GF 130.10

REVISED: November 21, 2000

FEB 27 2002

COPY

DEPARTMENT OF HEALTH

Hawaii Administrative Rules
Procedures for Review, Routing and Approval

The Department of Health (DOH) Hawaii Administrative Rules (HAR) Procedures for Routing and Approval is a culmination of administrative directives from the Office of the Governor (No. 99-02), the Department of the Attorney General (Attachment D), Legislative Reference Bureau (Attachment A-2), the Lt. Governor's S.W.A.T. (Slice, Waste and Tape) Program, and the Director's Office. These directives have been combined to help DOH programs draft and process rules appropriately without having to look at multiple documents for guidance. These procedures are also updated to reflect changes in HAR processing procedures made as a result of statutory changes.

The DOH HAR procedures are divided into five stages:

Stage I: Drafting Administrative Rules and Review Process

Stage II: Governor's Approval to Public Hearing

Stage III: Public Hearing

Stage IV: Final Approval

Stage V: Post Final Approval

STAGE I: DRAFTING ADMINISTRATIVE RULES AND REVIEW PROCESS

A. Program drafts, revises, or repeals administrative rules in Ramseyer format using the *Hawaii Administrative Rules Drafting Manual*. If drafting new rules, the program should notify the Office of Planning, Policy and Program Development (OPPPD) at 586-4188 to obtain a chapter number assignment.

Drafts of administrative rules should also conform with Chapter 91, Hawaii Revised Statutes.

Prior to drafting new or amending HARs, programs are encouraged to complete the SWAT Rule Review Form (Attachment A) and submit the completed form to the department's SWAT representative - currently the Deputy Director of Health.

Administrative rules that require changes or additions should be amended and compiled. Administrative rules chapters and sections should no longer be amended only to allow for easier public review of the rules (see Attachment A-1, Intra-Departmental Directive No. [illegible] and Attachment A-2, letter from the Legislative Reference Bureau dated Ap[illegible]00).

When amending administrative rules, please keep in mi[illegible] cannot be renumbered. HAR sections can be amended by inserting n[illegible]oving old language (underlining or bracketing, respectively, in Ramseyer f[illegible]at). Sections may also be repealed, but may not be renumbered.

According to Act 283, SLH 2000, if repealing HAR sections, chapters or subchapters that are "null and void or unnecessary," programs need only publish or public notice that these sections, chapters, or subchapters are being repealed without any accompanying descriptions of those provisions, and without the need for a public hearing. However, if adopting, amending and/or compiling administrative rules in combination with repeal of these rules, the process must comply with existing requirements of administrative rules procedures.

B. The program sends a draft of the administrative rules first to their Deputy Attorney General, and second to the Legislative Reference Bureau (LRB):

1. <u>Deputy Attorney General</u>

Program sends the proposed administrative rules and a draft of a memo from the Director to the Governor to the Department of the Attorney General for review and comment as directed in Attachment B, Interdepartmental Memorandum No. 1999-4. This

memo asks the Governor for preliminary approval to hold public hearings on the rules (see Attachment C to review a sample of this memo) and needs to eventually be signed by the Deputy Attorney General. It is, therefore, necessary for the Deputy Attorney General to review both the memo and the rules.

The draft administrative rules and the draft memo may "bounce" back and forth between the program and the Deputy Attorney General assigned to the program until there is agreement that the administrative rules are satisfactory. When the Deputy Attorney General approves of the administrative rules and draft memo, the program should send the rules only to LRB.

2. Legislative Reference Bureau

The draft administrative rules should be sent to the Revision of the Statutes Division in LRB with a cover memo or note. The cover memo or note should contain the program's contact person's name and telephone number for LRB to call them if they require additional information regarding the rules. The program may also specify the date by which the program needs a response. LRB will review the administrative rules for format.

C. The program then sends the draft of the rules to OPPPD and the Administrative Services Office (ASO) after: 1) the program's assigned Deputy Attorney General approves the rules, 2) the program edits the rules according to LRB's direction, and their division head and deputy director approve the rules.

D. The program schedules a review team with their Deputy Director, Program Chief, ASO and OPPPD. The Deputy Director heads this administrative rules review team to make sure that the rules comply with departmental policies. The draft of administrative rules is ready to obtain Governor's preliminary approval upon approval of the review team.

STAGE II: GOVERNOR'S APPROVAL TO HOLD PUBLIC HEARING

A. In order to obtain the Governor's preliminary approval to hold public hearings on the rules, the program needs:

1. A memo from the Director of Health to the Governor asking for preliminary approval.

   The preliminary approval memo should resemble Attachment C. Signature blocks should be placed at the end of the memo for the Governor to indicate approval and the Deputy Attorney General to sign APPROVED AS TO FORM. If the administrative rules are for a board or commission attached to the Department of Health, a signature block should be made for the chairperson to sign as well.

2. A draft of the HAR in Ramseyer format.

   Please made sure that the Deputy Attorney General signs the memo. If appropriate, the Ramseyer format of the rules may be signed by upon the discretion of the Deputy Attorney General.

   If the rules do not change after public hearing, programs may submit the Ramseyer version of the rules which have been signed by the deputy Attorney General and the Director of Health to LRB after the Governor has given final approval of the rules.

   If the rules change after public hearing, the Ramseyer version of the rules must be revised and, if the changes are considered substantive by the Deputy Attorney General, the program must go through procedures to allow for public hearing of rules again.

no need Deputy AG signature yet 3/15/05 per Val Tim

3. A small business impact statement, if applicable.

According to Act 168, SLH 1998, which has a sunset date of 6/30/02, prior to submitting proposed rules for adoption, amendment, or repeal under Section 91-3, the program should determine whether the proposed rules affect small business and, if so, consider the availability and practicability of less restrictive alternatives that could be implemented (this determination does not apply to emergency rule making).

If the proposed rules affect small business, the program should consider creative, innovative or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the small business regulatory review board prior to providing notice for a public hearing. The statement per Act 168, SLH 1998, shall provide a reasonable determination of the following:

a. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;

b. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

c. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;

d. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;

e. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;

f. How the agency involved small business in the development of the proposed rules; and

g. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

DOH does not have an administratively attached advisory committee on small businesses. Each program is, therefore, advised to convene its own committee on small businesses. This committee should consist of three or more odd number of members appointed by the program to review the small business impact statement. The committee members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person can serve on the DBEDT's small business regulatory review board and an advisory committee on small business for the program concurrently. The advisory committees shall not be subject to the requirements of Chapter 91, HRS.

These requirements regarding small business shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations which affords the agency no discretion to consider less restrictive alternatives.

3/15/05 per VP Yim no signatures needed

B. Program delivers an original plus one copy of the preliminary approval memo, a draft of the HAR in Ramseyer format and a small business impact statement to OPPPD. OPPPD reviews and routes the memo to the program's Deputy Director and the Director for signature. OPPPD then notifies the program that the memo has been signed.

C. Program picks up signed documents from OPPPD, then makes copies and distributes the memo and the proposed administrative rules accordingly:

Agency	Memo	Administrative Rules	Small Business Impact Statement
Governor's Office	Original	Original	1 copy
B&F	1 copy	1 copy	1 copy
DBEDT	1 copy	1 copy	1 copy
OPPPD	1 copy	1 copy	1 copy

Preliminary approval of the administrative rules from the Office of the Governor may take some time. The Office of the Governor waits for analyses from the Department of Budget and Finance (B&F) and the Department of Business, Economic Development and Tourism (DBEDT) before granting preliminary approval. The program may be asked to answer questions from these departments during this time.

STAGE III: PUBLIC HEARING

A. Program calls OPPPD at 586-4188 for a docket number for public notice after the Office of the Governor gives preliminary approval of the rules.

B. Program schedules and advertises for a public hearing in newspapers of general circulation. See Interdepartmental Memorandum No. 1991-2 (Attachment D) and the *Outline of Requirements for a Notice of Public Hearing for the Adoption, Amendment, or Repeal of Administrative Rules* for specific instructions on how to inform the public of the hearing. A draft of a public hearing notice is included (Attachment E). Also, see "Guidelines for

Preparing DOH notices to Assure Accessibility for Persons with Disabilities" for sample language to include in public notices to accommodate the disabled (Attachment F).

The Deputy Attorney General should review the public notice to make sure it conforms to the HRS mandates.

Per §1-28.5, HRS, the comptroller is in the process of determining a consistent publication procedure to enable the public to go to one source of publication for published public notice on each island. Programs will be notified once this procedure is established. The notice for public hearing should appear no less than 30 days prior to the hearing. Early notification of the public hearing to local newspaper agencies is recommended.

Also, per Administrative Directive No. 99-02, if any proposed rule affects small business, the notice of public hearing shall summarize any business impact described in the "Small Business Impact Statement," and shall state any new fee or compliance burdens that will affect small business.

The program should forward a copy of the published Notice or Notices of Public Hearing and a copy of the administrative rules to the Communications Office with the name of the program's contact person and telephone number to respond to public inquiries, if any.

C. Program notifies or appoints a Public Hearings Officer. A Public Hearings Officer preferably should not be the person who drafts the administrative rules for objectivity during the hearing. District Health Service Administrators may be asked to serve as hearings officers for hearings on the neighbor islands, if necessary. Public Hearings Officers write a Hearings Officer's report to document the hearing (see Attachment G for an example of such a report). When public hearings need to be scheduled or if programs have additional questions on how to conduct public hearings, call the departmental hearings officer, at ~~586-4340~~.
64409

D. Program makes copies of the proposed administrative rules as follows:

1. One copy for each district health office.

2. One copy for display.

3. If draft rules are posted on the Internet, programs may refer the public to the website, otherwise additional copies should be made for distribution upon request from the public prior to the hearing. Per Act 301, SLH 1999, state agencies can exercise the option to charge for copies of HARs or not. If an agency does decide to charge for rules, the fee, according to Act 301, SLH 1999, and Act 160, 1999 should be not less than 5 cents per page and not more than 10 cents per page.

Program sends copies of PN package to Communications Director & EPA, Reg. 9

E. A record of the hearing must be kept. The program has the option of recording the hearing on tape or hiring a stenographic recorder to make a transcript of the hearing proceedings. Written testimony should be kept and filed with the program. The minutes from the hearing and written and oral testimonies should be used to write the hearings officer's report.

F. Program notifies their Deputy Attorney General after the hearing. If changes in the wording of the administrative rules (excluding grammatical and formatting changes) were made as a result of the hearing, this notification should be in writing and should include:

1. An indication of whether the facts and circumstances regarding the proposed adoption, amendment, or repeal of the rules have changed compared to that information that was sent prior to the hearing. The program should incorporate a summary of the public's statements regarding the administrative rules and the department's response to these comments at this time.

2. The actual changes in administrative rules as a result of the hearing.

   If the Attorney General determines that the changes in administrative rules are substantial, the program makes the changes and goes back to Stage I of the departmental administrative rules processing procedures.

   If the changes are not substantial or no changes were made to the administrative rules after the hearing, the program proceeds to the next stage.

STAGE IV: GOVERNOR'S FINAL APPROVAL

A. To obtain the Governor's final approval of HARs, programs need:

   1. The final approval memo from the Director of Health to the Governor requesting final approval of the administrative rules per Administrative Directive No. 99-02. This memo should:

      a. Indicate whether the facts and circumstances regarding the proposed adoption, amendment, or repeal of the rules has changed, compared to that information that was sent before the public hearing.

      b. Describe any changes that have been made to the proposed rule following public hearing, by explaining these changes and providing any updates of information requested in Items 1 through 7. A copy of this information shall be concurrently sent to the Director of Budget and Finance, the Director of Business, Economic Development, and Tourism, and the Attorney General.

c. Indicate whether the proposed rule affects small business and, if so, whether a "Small Business Statement," which provides the information described in § -3 of Section 2, Act 168, SLH 1998, has been submitted to the Small Business Regulatory Review Board and the departmental advisory committee on small business.

2. An administrative rules package which should be an attachment to the memo. The original copy of the rules should be printed on bond paper. The administrative rules package should consist of:

   a The administrative rules summary sheet. PLEASE NOTE that the adoption date is stamped by the Director's Office. Programs or attached agencies should leave a blank space for this date stamp and not type in an adoption date on the rules.

   b The administrative rules in "clean format," typed single space and printed on both sides of the paper with appropriate headers and footers. (The Office of the Lieutenant Governor will stamp the administrative rules' effective date after the Governor gives his final approval.)

   c An approval sheet that has allowances for the signatures of the Director, Deputy Attorney General and the Governor.

   See the *Hawaii Administrative Rules Drafting Manual* for examples of "a" thru "c."

   d. If the Ramseyer version of the administrative rules has not been signed by the Director and the Deputy Attorney General or non-substantial changes have been made to the rules as a result of the hearings, submit a copy of the rules in Ramseyer format for the Director to sign at the same time he signs the clean version. Programs should obtain the Deputy Attorney General's signature on both formats of the rules and on the memo. The Ramseyer format is for LRB only and programs should not send the Ramseyer format to the Governor or DBEDT for final approval. Programs should

^ But how?

send LRB signed copies of the administrative rules in Ramseyer and clean formats (see STAGE V, C).

3. A Post Hearing Small Business Impact Statement per Act 168, SLH 1998 has a sunset date of 6/30/03. If proposed Hawaii Administrative Rules have an impact on small businesses, programs should write an impact statement after public hearing. Programs should submit this statement to the small business regulatory review board and the advisory committee on small business after the public hearing is held. This requirement does not apply to emergency rules. The small business statement after public hearing shall provide the following information:

address to ~~small business~~ @ 250 South Hotel St. Rm 504 Hon 96813

   a. A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;

   b. The number of persons who:

      (1) Attended the public hearing;
      (2) Testified at the hearing; and
      (3) Submitted written comments; and

   c. If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change.

B. Program sends the final approval memo and the administrative rules package to the Deputy Attorney General to obtain the APPROVED AS TO FORM signatures on the approval sheets of the administrative rules package. Programs should retrieve the memo and package after the Deputy Attorney General signs the approval sheets.

C. Program delivers an original plus two copies of the final approval memo, the signed administrative rules package and small business impact statement to OPPPD. OPPPD reviews and routes the memo and attachments to the Deputy Director and Director for signature:

> The Director signs the memo and the original and one copy of the approval sheet; the second copy may have a facsimile of the required signature according to Administrative Directive No. 99-02. However, it is preferable that the Director sign the original and both copies.

OPPPD will return the administrative rules after the Director signs them.

D. Program makes copies of the memo and the administrative rules package and distributes them accordingly:

Agency	Memo	Administrative Rules	Small Business Impact Statement
Governor's Office	Original	Original + 2 copies	1 copy
B&F	-0-	-0-	-0-
DBEDT	1 copy	1 copy	1 copy
OPPPD	1 copy	1 copy	1 copy

After the Governor signs the approval sheets in the administrative rules package, the Office of the Governor forwards the administrative rules to the Office of the Lieutenant Governor. The Office of the Lieutenant Governor stamps the effective dates on the rules, displays the rules for 10 days, and returns one copy to OPPPD. OPPPD will send a copy of the signed administrative rules to the program.

STAGE V: POST FINAL APPROVAL

A. Program checks entire contents of administrative rules. If the Lieutenant Governor's Office inadvertently missed stamping effective dates, the program may stamp the effective dates in the appropriate areas.

B. Program sends a copy of the rules on diskette to the Health Information Systems Office (HISO). This diskette copy will be used to post the rules on the department's website. A complete list of the Department of Health's administrative rules is on the web. HAR chapters that are listed in blue are those that may be printed from the web. The Department of Health's HAR website is:

www.hawaii.gov/doh/rules/index.html

PLEASE NOTE: Copies of HAR from the website are not considered to be official (see HAR drafting manual for directions on distributing hard copies of the rules to the public).

C. Program sends the following items to LRB:

1. Amended, repealed or new administrative rules in Ramseyer format that have been signed by the Director and Deputy Attorney General.

2. A copy of the administrative rules package which includes the administrative rules that have been approved by the Governor in clean format.

D. Program makes copies of the administrative rules for internal and public distribution using directions on Official Hawaii Administrative Rules copies in the *Hawaii Administrative Rules Drafting Manual*. Public inquiries for copies of administrative rules will be referred to the program.

According to Section 91-5, HRS, programs shall send a copy of administrative rules, free of charge, to state and county agencies upon request. All other entities may be charged a fee for copies of the rules. If a fee is charged, the price of the copy should be based on the costs of publication and mailing.

E. Section 93-3, HRS, requires the department to send, **through interdepartmental mail**, the adopted administrative rules package, as described on page 10, in clean format, as follows:

No. of copies	Recipients
1	The Supreme Court Law Library The Judiciary Attention: Ms. Lolly Suwa
1	Department of the Prosecuting Attorney Attention: Karen Sakata
1	State Archives
7	Hawaii State Library Hawaii Document Center Attention: Mr. Patrick McNally[1]
1	City & County of Honolulu Municipal Library Attention: Jean Malia

1 copy to UH Library

E.1.
1 DDEH, Secretary ~~Robyn~~
2 DEHP, Hawaii, Kauai, Maui
1 Deputy AG

to EPA too

F. Programs are responsible for keeping and maintaining files of their administrative rules. Maintenance of files includes updating source notes (HRS references at the end of each HAR section) when Hawaii Revised Statutes are renumbered due to legislation or when Session Laws of Hawaii are codified.

[1] Section 93-3, HRS, requires the department to send 15 copies of administrative rules to the State Library (or State Distribution Center) but, per Mr. McNally, only 7 copies are needed.

Source notes may be updated through Notices of Change. There are three types of Notices of Change: "Authorization" or "Implementation" for citations that authorizes programs or implements the rules respectively, and "Authorization and Implementation" for source notes that cite the same reference in both areas. Programs should refer to the *Hawaii Administrative Rules Drafting Manual* to update source notes by notices of change (examples of notices of change are also in the manual).

It is recommended that programs review rules and source notes after each session.

SWAT Rule Review Form
January 2000

Department: _____ **Reviewer's name/phone #:** _____

Chapter reviewed: _____ **Date of review:** _____

Criteria	Yes	No
1. Rule is null and void, duplicative, ambiguous and should be repealed or amended.		
2. Better private sector alternatives (such as market mechanisms) exist.		
3. Private business could be accountable with its own standards.		
4. Federal or local governments could do the job.		
5. Rule is unnecessary to comply with its authorizing statute.		
6. Laws or circumstances changed, requiring amendment or repeal.		
7. Rule does not protect the public's health, safety, and welfare.		
8. Rule is not providing intended results in a reasonable manner.		
9. Regulatory alternatives or new technologies are more effective or efficient.		
10. Rule is not easily understood (clear and concise).		
11. Rule is inconsistent with legislative intent/ authorizing statute.		
12. Rule is not based on sufficient statutory authority.		
13. More specific legislative authorization is needed to protect health, safety, and welfare.		
14. Coordination with other jurisdiction and agencies could reduce duplication and inconsistency.		
15. Qualitative and quantitative benefits of rule were not considered in relation to cost.		
16. Imbalance between public benefit and cost to gain compliance.		
17. Imbalance between costs and time spent on compliance.		
18. Rule results in unequal treatment of those who must comply with it.		
19. Rule should be modified or eliminated to minimize any disproportionate impacts on regulated community.		
20. Rule should be strengthened to provide additional protection.		

If you answered "yes," to any of the criteria above, action(s) must be taken. Specify what action(s) will be taken (repeal? amendment?):

_____

_____

_____

When will the action(s) be completed? _____

Directors' approval (signature/date): _____

Attachment A

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

LAWRENCE MIIKE
DIRECTOR OF

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer
File: 413

INTRA-DEPARTMENTAL DIRECTIVE NO. 97-1
March 19, 1997

TO: All Deputies, Division Chiefs, Staff Offices, District Health Service Administrators, Branch Chiefs, and Administrators of Attached Agencies

FROM: Lawrence Miike
Director of Health

SUBJECT: **REQUIREMENT OF COMPILATION WHEN AMENDING ADMINISTRATIVE RULES**

97-1.1 **PURPOSE**

To file and distribute administrative rules in its entirety and to eliminate or reduce the cost of reproducing sections that have been amended, administrative rules shall be compiled when the rules are amended.

97-1.2 **DIRECTIVE**

Administrative rules that are to be amended should be written in amendment and compilation form as set forth in the Legislative Reference Bureau's Hawaii Administrative Drafting Manual.

97-1.3 **SCOPE**

This directive shall apply to all amendments to Hawaii Administrative Rules for the Department of Health.

Wendell K. Kimura
Acting Director

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681

LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

April 27, 2000

Dr. Bruce S. Anderson
Director
Department of Health
1250 Punchbowl Street
Honolulu, HI 96813

Attention: Ms. Valerie Yin

Dear Dr. Anderson:

Subject: Amendment and Compilation for All Amendments

The Hawaii Administrative Rules format will be undergoing its first significant modification since its inception in 1980. The single most significant change being made will be the elimination of procedures for amending individual sections and subsections in favor of amending and compiling the entire chapter of rules each time any change is made to any portion of that chapter. The impetus for this change is the progress made by the Lieutenant Governor's SWAT project and the work of all the executive agencies in posting agency rules on the Internet.

Now that the State's administrative agency rules are posted on the Internet, the practical reality is that most people will probably be accessing the rules through the Internet. Many of these users will undoubtedly be state agency personnel. The Bureau has always believed it imperative that the official copies of rules filed with the Lieutenant Governor pursuant to chapter 91, Hawaii Revised Statutes, be in a form that replicates as closely as possible the rules that will be seen by the public. To date, the Hawaii Administrative Rules format has provided for rules being filed in: (1) a primary set of complete chapters; and (2) an amendment file consisting of individual sections or subsections that have been amended. Users check both files to ensure that they are consulting the most current version of the rules. Such an arrangement simply does not comport with the reality of the Internet, and there does not appear to be much sense in requiring users to move between separate databases for complete chapters and amendments. If users are accessing complete chapters on the Internet that are always updated to include the most current amendments, the "hard" copies on file at the Lieutenant Governor's office should reflect the same data.

With respect to Notices of Change, the Bureau has always taken the position that these notices, which do not affect the actual text of any rule sections, need not be adopted through rulemaking procedures, and can be filed directly with the Office of the Lieutenant Governor. For this reason, chapters of rules need not, and should not be compiled solely to incorporate recently filed Notices of Change. Notices of Change should instead be incorporated into a compiled chapter of rules when amendments are made to the text of one or more of the sections in that chapter.

We anticipate issuing the formal amendments to the rules format that will implement the foregoing changes sometime this summer. This letter is intended to apprise you and your staff of the changes that are coming, and to request voluntary compliance in any forthcoming rulemaking actions. Please do not feel obligated to change the course of any ongoing rulemaking actions that are already undergoing review. We ask only that you consider direct compilation for any rulemaking actions that are still in the drafting stage. Finally, the Bureau has not ever, nor do we now recommend compilation of any chapter of rules that is not otherwise being amended.

Please distribute copies of this letter to all agencies that are organic to your department, as well as those that are attached for administrative purposes. Please do not hesitate to contact me by phone at 587-0655 or by e-mail at Takayama@capitol.hawaii.gov if you have any questions.

Very truly yours,

Ken H. Takayama

Ken H. Takayama
Assistant Director for Legislative Research

APPROVED:

Wendell K. Kimura

Wendell K. Kimura
Acting Director

BENJAMIN J. CAYETANO
GOVERNOR

EARL I. ANZAI
ATTORNEY GENERAL

THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

August 10, 1999

INTERDEPARTMENTAL
MEMORANDUM NO. 1999-4

TO: All Department Heads

From: Attorney General

Subject: Requests for Legal Opinions and Memorandum Procedures

It has come to my attention that there is a backlog of written legal opinions or advice requested from this Department. In order to achieve management control over and improve the timeliness of written legal opinions or advice I am requesting your cooperation.

First, please advise your department personnel and any boards or commissions attached to your department that any request for a written legal opinion or advice should be in writing, and addressed directly to me. Second, the request must be approved by you. The reasons for this procedure are to enhance your and my knowledge of requests, their volume and our timeliness in responding to you. All nonconforming requests will be returned to the requesting agency.

The request for written legal advice should be submitted in the following format:

1. A brief statement of the legal problem or problems;
2. A chronological statement of the facts, with any supporting documentation;
3. A discussion of the problem;
4. Your administrative interpretations and past practice; and
5. Any problem that may arise from various interpretations.

Submitting your request in accordance with the above format will enable us to determine the complexity of the problem and to assign the opinion request to the appropriate deputy. Following this format will also provide a record of such opinions for future reference.

Deputy attorneys general may respond to oral requests for legal advice not brought to the personal attention of the Attorney General only where the deputy attorneys general determine that the law on a particular subject is sufficiently clear or where routine, housekeeping matters are involved.

Attachment B

As a general rule, the due date for written legal advice is 30 calendar days after the date the opinion request is received by the Department, assuming that the request is in accordance with the above format. Please call me if you need a more timely response. Additionally, if there are any tardy replies which are pressing, I would appreciate hearing from you so we can prioritize our backlog.

Your cooperation in this matter will be greatly appreciated.

Earl I. Anzai

SAMPLE MEMO
for preliminary approval

(Insert date here)

TO: The Honorable Benjamin Cayetano
Governor of Hawaii

FROM: Bruce S. Anderson, Ph.D., M.P.H.
Director of Health

SUBJECT: Request for Governor's Preliminary Approval of Proposed Hawaii Administrative Rules, Title 11, Chapter *(Insert chapter number here)*, entitled "*(Insert chapter title here)*"

Pursuant to Administrative Directive 99-02, we request your approval to hold public hearings for the adoption of proposed changes to Title 11, Chapter *(Insert chapter number here)*, Hawaii Administrative Rules, entitled, "*(Insert chapter title here)*."

The following information is provided in accordance with Administrative Directive 99-02:

1. Exact changes to be made and the reasons for the changes, including a justification for the proposed adoption, amendment, or repeal of any rule. If applicable, the present rule should be cited and the proposed rule shall be quoted in full without paraphrasing.

   (Insert your text here.)

2. The manner in which the proposed adoption, amendment, or repeal of the rules would affect the operations of the department or agency in terms of responsibilities, functions, activities and inter-relationships, both internal and external.

   (Insert your text here.)

SAMPLE

3. Final result (e.g., a program improvement/clarification of statute) to be expected by instituting the proposed adoption. amendment, or repeal of a rule.

   (Insert your text here.)

4. Program and financial impact on the state upon the adoption, amendment, or repeal of the rules. This should include the:

   a. Long and short-range program impact, and

   b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates of anticipated savings or funding shortfalls projected over the subsequent four-year planning period.

   (Insert your text here.)

5. Long and short-term impacts on the public, on economic growth and the economy of the state.

   (Insert your text here.)

6. Other alternatives explored in attempting to resolve the problem or situation at hand other than that of adopting, amending or repealing the rules in question.

   (Insert your text here.)

7. A determination as to whether the proposed rule will affect small business. For purposes of this Directive, a proposed rule will affect small business if the proposed rule will be applied to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees, and will cause a direct and significant economic burden upon a small business, or is directly relted to the information, operation, or expansion of a small business.

   If a proposed rule affects small business, the department o agency shall discuss:

   a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposed rule;

   b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule;

   c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board and to any departmental advisory committee on small business for its respective consideration and recommendation, in the manner described in § -2 of Section 2, Act 168, SLH 1998; and

   d. Whether any recommendation was made by the Small Business Regulatory Review Board and the departmental advisory committee on small business regarding the proposed rule; and, if the recommendation was not adopted, an explanation for not adopting the recommendation.

   (Insert your text here.)

Thank you for your consideration in this matter. Please call *(Insert contact person's name)*, *(contact person's title)*, at *(contact person's phone number)*.

Attachments

c: Department of the Attorney General
Department of Budget & Finance
Department of Business, Economic Development and Tourism
Office of Planning, Policy and Program Development

APPROVED AS TO FORM:

_____
(Deputy Attorney General's Name)
Deputy Attorney General

Date _____

☐ APPROVED ☐ DISAPPROVED

_____
BENJAMIN J. CAYETANO
Governor of Hawaii

Date _____

WARREN PRICE, III
ATTORNEY GENERAL

CORINNE K. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

June 12, 1991

INTERDEPARTMENTAL
MEMORANDUM NO. 1991-2

TO: All Directors

FROM: Warren Price, III
Attorney General

RE: Review of Proposed Rules and Proposed Amendments or Repeals of Rules

In 1989, the Legislature amended section 91-3, Hawaii Revised Statutes, to revise the notice requirements that an agency must comply with before adopting, amending, or repealing a rule. Since then, my staff have experienced situations where, after a public hearing has already been held, a proposed rule or amendment, or repeal of a rule, is forwarded to us for final approval, at which time legal defects are discovered in the notice of public hearing. We have therefore had to recommend that the rulemaking procedures be repeated.

To obviate such situations in the future, please provide for our prior review a copy of any proposed notice of public hearing, along with the proposed rule, amendment, or repeal. This will save everybody time, expense, and effort in the long run. Thank you in advance for your cooperation.

I would appreciate your sharing this directive with all agencies, boards, or commissions attached to your department.

Attached is a brief outline of the minimum requirements of notice under existing law which should help you in drafting a proper notice prior to review by our office.

WP/CKAW:imm
c: All legal services supervisors

Attachment D

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

OUTLINE OF REQUIREMENTS FOR A NOTICE OF PUBLIC HEARING FOR THE ADOPTION, AMENDMENT, OR REPEAL OF ADMINISTRATIVE RULES UNDER SECTION 91-3, HAWAII REVISED STATUTES

A. DESCRIPTION OF THE PROPOSED RULE ADOPTION, AMENDMENT, OR REPEAL: Include either requirement below:

1. A statement of the substance of the proposed rule adoption, amendment, or repeal; or
2. A general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, of repeal.

As interpreted by the Supreme Court of Hawaii in Costa v. Sunn, 64 Haw. 389, 642 P.2d 530 (1982), the word "substance" as used in "statement of the substance of the proposed rule" means "not merely the subject of it, but an intelligible abstract or synopsis of its material and substantial elements" and the statement "should fairly apprise interested parties of what is being proposed so they can formulate and present rational responses to the proposal." The problem with this interpretation is that the notice alone apparently must be so detailed that the reader of the notice can then formulate and present rational responses to the proposal, without the necessity of reading the proposal itself. Attempts to draft satisfactory statements of the substance of proposals often resulted in the entire rule proposals being included in the published notices. Unfortunately, even a quotation of the entire rule proposal may not be sufficient, since the significance of the proposal read out of context may not be clear without a good explanation.

To avoid the necessity of publishing in the notice the entire rule proposal, as well as a detailed explanation of the proposal, at substantial cost to the agency proposing the rule, the alternative requirement of providing merely a general description of the subjects involved and the purposes to be achieved was added. The amendment was intended to allow a less detailed notice that is not sufficient alone for a reader to formulate and present rational responses to a proposal. The intent is to sufficiently notify the reader interested in particular subjects of the proposal to request and review the proposal itself. The proposal itself, not the notice alone, will then be the source of information in sufficient detail to permit the formulation and presentation of rational responses to the proposal. However, a general description that may be sufficient for a simple proposal may not be sufficient for a lengthy and complicated proposal. Consequently, even a general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, or repeal will not always be easy to write.

B. STATEMENT OF AVAILABILITY OF FREE COPY OF RULE PROPOSAL:

1. A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed at no cost to any interested person who requests a copy; and
2. A description of where and how the requests may be made.

Since the objective of the alternative general description requirement was to have interested persons review the actual proposals and not rely only on the notice for the preparation of comments and recommendations on the proposal, the notice of public hearing must include the statement that a free copy of the proposal will be mailed to any interested person. Some agencies also include the location where the free copy may be picked up. For lengthy and complicated rules, the proposal materials to be handed out may include not only the actual rule proposal, but also a detailed section-by-section explanation, if it is felt that such an accompanying explanation will greatly assist interested persons in understanding what the proposal is intended to accomplish. Opposition based on a misinterpretation of the proposal may be avoided if an explanation of the proposal is provided with the copy of the proposed rule adoption, amendment, or repeal.

C. PUBLIC HEARING INFORMATION AND TIME OF PUBLICATION:

1. Date of the hearing (at least 30 calendar days after the date of publication of the notice);
2. Time when the public hearing will begin; and
3. Place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The place where the public hearing will be held must be chosen to accommodate the number of interested persons anticipated to attend the public hearing. Obviously, some guesswork will be required. The date and time chosen should be reasonable. The specific date should be selected based on the availability of the public hearing location and the publication schedule of the newspapers that will be used. The public hearing must not be held sooner than thirty days after the publication of the public hearing notice. If section 92-41, Hawaii Revised Statutes, which requires public hearing notices to be published "in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action," will apply and require publication in more than one newspaper and on different days, be sure that the latest publication date is at least thirty full calendar days before the date of the public hearing.

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NOTICE OF PUBLIC HEARING

ON WATER POLLUTION RULES

DEPARTMENT OF HEALTH

STATE OF HAWAII

DOCKET NO. R-13-97

The Department of Health will receive written comments and hold a public hearing on proposed changes to Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control.

The subjects and purposes of the proposed changes are to:

1. Modify and readopt general permits for discharges of:
   a. Storm water associated with industrial activities (HAR Chapter 11-55 Appendix B).
   b. Storm water associated with construction activities (HAR Chapter 11-55 Appendix C).
   c. Treated effluent from leaking underground storage tank remedial activities (HAR Chapter 11-55 Appendix D).
   d. Once through cooling water less than 1,000,000 gallons per day (HAR Chapter 11-55 Appendix E).
   e. Hydrotesting water (HAR Chapter 11-55 Appendix F).
   f. Construction activity dewatering effluent (HAR Chapter 11-55 Appendix G).
2. Adopt new general permits for discharges of:
   a. Treated effluent from petroleum bulk stations and terminals (HAR Chapter 11-55 Appendix H).
   b. Treated effluent from well drilling activities (HAR Chapter 11-55 Appendix I).
3. Change requirements and procedures for general permits including:

Attachment E

DRAFT

a. Starting automatic general permit coverage 30 days instead of 31 days after a complete notice of intent is submitted.

b. Allowing the Department of Health to impose additional conditions on already issued notices of general permit coverage and on activities that have already obtained automatic general permit coverage.

c. Adding procedures on general permit renewal.

4. Meet or exceed federal requirements for the State to administer the National Pollutant Discharge Elimination System (NPDES) in Hawaii.

5. Reflect the latest changes to the Hawaii Revised Statutes and refer to the latest Code of Federal Regulations.

6. Revise language and change style for clarity and consistency, to conform to the required format for rules, and to make corrections.

7. Reflect the latest Department of Health policies.

Persons desiring to speak are asked to submit two copies of their testimony before or at the hearing. Written testimony will also be accepted until 4:30 p.m. on July 11, 1997 at the Clean Water Branch, Environmental Management Division, State Department of Health, 919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii 96814-4920.

The Public Hearing will be held on Oahu at 7:00 p.m. on Thursday, July 10, 1997 at the 5th Floor Conference Room of 919 Ala Moana Boulevard, Honolulu.

Copies of the proposed rules and documents explaining the

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proposed changes are available at the following locations:

Oahu — Clean Water Branch, 919 Ala Moana Boulevard, Room 301, Honolulu, 96814-4920.

Kauai — Chief Sanitarian, Department of Health, 3040 Umi Street, Lihue, 96766.

Maui — Chief Sanitarian, Department of Health, 54 High Street, Wailuku, 96793.

Hawaii — Chief Sanitarian, Department of Health, 1582 Kamehameha Avenue, Hilo, 96720.

The proposed rules will also be mailed or faxed at no cost upon request. To obtain the changes to HAR Chapter 11-55 call the Clean Water Branch at (808) 586-4309 or write to the above address.

Any person with a hearing impairment desiring to attend the hearing may request the assistance of a sign language interpreter, provided such request is made 72 hours prior to the scheduled hearing. This request may be made by writing to the Clean Water Branch at 919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii 96814-4920 or by calling (808) 586-4309 (voice).

LAWRENCE MIIKE
Director of Health

Guidelines for Preparing DOH Notices to Assure Accessibility for Persons with Disabilities

If you are inviting the public to inspect, comment, hear, meet, confer, etc., then the process must be accessible to persons with disabilities and provide accessible siting, who to contact by when if they need aid in participating, and aid in participating.

If inviting inspection,
then what is being inspected must be available in accessible/alternate formats.

Sample language: *"If you have special needs due to disability that will aid you in inspecting the (report), please contact (name) at (phone numbers Voice/TTY*)."*

If inviting comments,
then what is to be commented on must be available in accessible/alternate formats.

Sample language: *"If you have special needs due to disability that will aid you in commenting on the (report), please contact (name/program) at (phone number[s] Voice/TTY*)."*

If inviting people to meet or to hear (also includes RFP orientations), then what is to be met over/to be heard must be at an accessible site,

what is the object of the meeting/hearing (such as rules, plans, applications, etc. must be in accessible/alternate formats, and

the proceedings must be accessible through the offering/use of auxiliary aids (such as sign language interpreters, large type materials, etc.) to respond to special needs.

Sample language: *"If you have special needs due to disability, please contact (name/program) at (phone number[s] Voice/TTY*) by (date**)."*

If soliciting a request for proposals,
then programs that provide packets/specifications must provide notice

that those who may have special needs due to disability may contact them to discuss their needs (re possibilities such as getting the materials via mail and the form of the materials).

Sample language: *"If you have questions on obtaining the RFP materials, please contact (name/program) at (phone number[s] Voice/TTY*)."*

Expenses related to facilitating participation
of persons with disabilities cannot be passed on to them except to the same extent charged other participants. For example, if you provide a copy of the rules/materials to requestors at no charge, then persons with disabilities who request copies shall be provided copies at no charge as well. If you charge requestors, persons with disabilities who request an alternate format copies shall be charged no more than what is charged for the primary format copy

If you need to discuss any of the above further, please contact the DOH Affirmative Action Office (AAO).

* If you have a number that is both voice and text telephone (TTY) capable, after the phone number indicate "Voice/TTY". If you have separate numbers for "voice" and for text telephone indicate "Voice" and "TTY" after the appropriate number. If you do not have text telephone access, plan purchase or arrange joint use and in the interim familiarize your staff with the GTE Hawaiian Telecommunications Relay Service. See your GTE Hawaiian Tel directory for general information. You may also refer to prior DOH AAO memos/directories or contact the DOH AAO for information or resources.

** The date should be appropriate to how much time you need to arrange for an interpreter or alternate format materials. It may differ with each context. If your notice is sufficiently in advance, ten working days should give yourself reasonable time to make arrangements. This is if persons with disabilities have reasonable time to respond before your contact date. If they contact you after your date has passed, you still need to try. However, you may note that it may not be possible to provide the aid by or at the meeting. If your notice is published "late," adjust the contact date accordingly to give people time to respond to you. Three working days should be the minimum time that you give yourself to make arrangements.

References: See generally, How to Make Meetings & Conference Accessible for Persons with Disabilities. (DOH AAO memo 4/14/98) See specifically, Sample 3.0 Registration form statement. The publication and sample are also available on the DOH website at www.hawaii.gov/health/cpd/cpd-aac1.htm. See also OPPPD 7/21/98 memo on Public Notices for Administrative Rules.

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

HEARING RE:	)	Docket No. R-10-97
	)	
PROPOSED SUBSTANTIVE CHANGES	)	
CHAPTER 143, TITLE 11,	)	
ADMINISTRATIVE RULES	)	June 5, 1997
TESTING OF NEWBORN INFANTS	)	
FOR METABOLIC AND OTHER	)	
DISEASES	)	
	)	

HEARING OFFICER'S REPORT

Public hearings to consider adoption of amendments to Administrative Rules, Chapter 11-143, Testing of Newborn Infants for Metabolic and Other Diseases, were held as follows:

1. Thursday, May 29, 1997; 2:00 PM
   Kauai District Health Office
   Lihue Health Center Conference Room
   3040 Umi Street
   Lihue, Hawaii 96766

2. Friday, May 30, 1997; 2:00 PM
   State Building, Conference Room A, Third Floor
   54 High Street
   Wailuku, HI 96793

3. Friday, May 30, 1997; 3:00 PM
   State Building, Conference Room A
   75 Aupuni Street
   Hilo, HI 96720

4. Monday, June 2, 1997; 12:00 PM
   State Department of Health, Board Room, First Floor
   1250 Punchbowl St.
   Honolulu, HI 96813

The hearings on Kauai and Hilo were convened by Ms. Christine Matsumoto, Newborn Screening Program Coordinator; the hearing on Maui was convened by Ms. Sylvia Au, Hawai'i Genetics Coordinator, and the hearing on Oahu was convened by Mr. Louis Erteschik, Hearings Officer for the Department of Health. The hearing officers announced that the public notice of each hearing was published on April 29; 1997, in the Hawaii

Attachment G

Tribune Herald, the Maui News, Garden Island, and the Honolulu Advertiser. A representative of the Department of Health, summarized the proposed amendments at each hearing.

There were no oral testimonies as no one attended any of the public hearings.

At the conclusion of the public hearing, each hearing officer announced that written testimony must be received by the Department of Health, no later than the close of business, June 4, 1997, to be recognized as official testimony to the amendments to Chapter 11-143.

No written testimonies were submitted during the public comment period.

No questions or concerns were raised through the presentation of any oral testimony and written comments. Therefore, we conclude that the Department of Health has fulfilled the legal and procedural requirements for the promulgation of amendments to the Hawaii Administrative Rules, Title 11, Chapter 143, Testing of Newborn Infants for Metabolic and Other Diseases, and that said amendments should be forwarded to the Office of the Governor, and if so approved, shall thereafter be finalized in accordance with the law.

Hearings Summary Submitted By:

Louis Erteschik
Hearings Officer

Christine A. Matsumoto
Hearings Officer

Sylvia M. Au
Hearings Officer