

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 1

ADMINISTRATION

CHAPTER 1

BOARD OF AGRICULTURE
RULES OF PRACTICE AND PROCEDURE

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Historical Note: This chapter is based substantially upon State of Hawaii Board of Agriculture Rules of Practice and Procedure. [Eff 6/14/62; am 8/31/74; R Sep 20 1986]

SUBCHAPTER 1

GENERAL PROVISIONS

§4-1-1 Purpose; construction. This chapter governs practice and procedure before the state board of agriculture and shall be construed to secure the just and efficient determination of every proceeding. [Eff Sep 20 1986] (Auth: HRS §§91-2, 141-2, 142-2, 144-11, 145-15, 147-4, 148-2, 149A-19, 149A-33, 150-22, 150A-9, 152-2, 153-4, 155-4, 157-13, 159-7, 161-7, 163-4) (Imp: HRS §91-2)

§4-1-2 Definitions. As used in this chapter unless the context otherwise requires:

"Board" means the state board of agriculture.

"Chairperson" means the chairperson of the state board of agriculture.

"Complainant" means a person, an agency, or an officer upon whose complaint a proceeding is instituted.

"Department" means the state department of agriculture.

"Deputy" means the deputy to the chairperson of the state board of agriculture.

"Hearing officer" means a person duly appointed by the board to hold a hearing to take evidence or oral argument, and to make a recommended decision in any case or controversy within the jurisdiction of the board.

"Party" means the department, if named, permitted or entitled as of right to participate in a proceeding, each person named in a proceeding, or any interested or aggrieved person permitted or entitled as of right to participate in a proceeding before the board in the capacity of a petitioner, respondent, intervenor, or in a capacity other than that of a witness.

"Person" means individuals, partnerships, corporations, associations, or public or private organizations of any character other than the board or department.

"Petitioner" means a person on whose behalf petitions are made in proceedings involving declaratory rulings or the adopting, repealing, or amending of any rule of the board.

"Proceeding" means the board's consideration of the relevant facts and applicable law and action thereupon, with respect to a particular subject within the board's jurisdiction, initiated by a filing, a submittal, a request, or the board's notice or order. It shall include, but not be limited to, the following:

- (1) Contested cases involving the denial, suspension, or revocation of, or refusal to renew, any license, permit, or certificate issued by the board;
- (2) Proceedings involving petitions for declaratory rulings;
- (3) An investigation or review instituted or requested to be instituted by the board; and
- (4) Proceedings involving the adoption, amendment, or repeal of any rule of the board, whether initiated by board order or by petition of a person with a legal interest.

"Respondent" means a party in a contested case against whom an order to show cause has been issued by the board on its own initiative or a notice of hearing has been issued on the basis of a complaint filed with the board. [Eff SEP 22 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-3 Grammatical usage; meaning of terms. (a) Unless otherwise required by the context, the singular includes the plural and vice-versa.

(b) Unless specifically stated, the terms used in rules adopted by the board pursuant to powers granted by statute shall have the meaning defined by that statute.

(c) A rule which defines a term without express reference to the statute or to this chapter, or to a portion thereof, defines the term for all purposes as used both in the statute and in this chapter, unless otherwise specifically required by the context. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-4 Office. (a) The principal office of the board is located at 1428 South King Street, Honolulu, Hawaii.

(b) All communications to the board shall be addressed to the state board of agriculture, P. O. Box 22159, Honolulu, Hawaii 96823. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: §91-2)

§4-1-5 Hours. The offices of the board shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order. [Eff Sep 20 1986] (Auth: HRS §§80-1, 91-2) (Imp: HRS §§80-1, 91-2)

§4-1-6 Meetings; conduct of meetings. (a) The board may meet and exercise its powers in any part of the State.

(b) Board meetings shall be held in accordance with sections 92-3, 92-4, 92-5, 92-7, 92-8, and 92-9, HRS, as applicable. [Eff Sep 20 1986] (Auth: HRS §§91-2, 92-4, 92-5, 92-7, 92-8, 92-9) (Imp: HRS §§91-2, 92-3, 92-4, 92-5, 92-7, 92-8, 92-9)

§4-1-7 Quorum; votes necessary for a decision. The constitution of a quorum and the number of votes necessary to validate any act of the board shall be in accordance with section 92-15, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-15)

§4-1-8 Records; annual report. (a) The chairperson shall have charge of the board's official records and shall be responsible for the maintenance and custody of the files and records of the board, including:

- (1) The transcripts of testimony and exhibits;
- (2) All papers and requests filed in proceedings;
- (3) The minutes of all board meetings and hearings; and
- (4) All findings, determinations, reports, opinions, orders, rules, and approved forms.

(b) The chairperson shall prepare for submission by the board an annual report of the department's activities and accomplishments to the governor and the legislature. [Eff Sep 20 1986] (Auth: HRS §§91-2, 141-1) (Imp: HRS §§91-2, 141-1)

§4-1-9 Authentication of board actions. All orders and other actions of the board shall be signed by the chairperson or, in his absence, by another member of the board designated by the chairperson. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-10 Public records; requests for public records; fees. (a) All public records of the board shall be available for inspection by any person during office hours except as otherwise provided by section 92-51, HRS.

(b) All requests for inspection or copies of public records shall be submitted to the board in writing. The request shall:

- (1) State the name, address, and phone number of the requestor;
- (2) Give the reason for the request;
- (3) Properly designate documents requested; and
- (4) Give the date of the request.

(c) The fee to be charged for copies of public records shall be in accordance with section 92-21, HRS.

(d) As used in this section, "public records" do not include "personal records" as defined in section 92E-1(3), HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-21, 92-51, 92E-1(3))

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§4-1-11 General rule. All persons and parties shall comply with these rules of practice

and procedure when appearing before the board. Procedures to be followed, unless specifically prescribed in this chapter or in chapter 91, HRS, shall be those which best serve the purposes of the proceeding. For good cause shown, the provisions of these rules may be modified or waived. [Eff Sep 20 1986] (Auth: HRS §§91-2, 92-16) (Imp: HRS §§91-2, 92-16)

§4-1-12 Appearances before the board. (a) A person may be represented by or with counsel in any proceedings under this chapter.

(b) When a person acting in a representative capacity appears in person or signs any document or paper submitted to the board, the personal appearance or signature of that individual shall constitute a representation to the board that the individual is authorized and qualified to represent that person. The individual, at any time, may be required to furnish proof of authority and qualification to act.

(c) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before, or passed by, the board during the time of the person's association unless the person shall first have obtained the written consent of the board upon a verified showing that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-13 Filing of papers. (a) All papers or documents required to be filed with the board shall be filed with the chairperson.

(b) Such papers may be mailed or hand-carried to any office of the department in the State within the time limit, if any, for filing.

(c) The date on which the papers or documents are actually received by any office of the department shall be deemed to be the date of filing.

(d) All papers or documents shall be written legibly or typed and signed in black ink by the party or the party's duly authorized agent or attorney. The signer's name shall be printed legibly below the signature.

(e) The signature on any paper or document constitutes a certification that the person has read the document, that to the best of that person's knowledge, information, and belief, every statement in the paper or document is true, not misleading, and not interposed for delay.

(f) The initial document filed by any person in any proceeding shall include on the first page the name and address of the person who may be served with any documents filed in the proceeding. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-14 Retention of papers. All papers filed with the board shall be retained by the board in its files. However, the chairperson may permit the withdrawal of the original documents upon submission of properly authenticated copies to replace the original papers. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-15 Computation of time. Computation of time shall be as provided under section 1-29, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§1-29, 91-2)

§4-1-16 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter, by notice given under this chapter, or by an order, the board may:

- (1) With or without notice, extend the period before expiration of the prescribed period;
or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act is clearly shown to be the result of excusable neglect.
[Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-17 Striking or amendment of papers. If any paper filed with the board is not in substantial conformity with the applicable rules, the board, on its own motion or the motion of any party, may strike the document or require that it be amended. If amended, the document shall be effective as of the date of the original filing. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-18 Board decision. (a) Certified copies of all final orders, opinions, or rulings entered by the board in any proceeding shall be served upon the parties or persons participating in the proceedings by first class mail or personal delivery by the board.

(b) All final orders, opinions, or rulings may be released for general publication.

(c) Copies of materials released for general publication shall be available for public inspection in the office of the board or may be obtained upon request and upon payment of a reasonable charge in accordance with section 92-21, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-21)

§4-1-19 Counsel for the board. The attorney general, as counsel for the board, shall be a participant in all proceedings governed by this chapter. The attorney general or a representative of the attorney general shall be designated as "counsel for the board", and shall be served with copies of all papers, pleadings, maps, and documents as are all other parties to the same proceeding. [Eff Sep 20 1986] (Auth: HRS §§ 28-4, 91-2) (Imp: HRS §§ 28-4, 91-2)

§4-1-20 Substitution of parties. Upon motion and for good cause shown, the board may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-21 Consolidation. The board may consolidate for hearing or other purposes or contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-22 Default. When a party, against whom an order to show cause has been issued, fails to plead or defend that action and this fact is made to appear by affidavit or otherwise, the board may enter the party's default. No order for default shall be entered against an infant or an incompetent person unless represented in a hearing by a guardian or other representative. For good cause shown, the board may set aside a default order. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 3

RULEMAKING PROCEEDINGS

§4-1-23 Initiation of rulemaking. (a) The adoption, amendment, or repeal of any rule of the board may be made by the board on its own motion, or by petition of any interested person or agency. Petitions for rulemaking filed with the board shall be matters of public record.

(b) Petitions shall conform to and be filed in accordance with section 4-1-12 and shall contain:

- (1) The name, address, and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A draft or the substance of the proposed rule or amendment or a designation of the provisions of the rule to be repealed;
- (4) A statement of the petitioner's interest in the subject matter; and
- (5) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) Within thirty days after the filing of a petition for rulemaking, the board shall either deny the petition or initiate rulemaking proceedings. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-2, 91-6)

§4-1-24 Denial of petition. Any petition that fails to comply in any material respect with the requirements of this chapter or fails to disclose sufficient reason to justify conducting rulemaking proceedings shall not be considered by the board. The board shall promptly notify the petitioner in writing of such denial, stating the reasons therefor. Denial of a petition shall not prevent the board from acting, on its own motion, upon any matter disclosed in the petition. The petitioner may seek judicial review of denial. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-6, 91-14)

§4-1-25 Acceptance of petition. If the board determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the conduct of rulemaking proceedings, the procedures to be followed shall be as set forth in this chapter and applicable statutes. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-6)

§4-1-26 Notice of rulemaking. Whenever pursuant to a petition or upon its own motion the board proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published in accordance with sections 91-3, 91-6, and 92-41, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-3, 91-6, 92-41)

§4-1-27 Conduct of rulemaking hearings. (a) Each hearing shall be held before the board or presided over by a hearing officer.

(b) The board or hearing officer shall be authorized to take all actions necessary for the orderly conduct of the hearing.

(c) Each hearing shall be held at the time and place set in the notice of hearing, but may be continued by the board or hearing officer from day to day or adjourned to a later date or to a different place without notice other than an announcement at the hearing.

(d) The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to offer evidence on the matters specified in the notice of hearing and to obtain a clear and orderly record. However, in order to avoid unnecessary, cumulative evidence, the board or hearing officer may limit the number of witnesses or the time allowed for testimony.

(e) At the commencement of the hearing, the notice of hearing shall be read and the procedure to be followed shall be outlined briefly. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the board or hearing officer prescribes.

(f) All interested persons and agencies shall be afforded an opportunity to submit orally or in writing data, views, or arguments that are relevant to the matters specified in the notice of hearing. The board or hearing officer may require the filing of an original and eight copies of all written comments, recommendations, or replies.

(g) Before proceeding to testify, all interested persons shall:

(1) State their name, address, and whom they represent; and

(2) Give any information respecting their appearance as the board or hearing officer may request.

(h) Witnesses shall be subject to questioning by members of the board or by any other representative of the board. Cross examination by other persons or agencies shall be permitted only at the discretion of the board or hearing officer.

(i) The board or hearing officer shall confine the evidence to the questions before the hearing, but need not apply the technical rules of evidence.

(j) Unless otherwise ordered by the board or hearing officer, testimony given at the public hearing shall not be reported verbatim.

(k) All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the board or hearing officer to be authentic and

relevant, shall be received in evidence and made a part of the record. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-3)

§4-1-28 Recommendation; submissions; board decision. (a) At the close of a public hearing presided over by a hearing officer, the hearing officer shall announce either:

- (1) What recommendation will be made to the board on the proposed adoption, amendment or repeal; or
- (2) The date by which such recommendation will be made.

(b) If no recommendation is made at the close of the public hearing, the hearing officer, within five calendar days of the close of the public hearing, may request or allow filing of additional written submissions in support of or in opposition to the proposed rulemaking.

(c) The hearing officer's recommendation shall be filed with the board not later than ten calendar days after the close of the public hearing or the expiration of any period for filing additional written submissions.

(d) At the close of a public hearing before the board, the board shall announce its decision or the date by which such decision will be made. The board's decision on the adoption, amendment, or repeal of any rule shall be rendered in accordance with section 92-3(a)(2), HRS. [Eff Sep 20 1996] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-3)

§4-1-29 Board action. (a) In rulemaking proceedings before the board, the board shall take final action either at the close of the public hearing or on the date previously announced for decision making.

(b) In rulemaking proceedings presided over by a hearing officer, the board shall take final action within forty-five calendar days after the filing of the hearing officer's recommendation. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3)

§4-1-30 Emergency rulemaking. The board may adopt emergency rules in accordance with section 91-3(b) and 91-4(b)(2), HRS. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3(b), 91-4(b)(2)) (Imp: HRS §§91-2, 91-3(b), 91-4(b)(2))

SUBCHAPTER 4

APPLICATION FOR ISSUANCE OR RENEWAL OF LICENSE, PERMIT, OR CERTIFICATE

§4-1-31 Forms and instructions. An application for the issuance or renewal of a license, permit, or certificate shall be filed with the board. Application shall be made by completing a form furnished by the department. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-32 Denial of application. In the event an application for the issuance or renewal of a license, permit, or certificate is denied, the chairperson or the chairperson's designated representative shall promptly notify the applicant of the board's action by letter which shall include a concise statement of the reasons therefor and of the applicant's right to a hearing if the applicant so desires. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9) (Imp: HRS §§91-2, 91-9)

§4-1-33 Request for hearing. Any person whose application for the issuance or renewal of a license, permit, or certificate has been denied by the board, shall be entitled to a hearing after notice, provided that a request for a hearing is filed with the board within thirty days of the date of mailing of the letter informing the applicant of the denial of the application. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-34 Proceedings upon request for hearing. If a request for hearing is filed within the time prescribed, the board shall order a hearing upon reasonable notice, which shall be conducted in accordance with subchapter 5 and all applicable laws on contested cases. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 5

CONTESTED CASE PROCEEDINGS

§4-1-35 Initiation of contested case. (a) A contested case is initiated with the filing of

- (1) A request for a contested case hearing;
- (2) A citation issued by the department;
- (3) A complaint; or
- (4) An order to show cause issued by the board.

(b) Upon the filing of a document initiating a contested case, a docket number shall be assigned consisting of a two-digit year identifier, a two-letter division or branch identifier, and a numerical case identifier, with each identifier separated by a dash. Docket numbers shall be assigned chronologically on a calendar year basis. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-36 Request for contested case hearing. (a) A hearing on a contested matter may be requested by the board on its own motion, by any government agency upon filing of a written petition, or by any person aggrieved by a decision or ruling of the board or against whom a citation has been issued by department employees for a violation of state law or rule.

(b) A person aggrieved by a decision or ruling of the board shall file a request for hearing within ten calendar days after mailing of written notice of board action.

(c) A cited person desiring a hearing shall file a request for hearing within twenty days

after mailing of the citation, notice of violation, or similar document.

(d) A request for hearing filed after the expiration of the time limits set forth in subsections (b) and (c) shall be deemed untimely, and the board need not grant such a request. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-37 Filing of complaint. (a) Any person or agency of the State or its political subdivisions, or any officer thereof, may file a complaint against a person holding a license, permit, or certificate issued by the board charging a violation of any law over which the board has jurisdiction or of any rule of the board.

(b) The complaint shall be in writing, signed by the complainant, and shall contain:

- (1) A short and simple statement of the facts constituting the alleged violation;
- (2) The name and address of the complainant; and
- (3) The name and address of the respondent.

(c) Upon receipt of a complaint, the chairperson shall:

- (1) Transmit a copy of the complaint to the person against whom the complaint has been filed;
- (2) Direct the department staff to investigate the matter contained in the complaint if it has not already done so, and to make an appropriate report and recommendations.

(d) Upon receipt of the staff investigative report, the chairperson shall present the complaint, together with the staff report and recommendations, to the board at its next meeting.

(e) The board shall determine whether or not the complaint should be set for a contested case hearing. The board need not order a hearing where the matters complained of:

- (1) Involve a private controversy redressable in the courts and the public interest is not involved; or
- (2) Concern a situation where it is clear on the face of the complaint that there has been no violation of law or rule.

[Eff Sep 20 1986] (Auth: HRS §§91-2, 92-17) (Imp: HRS §§91-2, 92-17)

§4-1-38 Order to show cause. (a) Whenever the board has reason to believe that a law over which it has jurisdiction or one of its rules has been violated by a person holding a license, permit, or certificate issued by the board, the board shall issue and serve upon that person an order to show cause.

(b) The order shall set forth the particular sections of the law or rule involved, and the nature of the alleged violation or subject matter of inquiry. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9, 91-9.5, 92-17) (Imp: HRS §§91-2, 91-9, 91-9.5, 92-17)

§4-1-39 Notice of hearing. Upon filing of a petition or request for hearing under section 4-1-36, board determination that a contested case hearing is required under section 4-1-37(e), or service of an order to show cause under section 4-1-38, a written notice of hearing shall be served on the parties in accordance with section 91-9.5, HRS. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-40 Prehearing conferences; briefs. (a) The board or hearing officer may hold pre-hearing conferences with the parties for the purpose of;

- (1) Formulating, simplifying, or narrowing the issues;
- (2) Arranging for the exchange of proposed exhibits or proposed written testimony, the setting of schedules, the exchange of names of witnesses, and the limitation of the number of witnesses; and
- (3) Such other matters as may expedite the orderly conduct and disposition of the proceedings.

(b) The board or hearing officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely, and may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and a table of authorities. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-9)

§4-1-41 Conduct of contested case hearings. (a) Each hearing shall be held before the board or presided over by a hearing officer.

(b) The board or hearing officer shall be authorized to administer oaths or affirmations and to take all actions necessary for the orderly conduct of the hearing.

(c) Each hearing shall be held at the time and place set in the notice of hearing, but may be continued by the board or hearing officer from day to day or adjourned to a later date or to a different place without notice other than an announcement at the hearing.

(d) The hearing shall be conducted in such a way as to afford each party a reasonable opportunity to offer evidence on the matters specified in the notice of hearing and to obtain a clear and orderly record. However, in order to avoid unnecessary, cumulative evidence, the board or hearing officer may limit the number of witnesses or the time allowed for testimony.

(e) At the commencement of the hearing, the notice of hearing shall be read and the procedure to be followed briefly outlined. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the board or hearing officer prescribes.

(f) The petitioner or complainant shall make the first opening statement and the last closing argument unless the board or hearing officer directs otherwise. Other parties shall be heard in such order as the board or the hearing officer directs.

(g) Each party shall be afforded an opportunity to submit orally or in writing data, views, or arguments that are relevant to the matters specified in the notice of hearing. The board or hearing officer may require the filing of an original and eight copies of all written comments, recommendations, or replies.

(h) All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the board or hearing officer to be authentic and relevant, shall be received in evidence and made a part of the record.

(i) Each party shall have the right to call or have subpoenaed witnesses to testify at the hearing.

(j) Each party shall have the right to conduct such examination or cross examination of the witnesses as may be necessary for a full and true disclosure of the relevant facts and shall have

the right to submit rebuttal evidence, subject to limitation of repetitive questions or cumulative evidence by the board or hearing officer.

(k) Witnesses shall also be subject to questioning by members of the board, the hearing officer, or any other representative of the board.

(1) Before proceeding to testify, all witnesses shall:

(1) Swear or affirm to tell the truth;

(2) State their name and address; and

(3) Give any information respecting their appearance as the board or hearing officer may request.

(m) Where a party is represented by more than one counsel, the counsel may allocate direct or cross examination of witnesses between them, but only one counsel shall be permitted to cross examine a witness, to state any objections, or to make opening and closing arguments.

(n) Any procedure may be modified or waived by stipulation of the parties, and informal disposition may be made by stipulation, agreed settlement, consent order, or default.

(o) The board or hearing officer shall confine the evidence to the questions before the hearing, but need not apply the technical rules of evidence.

(p) At the close of the reception of evidence or within a reasonable time thereafter and prior to the filing of the hearing officer's recommended decision, the parties shall be permitted to file proposed findings of fact and conclusions of law together with reasons therefor. Proposals shall be in writing and shall contain references to the record and authorities relied upon. The original and eight copies shall be filed with the board and copies shall be furnished to all parties concerned.

(q) Prior to the filing of a recommended decision, the hearing officer, for good cause shown, may reopen the case for the reception of further evidence. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-42 Recommended decision; exceptions. (a) The hearing officer's recommended decision shall be filed as soon as practicable and not later than thirty calendar days after the close of the reception of evidence.

(b) The hearing officer's recommended decision shall become a part of the record and include separate findings of fact and conclusions of law as well as reasons therefor. The findings and conclusions shall be based upon the whole record and supported by reliable, probative, and substantial evidence, including facts of which the hearing officer may have taken official notice.

(c) If any party to the proceeding has filed proposed findings, the hearing officer shall incorporate in the recommended decision a ruling upon each proposed finding.

(d) A copy of the hearing officer's recommended decision shall be served upon each party or the party's counsel of record.

(e) Within ten calendar days after receipt of a copy of the hearing officer's recommended decision, any party may file with the board exceptions to any part thereof and request review by the board. Each exception shall specify the portions of the record and the authorities relied on to sustain each point. A copy of the exceptions and request for review shall be served upon each party or the party's counsel of record. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

§4-1-43 Board action. (a) Before taking final action in a contested case, the board, on its own motion, may order further proceedings to be held.

(b) In taking final action, the board shall consider the recommended decision of the hearing officer and all relevant evidence introduced in conjunction with the case.

(c) If timely exceptions and requests for review have been filed by a party adversely affected by the recommended decision, the board shall allow the party an opportunity to present argument and shall consider the whole record or such portions as may be cited by the party.

(d) The board shall take final action within forty-five calendar days:

- (1) After filing of the recommended decision of the hearing officer if no timely exceptions and requests for review have been filed; or
- (2) After the conclusion of further proceedings as provided in subsection (a) or review as provided in subsection (c). [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3, 91-11)

§4-1-44 Informal disposition; offers of settlement; satisfaction of complaint. (a) The complainant, respondent, counsel for the board, and any other party to the proceedings may meet at any time prior to or during hearings for the purpose of informal disposition of the proceedings.

(b) Unaccepted proposals or offers of settlement shall not be admissible in evidence.

(c) If a respondent satisfies a complaint either before or after the commencement of a hearing, a statement setting forth when and how the complaint has been satisfied shall be:

- (1) Signed and verified by each party;
- (2) Filed with the board; and
- (3) Served upon all parties of record. Satisfied complaints may be dismissed at the discretion of the board. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-9) (Imp: HRS §§91-2, 91-9)

§4-1-45 Service of papers. (a) The board or hearing officer shall serve all orders, notices, and other papers issued by the board or hearing officer, together with any other papers which the board or hearing officer is required by law to serve. All other papers shall be served by the party filing them.

(b) All papers, including notice of final board action, shall be served:

- (1) On all counsel of record at the time of filing;
- (2) Upon parties not represented by counsel; or
- (3) Upon agents designated by parties or by law.

(c) Any counsel entering an appearance subsequent to the initiation of a proceeding shall notify all other counsel of record and all parties not represented by counsel of this fact.

(d) Service of papers shall be made personally or by first-class certified mail.

(e) A party shall be in default upon failure or refusal to adhere to papers served in accordance with this section. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-46 Depositions. (a) Upon application of a party to any proceeding, the board or hearing officer, at any time after the filing of a complaint, may order the taking of testimony by oral deposition or by deposition upon written interrogatories.

(b) Any party desiring to take the deposition of a witness shall make application in writing to the board or the hearing officer giving reasons why a deposition should be taken, together with the following:

- (1) The character of the deposition;
- (2) The time and place the deposition is to be taken;
- (3) The name and address of the person before whom the deposition will be taken;
- (4) The name and address of each witness; and
- (5) The subject matter upon which a witness is expected to testify.

(c) Upon approval of an application for the taking of testimony by deposition, a deposition may be taken before any person having power to administer oaths other than the person designated in the notice, provided written notice is given to all parties concerned.

(d) Each witness testifying shall be duly sworn. The adverse party shall have the right to cross-examine the witness.

(e) The questions propounded to the witness and the answers thereto shall be reduced to writing and, in the presence of the person taking the deposition, read to and subscribed by the witness and certified in the usual form by the person taking the deposition. The person taking the deposition shall forward the original and two copies of the deposition to the board at its office in Honolulu, Hawaii.

(f) A deposition ordered and taken in accordance with this section may be used in any proceedings if the board or the hearing officer finds that the evidence is otherwise admissible and that:

- (1) The witness is dead; or
- (2) The witness is outside the State, unless it appears that the absence of the witness is procured by the party offering the deposition; or
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
- (4) The party offering the deposition has endeavored and been unable to procure the attendance of the witness by subpoena; or
- (5) Exceptional circumstances exist to make it desirable to allow the deposition to be used.

(g) If any part of a deposition is put in evidence by a party, any other party may require the production of the remainder or any other portion of the deposition. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

§4-1-47 Subpoenas. (a) The issuance of subpoenas by the board shall be in accordance with section 92-16, HRS.

(b) Application for subpoenas for the production of documentary evidence shall be made in writing to the board or to the hearing officer. The application shall be reasonable in scope and specify as exactly as possible the documents desired, showing their general relevancy. [Eff Sep 20 1986] (Auth: HRS §§91-2, 92-16) (Imp: HRS §§91-2, 92-16)

§4-1-48 Ex parte communications. (a) No party or other person representing or on behalf of a party shall communicate privately on the merits of a case to any member of the board, the department staff, or the hearing officer designated to hear and decide a matter.

(b) The following types of ex parte communications are permitted:

(1) Requests for information as to the status of a proceeding; and

(2) Those which all parties to the contested case have agreed upon or which the board or hearing officer has formally ruled may be made on an ex parte basis.

(c) Statements may be made to any news media to inform the public of the status or progress of the contested case or the testimony presented or the evidence produced. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

§4-1-49 Record of hearing. Contested case hearings shall be reported verbatim or recorded on electronic devices. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9)

SUBCHAPTER 6

DECLARATORY RULINGS

§4-1-50 Petition for declaratory ruling. (a) On petition of an interested person, the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board. Petitions for the issuance of a declaratory order shall:

- (1) State clearly and concisely the controversy of uncertainty;
- (2) Cite the statutory authority involved;
- (3) Include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest; and
- (4) Conform to the requirements of section 4-1-12.

(b) The board, upon receipt of a petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) The board, without notice or hearing, may dismiss a petition for declaratory ruling which fails in any material respect to comply with the requirements of this section.

(d) Although no formal hearing will ordinarily be held on a petition for a declaratory ruling, the board may order a hearing.

(e) Any petitioner or interested party who requests a hearing on a petition for declaratory ruling shall:

- (1) Set forth in writing the reasons why the information filed will not permit a fair and expeditious disposition of the petition; and
- (2) If the hearing is dependent upon factual assertions, submit affidavits establishing those facts.

(f) In the event a hearing is ordered by the board, the proceedings shall be in accordance with subchapter 5. [Eff Sep 20 1986] (Auth: HRS §§91-2, 91-8) (Imp: HRS §§91-2, 91-8)

SUBCHAPTER 7

SEVERABILITY

§4-1-51 Severability. This chapter shall be deemed to be severable, and in the event a section of this chapter is determined to be invalid, such invalidity shall affect that section only and not invalidate this chapter in its entirety. [Eff Sep 20 1986] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 8

REPEAL

§4-1-52 Repeal. All rules and regulations adopted by the board in effect on July 1, 1980, and subsequently not converted to the Hawaii Administrative Rules format in accordance with section 91-4.2 and 91-5, HRS, are repealed. [Eff Sep 20 1986] (Auth: HRS §§91-2, 141-2, 142-2, 144-11, 145-15, 147-4, 148-2, 149A-19, 149A-33, 150-22, 150A-9, 152-2, 153-4, 155-4, 157-13, 159-7, 161-7, 163-4) (Imp: HRS §§91-4.2, 91-5)

DEPARTMENT OF AGRICULTURE

The repeal of State of Hawaii Board of Agriculture Rules of Practice and Procedure and all rules and regulations adopted by the Board of Agriculture in effect on July 1, 1980 and subsequently not converted to the Hawaii Administrative Rules format in accordance with section 91-4.2 and 91-5, Hawaii Revised Statutes, and the adoption of Chapter 4-1, Hawaii Administrative Rules, on the Summary Page dated August 28, 1986, were approved by the Board of Agriculture on August 28, 1986 following a public hearing held on August 11, 1986 after public notice was given in The Sunday Star-Bulletin & Advertiser, The Maui News, Hawaii Tribune-Herald, and The Garden Island on July 20, 22, 23, and 23, 1986, respectively.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

Jack K. Suwa, Chairperson
Board of Agriculture

APPROVED AS TO FORM:

Gerald Y.Y. Chang
Deputy Attorney General

George R. Ariyoshi
Governor, State of Hawaii

Date: Sept. 9, 1986

Filed