - last amendment was December 23, 2013.

6. **HAR Title 19 Chapter 149 – State Civil Identification** - last amendment was March 23, 2014.

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

7. **HAR Title 19 Chapter 122** – Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver’s Licenses and Instruction Permits
8. **HAR Title 19 Chapter 141** – Motor Carrier Safety Regulations
9. **HAR Title 19 Chapter 145** – Hazardous Materials Regulations
10. **HAR Title 19 Chapter 149** – State Civil Identification

University of Hawaii (UH)

UH did not adopt any rules during the period of July 1, 2013 through June 30, 2015 that affect small business. UH does not anticipate amending or repealing any existing rules that affect small business.

Small Business Regulatory Review Board

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