

**DEPARTMENT OF BUSINESS
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKĀ'I

JOSH GREEN, M.D.
GOVERNOR

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DTS: 202402201111AR

February 20, 2024

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

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-Second 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 2024 Small Business Regulatory Review Board Periodic Review and Evaluation Report, as required by Section 201M-7, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <http://dbedt.hawaii.gov/overview/annual-reports-reports-to-the-legislature/>.

Sincerely,

James Kunane Tokioka

Enclosure

c: Legislative Reference Bureau



STATE OF HAWAII • DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

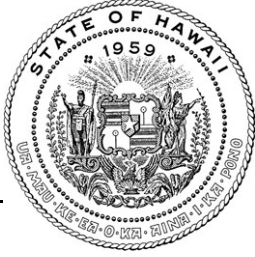
Periodic Review; Evaluation Report

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

2024

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MESSAGE FROM DIRECTOR



On behalf of the Department of Business, Economic Development and Tourism (DBEDT), I am pleased to extend my deep appreciation to the members of the Small Business Regulatory Review Board for their continued hard work, dedication, and commitment to improve the regulated climate for Hawai'i's small business community.

At DBEDT, it is our goal to make continuous improvements to ensure that Hawai'i is a state that is welcoming to businesses – that means making Hawai'i administrative rules friendlier for small business, an important part of having a robust entrepreneurial and innovation ecosystem. Small businesses are essential to our local economy and benefit our communities by driving economic growth, diversifying the local marketplace with a range of products and services, and creating careers and opportunities.

We encourage small business owners and associations to get involved and learn how actions taken on rules can have positive impacts on Hawai'i's small business landscape. Our collaborative efforts will make a difference and help to fulfill our mission of accomplishing a regulatory environment that encourages and supports the vitality of small business in Hawai'i.

Mahalo,

James Kunane Tokioka
DBEDT Director



SMALL BUSINESS REGULATORY REVIEW BOARD

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MESSAGE FROM CHAIR



Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane
Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Mary Albitz
Chairperson
Maui

Robert Cundiff
Vice Chairperson
O'ahu

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy
Atmosfera-Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

This Report consists of existing Hawaii Administrative Rules that both the 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 statutory effort to reduce negative small business impact and to improve rule-making procedures.

The Board began a state-wide rule-review process in 2003 with 14 departments submitting 345 rules that impact small business and the purpose for their continuation. Since then, the 345 rules have been updated and whittled down to 13 rules that the Board believes warrants a full review and modification; pages 18 through 25 of this Report provide the Board's recommendations on these final rules. In addition, the Board has included 3 Public Utility Commission rules that it believes warrants review and modification: pages 25-28.

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 am continuously impressed with the thoughtfulness and the thoroughness that the members put forth. I commend each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

We extend a special Mahalo to Governor Green, Director Tokioka, Deputy Wicker and extend a Mahalo to all the State and County departments that submitted the requested information to this Board.

Mary Albitz, Chair, SBRRB, 2024

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.

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

- 1) A list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) 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.

Result: The information in this report is a compilation of the responses and justifications received.

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

economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

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

- 1) A list of rules adopted during the prior year that affect small business, and
- 2) 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.

Result: The information in this report is a compilation of the responses to these two requests.

(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.

Action Taken: In accordance with Section 201M-7(c), HRS, the SBRRB encourages testimony on new and proposed amendments to Hawaii Administrative Rules but did not specifically solicit testimony from the public regarding any report submitted by the Agencies at a public meeting held pursuant to Chapter 92.

Result: The SBRRB receives and reviews testimonies from the public on proposed new and amended Hawaii Administrative Rules submitted by State and County Agencies during monthly board meetings with each testimony handled accordingly.

ADMINISTRATIVE RULE REVIEW MATRIX

| State and Counties Departments | Hawaii Administrative Rules Submitted |
|--|---------------------------------------|
| STATE DEPARTMENTS | |
| DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | 0 |
| DEPARTMENT OF AGRICULTURE | 1 |
| DEPARTMENT OF THE ATTORNEY GENERAL | 0 |
| DEPARTMENT OF BUDGET AND FINANCE | 0 |
| DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM | 3 |
| DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS | 29 |
| PUBLIC UTILITIES COMMISSION | 0 |
| DEPARTMENT OF HAWAIIAN HOME LANDS | 0 |
| DEPARTMENT OF HEALTH | 12 |
| DEPARTMENT OF HUMAN SERVICES | 1 |
| DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS | 2 |
| DEPARTMENT OF LAND AND NATURAL RESOURCES | 4 |
| DEPARTMENT OF PUBLIC SAFETY | 0 |
| DEPARTMENT OF TAXATION | 2 |
| DEPARTMENT OF TRANSPORTATION | 0 |
| UNIVERSITY OF HAWAII | 0 |
| | |
| COUNTIES | |
| | |
| HAWAII COUNTY | 8 |
| MAUI COUNTY | 3 |
| KAUAI COUNTY | 0 |
| CITY AND COUNTY OF HONOLULU | 13 |
| | |

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)

DAGS reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Agriculture (HDOA)

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 4 Chapter 157 – Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems**
Justification – Irrigation water rates will be amended. Rule change in progress.

Department of the Attorney General

The Department of the Attorney General has no plans to amend or repeal any rule based upon any new, amended, or repealed statute.

It 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 (B & F)

B & F reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Business, Economic Development, and Tourism

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Hawaii Housing Finance and Development Corporation (HHFDC)

1. **HAR Title 15 Chapter 311 – Rental Housing Revolving Fund Program**
Justification – Amendments were made so that affordable housing developers utilizing Rental Housing Revolving Fund (RHRF) loans to finance the construction of affordable rental housing projects pay higher fees for:
 - Application (increased from \$500 to \$5000);
 - New fees for loan origination (0.5% of the loan amount, for example, \$5000 for a \$1 million loan); and

- New fees for extensions or modifications (\$5000 per occurrence).

RHRF is a revolving fund pursuant to section 37-52.4, HRS, and therefore must demonstrate the capacity to be financially self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application fee had not increased since 2010.

2. HAR Title 15 Chapter 312 – Hula Mae Multi-Family Rental Housing Program

Justification – Amendments were made so that affordable housing developers utilizing the Hula Mae Multi-Family program revenue bonds to finance the construction of affordable rental housing projects pay higher fees for:

- Application (increased from \$500 to \$5000);
- Bond administration fee (increased from \$50,000 to 0.5% of bond amount, or \$1000,000, whichever is less, provided that the minimum fee shall be \$50,000); and
- New fee for extensions or modifications (\$5000 per occurrence).

HHFDC endeavors to ensure that its programs are self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application and bond administration fees had not increased since 2010.

3. HAR Title 15 Chapter 313 – Low Income Housing Tax Credit Program

Justification – Amendments were made so that affordable housing developers applying for federal and state Low Income Housing Tax Credits to build affordable rental housing projects pay higher fees for:

- Application (increased from \$1500 to \$5000); and
- New fee for extensions or modifications (\$5000 per occurrence).

HHFDC endeavors to ensure that its programs are self-sustaining. Increased program fees were necessary to cover program administrative costs, including personnel, legal counsel, and overhead. Other state housing finance agencies with similar programs have higher fees and charges. On average, it costs the agency \$3,000 to review each application and each request for extension or modification of a previous award. The application fee had not increased since 2010.

HHFDC met with fourteen affordable housing developers in 2021 to discuss the proposed fee. Most of them met the statutory definition of a small business. The above three amended and compiled rules were signed by the Governor of Hawaii on January 15, 2022.

Department of Commerce and Consumer Affairs (DCCA)

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Business Registration Division (BREG)

1. HAR Title 16 Chapter 39 – Securities

Justification – BREG is currently working on a draft to adopt a NASAA model rule that requires investment adviser representatives to complete annual continuing education courses on compliance, regulation, ethics and products and practice subject matters. The draft has been reviewed by the Attorney General's office and LRB. BREG is currently reviewing LRB suggested revisions.

Cable Television Division (CATV)

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

Justification – Rules under review to update chapter. Expect to amend and draft new language for HAR §16-131-70 to conform to HRS §440G-8.3, which allows DCCA Director to designate public, educational, and governmental access organizations exempt from HRS Chapter 103D. And add a new rule to expressly allow DCCA Director discretion regarding the application of the rules regarding cable television providers for consistency with HRS §440G-12(a).

Division of Financial Institutions (DFI)

3. HAR Title 16 Chapter 24 – Money Transmitters

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

4. HAR Title 16 NEW Chapter – Mortgage Servicers

Rules under review to update licensing requirements.

Professional and Vocational Licensing Division

5. HAR Title 16 Chapter 71 - Certified Public Accountants and Public Accountants

The Board will begin to draft to clarify and update language pertaining to exam credit extensions.

6. HAR Title 16 Chapter 72 – Acupuncture Practitioners

The Board is finalizing a draft. The proposed draft would address much of the outdated language and provide conformity with national standards and practices.

7. HAR Title 16 Chapter 73 - Barbers

The Board will begin drafting amendments to correct inconsistencies between Chapter 73 and Chapter 78, update training curriculum, sanitation requirements, and remove conflicting requirements that no longer apply with the passage of ACT 79 (6/17/2022). Amendments to repeal the medical clearance subchapter was effective 3/17/2022.

8. HAR Title 16 Chapter 75 – Cemetery and Funeral Trusts

The Program recognizes that Hawaii Administrative Rules Chapter 16-75 should be amended to align it with current practices; however, we must acknowledge that the statutory amendments referenced below address some of the past concerns. After review of the rules, there does not appear to be inconsistencies with the rules and amendments to the statutes as required by Act 188, SLH 2007, that are impeding the licensing and enforcement of the cemetery and funeral trust laws. In addition, Act 193, SLH 2018, regarding limited liability for maintaining or repairing cemetery grounds was enacted by the Legislature in response to concerns raised by the community. Act 22, SLH 2020, incorporates the Cemetery Program's current practices pertaining to

cemeteries that are exempt from the provisions of Hawaii Revised Statutes (HRS) Chapter 441.

9. HAR Title 16 Chapter 76 – Chiropractors

The Board is working on a draft to streamline the continuing education review process.

10. HAR Title 16 Chapter 77 – Contractors

The Board is currently working on a draft to update the specialty contractor classifications.

11. HAR Title 16 Chapter 78 – Cosmetology

The Board will begin drafting amendments to correct inconsistencies between chapter 73 and 78, update training curriculum, sanitation requirements, and remove conflicting requirements that no longer apply with the passage of Act 73 (6/17/22). Amendments to repeal the medical clearance subchapter was effective 3/17/2022.

12. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists

The Board is currently working on draft rules.

13. HAR Title 16 Chapter 81 – Elevator Mechanics

The Board is working on finalizing a draft that all parties agreed to.

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

Rules are being updated to reflect statutory provision pursuant to Act 88, SLH 1997; working to incorporate LRB comments.

15. HAR Title 16 Chapter 84 – Massage Therapy

The Board has finalized a draft including sanitation rules for massage establishments and continuing education requirements for massage therapists.

16. HAR Title 16 Chapter 85 – Medical Examiners

The Board is currently working on a draft, which will repeal Title 16 Chapter 93, to incorporate requirements for osteopathic licensure into Title 16 Chapter 85, and amend relevant sections based on enacted legislation.

17. HAR Title 16 Chapter 89 – Nurses

The Board will begin a draft to amend the exclusionary formulary for APRNs and to clarify APRN renewal requirements, including for prescriptive authority and amend the temporary permit section.

18. HAR Title 16 Chapter 90 – Nursing Home Administrators

The Board is currently working on updating to delete reference to “Board of Examiners of Nursing Home Administrators” as the Board was repealed in HRS Chapter 457B and is currently a program and not a Board. Last updated in 1988.

19. HAR Title 16 Chapter 92 – Optometrists

Rules are being updated; working to incorporate LRB comments.

20. HAR Title 16 Chapter 94 – Pest Control Operators

Rules were adopted 2/7/2022.

21. HAR Title 16 Chapter 95 – Pharmacy

The Board of Pharmacy will begin a draft to rules related to the requiring of pharmacies to provide accessible prescription drug label information to individuals who have difficulty seeing or reading standard printed labels on prescription drug containers.

22. HAR Title 16 Chapter 97 – Private Detectives and Guards

The Board is currently working on a draft.

23. HAR Title 16 Chapter 98 – Psychologists

The Board is in the early stages of drafting amendments for HAR 16-98, to bring the training requirements up to date and reflect current trends in doctoral psychology degree programs. The Board does not anticipate that these rules would impact small business.

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

The Commission is working to repeal this chapter, and replace it with three separate chapters 99.1, 99.2, and 99.3. This will facilitate the expeditious review of future rule revisions.

25. HAR Title 16 Chapter 101 – Veterinarians

Rules have been updated to reflect statutory provisions pursuant to Act 071, SLH 2022 currently with DAG for review.

26. HAR Title 16 Chapter 106 – Timesharing

The Program is currently working on a draft, which should include amendments to align with 2023 legislation.

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

On April 24, 2023, after holding a public hearing, the Board voted to approve proposed rules to add branches of Fire Protection and Environmental engineering for licensure, clarify the CE requirements for architects, allow for the acceptance of digital signatures, address misconduct, change lawful experience conditions for engineers and land surveyors, and update various outdated exam logistic and language references. The final draft has been transmitted to the Governor’s Office for signature.

28. HAR Title 16 Chapter NEW – Mixed Martial Arts

The Program will proceed with statutory changes during the 2024 legislative session and will draft rules following the possible enactment of the bill.

29. HAR Title 16 Chapter NEW – Midwives

The Board is currently working on a draft.

Public Utilities Commission (PUC)

The Public Utilities Commission hereby reports that there are no administrative rules to be amended or repealed at this time; and there were no administrative rules adopted by the PUC during the prior calendar year (2022) or fiscal year (July 1, 2021 to June 30, 2023).

Department of Hawaiian Home Lands (DHHL)

DHHL reported that no rule amendments were necessitated by any new, amended, or repealed statute and did not adopt any rules affecting small business during the period of July 1, 2021 through June 30, 2023.

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Solid and Hazardous Waste Branch

1. HAR Title 11 Chapter 260.1 to 279.1 – Relating to Hazardous Waste

Justification – Hawaii is an authorized state for the U.S. Environmental Protection Agency (EPA)'s national hazardous waste program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. To maintain authorization and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 271 (40 CFR 271) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR parts 124 and 260 to 279. This rulemaking updates the State's incorporation of the federal rules from the July 1, 2020 version of the CFR to the July 1, 2022 version, effectively adopting two new EPA rules (described in "Request for governor's preliminary approval of proposed amendments to Hawaii Administrative Rules, Title 11, Chapters 260.1 to 279.1" memorandum dated September 7, 2022). Minimal effect on small business as approved by SBRRB.

2. HAR Title 11 Chapter 273.1 – Hazardous Waste Management

Justification – Data security standards and media sanitization standards at the state and federal levels may sometimes require the physical destruction of electronic storage media (i.e., computer hard drives or solid-state drives). When these storage media are wastes generated by non-household entities, they are regulated as hazardous waste and physical destruction currently requires a hazardous waste permit. Changes are proposed to allow universal waste handlers, including generators and collectors of universal waste electronic items, to drill holes in or crush electronic storage media without a hazardous waste permit. This will ensure that regulated entities such as private businesses and government agencies can comply with both the state hazardous waste regulations and other standards governing data security and electronic storage media. Conditions are included to ensure continued protection of human health and the environment. Minimal effect on small business as these rules are regulatory.

Clean Air Branch

3. HAR Title 11 Chapters 60.1 – Air Pollution Control

Justification – The changes to §11-60.1-172 bring rules into alignment with the regulations of the U.S. Environmental Protection Agency.

No effect on small business as approved by the SBRRB.

Clean Water Branch

- 4. HAR Title 11 Chapter 55 – Water Pollution Control Appendices A,D,H,I and M**
Justification – National Pollutant Discharge Elimination System (NPDES) standard general permit conditions in appendix A as well as the NPDES general permits contained in appendices A, D, H, I, and M. The changes to the NPDES were made to be in line with the Environmental Protection Agency to regulate water quality and pollution control programs in the state of Hawaii.
- A** - Standard General Permit Conditions
 - D** - NPDES General Permit Authorizing Discharges of Treated Effluent from Leading Underground Storage Tank Remedial Activities
 - H** - NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
 - I** - NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
 - M** - NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Minimal effect on small business as these rules are regulatory.

- 5. HAR Title 11 Chapter 55 – Water Pollution Control Appendices C,J and L**
Justification – Readoption of the National Pollutant Discharge Elimination System (NPDES) general permits in HAR 11-55, Appendices C, J and L.
Reissuance of the NPDES general permits:
- C** - Authorizing discharges of storm water associated with construction activities
 - J** - Authorizing unintentional discharges from recycled water systems
 - L** - Authorizing discharges of circulation water from decorative ponds or tanks

Minimal effect on small business as these rules are regulatory.

Indoor and Radiology Health Branch

- 6. HAR Title 11 Chapter 41 – Lead-Based Paint Activities**
Justification – EPA has made changes to the federal lead-based paint activities rules, including to the dust-lead hazard standards and dust-lead post abatement clearance levels. To remain an authorized program, the DOH must adopt amendments to Chapter 11-41, HAR, to remain no less stringent than the federal program. Additional changes are made to improve clarity and readability. Changes are explained in detail in the memorandum requesting preliminary approval. DOH must report to EPA that the new rules have been adopted by March 8, 2023

Minimal effect on small business.

Office of Health Care Assurance

- 7. HAR Title 11 Chapter 94.2 – Nursing Facilities;
HAR Title 11 Chapter 97.1 – Home Health Agencies;
HAR Title 11 Chapter 103.1 – Licensure and Certification Fees for Health Care
Facilities and Agencies**
Justification – Allow the DOH to accept accreditation or certification of Hawaii’s nursing facilities by other nationally recognized accreditation or certification organizations for purposes of renewing Hawaii’s nursing facilities licenses. Improve consistency with the current federal requirements as set forth in 42 CFR Part 483 Requirements for Long Term Care Facilities which contains the requirements that an Institution must meet to

qualify to participate as a Skilled Nursing Facility in the Medicare program and as a nursing facility in the Medicaid program. The federal requirements serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements of participation in Medicare and Medicaid;

Update requirements for emergency preparedness for all hazards, including but not limited to natural disasters, pandemic events, or terrorist threats due to recent experiences nationally and locally, to be consistent with current federal requirements and guidance;

Require facilities to: (1) develop, implement, and maintain an effective, comprehensive, data-driven quality assurance and performance improvement program that focuses on indicators of the outcomes of care and quality of life for the full range of care and services provided by the facility; and (2) notify the resident, resident's representative, and the state long term care ombudsman of transfer or discharge initiated by the facility.

Minimal effect to small business.

Office of Medical Cannabis Control and Regulation

8. HAR Title 11 Chapter 850 – Medical Cannabis Dispensaries

Justification – Pursuant to Act 230, Session Laws of Hawaii (SLH) 2016 and Act 159 SLH 2018, the DOH requests approval of amendments to interim HAR Title 11, Chapter 850, entitled "Medical Cannabis Dispensaries". These interim rules set forth requirements for medical cannabis dispensaries and laboratories certified to analyze cannabis and manufactured cannabis products to provide for the protection of the health and safety of qualifying patients, qualifying out-of-state patients, and the public.

A recent major update to Chapter 11-850 (effective February 24, 2022), included the addition of many new laboratory analytical requirements. The purpose of the current amendments is to roll back certain changes that were mistakenly made without a phase-in period. The certified testing laboratories are unable to immediately comply with these regulations based on the need to obtain new equipment and chemical standards before they will be able to demonstrate competency to perform the new analyses. A new effective date for the requirements currently being removed will be sought in another rulemaking soon.

Minimal effect on small businesses, as dispensaries would need further certification as the cost of doing business.

Food and Drug Branch

9. HAR Title 11 Chapter 37 – Hemp Processing and Hemp Products

Justification – A recent update to Chapter 11-37 (effective February 24, 2022), included the addition of many new laboratory analytical requirements, which were aligned with the requirements in Chapter 11-850, HAR. The purpose of the current amendments is to roll back certain changes that were mistakenly made without a phase-in period. The testing laboratories certified under chapter 11-850 subchapter 9 are unable to immediately comply with recent changes to chapter 11-850 based on the need to obtain new equipment and chemical standards before they will be able to demonstrate competency to perform the new analyses. The current rollback changes are being made to Chapter 11-37, HAR, to keep testing requirements in both chapters aligned. A new

effective date for the requirements currently being removed will be sought in another rulemaking soon.

Minimal effect to small business.

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:

Clean Water Branch

10. HAR Title 11 Chapter 55 – Water Pollution Control and Permits Appendices C, J, L

Justification – Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges as well as some storm water discharges to surface waters such as streams, lakes, or oceans. The Environmental Protection Agency authorized the State of Hawaii, DOH to administer the NPDES permit system in Hawaii.

Adoption of rules will be in line with federal mandates. Specifically, Appendix C, J, L:

Appendix C: Discharges of Storm Water Associated with construction Activities
Appendix J: Occasional or Unintentional Discharges from Recycled Water systems
Appendix L: Discharges of Circulation Water from Decorative Ponds or Tanks

Alcohol and Drug Abuse Division

11. HAR Title 11 Chapter 177.2 – Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists

Justification – The proposed revised Title 11 Chapter 177.2, “Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists”, removes certification standards for an obsolete credential called Co-Occurring Disorders Professional Diplomate, establishes new standards for the certification of Peer Recovery Specialists to help clients who are in treatment and recovery, and updates ethical standards to include Peer Recovery Specialists. HRS §321-196 established the authority of DOH to adopt rules to implement HRS Chapter 321, Part XVI, “Substance Abuse” which includes the revision of rules on certification standards implemented by the DOH.

In the current administrative rules, there are no standards to include credentials with individuals who have lived experiences in recovery from substance use disorders. Peer Recovery Specialists have been adopted by many states according to standards adopted by the International Certification & Reciprocity Consortium (ICRC).

The Alcohol and Drug Abuse Division is working with SBRRB to determine if it has any effect to small businesses. Tentatively no effect.

Office of Language Access

12. HAR Title 11 Chapter 220 – Office of Language Access Rules of Practice and Procedures

Justification – The purpose and scope of these rules is to establish the practice and procedures for the administration of Chapter 321 C, HRS and to affirmatively address,

on account of national origin, the language access needs of limited English proficient persons.

Tentative minimal effect on small business as these rules will address language access to public activities and functions.

Department of Human Services

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Temporary Assistance for Needy Families Program (TANF)

1. **HAR Title 17 Chapter 794.1 – First to Work Program**

Justification – Will be amended to implement section 346-261(b), HRS, as amended by Act 237, SLH 2022. The proposed rules are being written. The date to submit and begin formal rule making process had not been set but are targeting July or August 2023.

Department of Land and Natural Resources

The following rules, which may affect small businesses, were repealed during the prior year.

1. **HAR Title 13 Chapter 251 – Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, Subchapter 1 Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits, Subchapter 2 Suspension or Revocation of Operator Permits, Subchapter 3 Violation of Operator Permit Provisions, and Subchapter 7 Special Operating Restrictions**

To remove all certification requirements regarding catamaran captain, surfboard instructor, sailboard instructor and commercial motorboat operator permits.

Effect of Small Business – Allows employees to set their own employee qualification standards.

Justification – Avoids unwanted liability on the state and taxpayers for accidents or injuries occurring from the permittee or their employee actions.

2. **HAR Title 13 Chapter 75 – Rules Regulating the Possession and Use of Certain Fishing Gear and Title 13 Chapter 60.4 – West Hawaii Regional Fishery Management Area, Hawaii**

Effect of Small Business – Various or not at all.

Justification – Needed for healthy management of fisheries.

3. **HAR Title 13 Chapter 256-152 – Kahaluu Bay Ocean Waters** - Regarding commercial surfing instruction, including a map exhibit and technical amendments.

Effect on Small Business – Limits number of students per instructor but allows for all day access to the bay. NOTE: Limit of 4 surf schools were in the 2016 rules and not changed.

Justification – Fewer surf schools and students at any one time allows local surfers access to the water.

4. HAR Title 13 Chapter 60.41 – West Hawai'i Pāku'iku'i Replenishment

Effect on Small Business – Short term loss of Pahu'iku'i fishing in West Hawaii. Permanent rules in 2 years.

Justification – Better for long-term management of fishery.

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Hawai'i Occupational Safety & Health Division (HIOSH)

1. HAR Title 12 Subtitle 8 Part 10 – Boiler and Pressure Vessel

Justification - To reflect the passage of Act 102 (SLH, 2022). Act 102 authorizes owner-user inspectors in the exclusive employment of owner-user inspection organizations to perform inspections on pressure retaining items.

The National Board of Boiler and Pressure Vessel Inspectors permits an Owner-User Inspection Organization (OUIO) to establish and maintain an inspection program if the OUIO's inspection procedures meet the requirements of NB-371, Accreditation of OUIO, NB-381, Quality Program for Inspection Organizations, NB-263, National Board Rules for Commissioned Inspectors, and the jurisdiction's approval.

2. HAR Title 12 Subtitle 8 Chapter 43 – Boards

Justification – Rules of Practice and Procedure before the Hawaii Labor Relations Board (HLRB) was adopted on October 21, 2022. The adoption of Chapter 43 replaced Chapters 41 and 42 and streamlined the procedure for contested case hearings before HLRB. Chapter 43 also includes rules of practice and procedure for contested case hearings pursuant to Chapter 396, Hawaii's Occupational Safety and Health Law.

The adoption of HAR Chapter 43 positively impacts small businesses by providing a streamlined procedure for contested case hearings, procedures for the free use of the HLRB's electronic filing system and cost savings for small businesses via electronic filing.

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

1. HAR Title 18 Chapter 237.1 – Administration of Taxes

Justification - The proposed rules amend section 18-237-1 of the HAR to add a new section to define the term “employee” for purposes of Hawaii’s general excise tax law.

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

Justification - The proposed rules amend sections 18-251-1-01 and 18-251-1-02 of the HAR to include peer-to-peer car sharing marketplaces in the definition of “lessors” under the Rental Motor Vehicle Surcharge Tax (RVST).

Please note these proposed rules are nearly identical to the Temporary Administrative Rules (the "Temporary Rules") currently in effect. Affected taxpayers were required to register for a license prior to March 1, 2021, and DoTax has been enforcing the rules since that date.

Department of Transportation (DOT)

DOT does not have any administrative rule that needs to be amended, or repealed to align with any new amended, or repealed statute; additionally, there are no rules adopted in FY 23 that affect small business.

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.

Follow-up on Prior SBRRB Administrative Rule Reviews

The following 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 2024 report, there have been 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 2024 report, there have been no changes or updates to the rules.

Division of Animal Industry

3. HAR Title 4 Chapter 17 – Swine

Justification - This rule authorizes DoAg to undertake disease control measures intended to control and eradicate certain diseases 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 the printing of this 2024 report, there have been no changes or updates to the rules.

4. 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 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; completion of the updates is expected in 2020.

As of the printing of this 2024 report, there have been no changes or updates to the rules.

Department of Commerce and Consumer Affairs

5. 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 the printing of this 2024 report, there have been no changes or updates to the rules.

6. 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 carried out. 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 have been 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 soon; at that time, a determination will be made if modifications are warranted.

As of the printing of this 2024 report, there are no changes or updates to the rules.

Department of Health

Medical Division

7. 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 has been 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 2024, DOH's website continues to show the rules are "pending amendment & compilation."

8. 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 2024, DOH's website continues show the rules are "pending repeal and replacement by Chapter 92."

9. 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 revision; 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 2024, there were no changes or updates to the rules.

10. 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 2024, there were no changes or updates to the rules.

Environmental Division

Noise, Radiation and Indoor Air Quality Branch

11. 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 2024, DOH's website continues to show rules are "pending repeal/replacement by Chapter 48."

12. 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 a public hearing.

Final Commentary - As of 2024, there were no changes or updates to the rules.

13. 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 2024, DOH’s website continues to show the rules are “pending amendment & compilation.”

Public Utility Commission (PUC)

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F – Title 6) to Department of Commerce and Consumer Affairs (DCCA – 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, 2021 through June 30, 2023, with reasons for justifying the rules’ continued implementation:

1. HAR Title 16 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, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

2. HAR Title 16 Chapter 605 – 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

As of 2020, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

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:

3. 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, contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014, however, as of the date of this 2024 Report, the chapter remains as 62 and no changes or modifications have been made to the rules.

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Environmental Management

- 1. Administrative Rule No. 5-3 – Article II (Solid Waste Division) Rule 5 (General Provisions), Section 5-3 (Definitions)**
Justification – Public health and safety. Supports a clean environment. Provides an enforceable definition of an “Unsecured load” to reduce litter.
- 2. Administrative Rule No. 12-3 – Article II (Solid Waste Division), Rule 12 (Solid Waste Fees), Section 12-3 (Fee Schedule), Subsection 1 (Sanitary landfill disposal fees), Paragraph D (Residential credit)**
Justification – Public health and safety. Supports a clean environment. Grants tipping credit to commercial haulers of household generated waste.

Hawai'i Fire Department

- 3. Hawaii Revised Statutes Chapter 132 Fire Protection**
Justification – State government regulation regarding the powers of the Fire Chief, Investigation rights, entry, duties of owners, penalties, submission of building plans. Establishes the powers and duties of Fire Chief's in the State of Hawaii in the furtherance of safety from fire for the public.
- 4. Hawaii County Code Chapter 26, Article 1. Hawaii County Fire Code**
Justification – Establishes the minimum life safety standards in Hawaii County in relation to fire for the built environment.
*Will be updated in FY2022-23 due to changes to state fire code as established in HRS 107-24(c) and decided by HRS107-25, and mandated to be update by code cycle in HRS107-28
- 5. Hawaii County Code Chapter 26, Article 2. Hawaii County Fire Code**
Justification – Adopts the language of HRS 132D on fireworks within the County of Hawaii for the safe regulation and usage of explosives pyrotechnic within the jurisdiction.
*No changes, but will be moved from Chapter 26, Article 2, to Chapter 17, Article 2 as part of the FY2022-23 updates to fire code and county code.

Department of Water Supply

- 6. Hawaii Revised Statutes Chapter 54 – Water Systems**
Justification – Management, control, and operation of the water systems of the County and property thereof.

18. Hawaii County Charter, Article VIII Section 8-1 through 8-5

Justification – Management, control, and operation of the water systems of the County and property thereof.

19. Department of Water Supply Rules and Regulations

Justification – Management, control, and operation of the water systems of the County and property thereof.

City and County of Honolulu

Pursuant to Section 201M-7, HRS, we have surveyed all our City departments and agencies and hereby affirm that except for the items listed below by department/agency, there were no rules adopted during the prior year that affect small business:

Department of Planning and Permitting (DPP)

DPP reported that there were no new, amended, or repealed Administrative Rules and that no rules were adopted affecting small business during the period of July 1, 2021 through June 30, 2023

Department of Transportation Services (DTS)

DTS may amend or repeal Chapter 23-3, Bus Advertising on City Transportation Vehicles (TheBus), within the next year because of enactment of Ord. 23-21.

DTS has not adopted any rules within the past calendar year.

Honolulu Board of Water Supply (BWS)

Although no new rules were adopted, BWS presented proposed water rates to the SBRRB on August 17, 2023 and received support to proceed to public hearing. The rates were subsequently adopted by the BWS Board on November 28, 2023 for rates and charges for the furnishing of water and water service for Fiscal Years 2024 to 2029. The rate changes go into effect as of February 1, 2024 and will have an impact on small business.

Department of Facility Maintenance

For future awareness, Storm Water Quality has existing Administrative Rules in place under Title 14, Chapter 6 that will be revised and updated in accordance with the Revised Ordinances of Honolulu (ROH), placing storm water enforcement authority under Chapter 43, ROH, versus Chapter 14 (ROH). The revised rules are scheduled for adoption in CY2024 and the SBRRB will be advised accordingly.

Honolulu Liquor Commission

On June 17, 2022, Act 076 (HB137 HD1 SD2, CD1) was signed into law, with an effective date of January 1, 2023. Act 076 made broad revisions to Hawaii Revised Statutes (HRS) Chapter 281, with a particular focus on the license application process and the investigative scope and discretion accorded an investigator in this process. Because the license application process is a core function of the Liquor Commission, the impact of Act 076 is expected to be extensive. Below is a list of existing Rules that may be amended in response to requirements found in Act 076, reserving the right to add to or delete from the list following additional review:

1. Rule §3-80-1.1. Definitions
2. Rule §3-81-19.11 Powers of the Commission in Conducting Hearings
3. Rule §3-81-20. General Right of Inspection

4. Rule §3-82-38.25. Restrictions of Conditions on Licensing
5. Rule §3-82-41.4. Management of Operating Agreements
6. Rule §3-82-45.1. Requirement for Criminal History and Fingerprint Card
7. Rule §3-83-53.1. License Applications; Notice of Hearing; Affidavits
8. Rule §3-83-56. Report by Investigator
9. Rule §3-83-57.1. Affidavits; Forms
10. Rule §3-83-61.1. Renewal of Existing License
11. Rule §3-84-79.1 Obstructing Commission Operations

Although the Honolulu Liquor Commission conducted public hearings on the adoption of proposed new rules on February 10, 2022, due to changes in the Commission and Commission administration, the process was not completed. For awareness, completion of the adoption process is anticipated in CY2024.

Department of Parks and Recreation (DPR)

The Department of Parks and Recreation amended the "Rules and Regulations Governing Shore Water Events" in CY2023. The proposed rules went before the SBRRB on July 20, 2023, a public hearing was held on October 23, 2023 and the proposed rules went back before the SBRRB on November 16, 2023. The rules were approved by Mayor Blangiardi and filed with the City Clerk on December 5, 2023.

See; [2023-12-11 fully executed Admin Rules Title 19 DPR Chap 25 Rules and Regulations Governing Shore Water Events.PDF \(honolulu.gov\)](#)

Honolulu Fire Department (HFD)

The HFD had no administrative rules or rule changes that would affect small businesses at this time. The public facing rules the HFD has jurisdiction over is the Fire Code of the City and County of Honolulu, of which only clarification changes were made in its recent adoption. Amendments to the Fire Code are under review and have not been adopted.

Adopted amendments affecting small businesses will be included in the next annual report.

Mayor's Office of Culture and the Arts (MOCA)

MOCA does not have Administrative Rules and thus this request is not applicable to the department.

City and County of Honolulu Office of the Managing Director

The following departments have reported no changes:

- Department of Environmental Services (ENV)
- Department of Human Services (DHR)
- Office of Economic Revitalization (OER)
- Department of the Corporation Counsel (COR)
- Department of Information Technology (DIT),
- Medical Examiner Department (MED)
- Department of Emergency Management (DEM)
- Office of Climate Change, Sustainability and Resiliency (CCSR)
- Honolulu Authority for Rapid Transportation (HART)
- Department of Customer Services (DCS)
- Department of Design and Construction (DDC)
- Office of Housing (HOU)
- Managing Director's Office (MDO)

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Environmental Management

1. Maui County Code Chapter 20.42, Prohibit the Sale, Use, or Distribution of Non-Mineral Sunscreens

Justification – Ordinance No. 5306 established December 6, 2021 and made effective October 1, 2022.

2. Maui County Code Chapter 20.18, 20.18.040 Plastic Bag and Disposable Bodyboard Restrictions

Justification – Amended by Ordinance No. 5236 on August 9, 2021 to include bodyboards effective August 9, 2022. Businesses are prohibited from selling, renting, or distributing disposable bodyboards.

3. Maui County Code Chapter 20.26, Relating to the Sale and Use of Plastic Disposable Foodware

Justification – Amended by Ordinance No. 5084 March 1, 2022. Includes a restriction on plastic disposable food ware and disposable polystyrene foam coolers.

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, 2021 through June 30, 2023, with reasons for justifying the rules' continued implementation:

Department of Finance – Real Property Division

1. Section 5A-11.4 of the Kauai County Code – Home and Related Exemption Rules

Justification – The rules relate to a new ordinance passed in the fall of 2020 that tightened up the restrictions to qualify for a homeowner's exemption. The intent was to make it more difficult to qualify for the home exemption to be more uniform with the other Hawaii counties.

Department of Parks and Recreation

2. Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Part IV, Sections 30 to 36

Justification – The rule amendments moderately extend the allowable hours of operation, amend compliance and enforcement of provisions to allow for incremental fines rather than automatic permit revocation, and clarify the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.



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

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