

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 201

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Subchapter 1

GENERAL PROVISIONS

§16-201-1 Purpose, scope, and construction. This chapter is intended to provide uniform rules of administrative procedure to govern all proceedings brought before any authority of the department of commerce and consumer affairs, State of Hawaii, the purpose of which is to obtain:

- (1) A determination of any contested or controverted matter within the authority's jurisdiction, through an evidentiary hearing;
- (2) A declaration as to the applicability, with respect to a factual situation, of any rule or order of the authority or of any statute which the authority is required to administer or enforce; or
- (3) The adoption, modification, or repeal of any rule of the authority which is initiated by petition.

This chapter shall be construed to secure the just, equitable, speedy, and inexpensive resolution of matters brought before the authority. Whenever this chapter is silent on a matter, the authority or hearings officer may refer to the Hawaii Rules of Civil Procedure for guidance. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-2 Definitions. As used in this chapter, unless the context otherwise requires:

“Aggrieved person” means any person who shall be adversely affected by an action, decision, order, or rule of the authority or who shall be adversely affected by the action or conduct of any person if the action or conduct is within the authority's jurisdiction to regulate, and shall also include any person who requires the authority's permission to engage in or refrain from engaging in an activity or conduct which is subject to regulation by the authority.

“Authority” means the director of commerce and consumer affairs, commissioner of securities, insurance commissioner, commissioner of financial institutions, and any board or commission attached for administrative purposes to the department of commerce and consumer affairs with rulemaking, decision making, or adjudicatory powers.

“Department” means the department of commerce and consumer affairs and any division or branch thereof.

“Declaratory relief” means the authority’s declaration as to the applicability or non-applicability with respect to a factual situation of any rule or order of the authority or of a statute which the authority is required to administer or enforce.

“Hearings officer” means a licensed attorney, duly appointed and authorized to hold a hearing for the purpose of taking evidence or oral argument and making a recommended decision in any case or controversy within the jurisdiction of the authority.

“Hearings relief” means the determination by the authority of the legal rights, duties, or privileges of specific parties which are required by law to be determined after an opportunity for agency hearing.

“License” means any grant, permission, permit, franchise, license, certificate, registration, entitlement, or right to engage in an activity required by law to be given by an authority.

“Member of authority” means any member of a board or commission attached for administrative purposes to the department of commerce and consumer affairs with rulemaking, decision making, or adjudicatory powers.

“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 authority in the capacity of a petitioner, claimant, 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 authority or department.

“Petition” means an application to the authority by a party which seeks relief hereunder.

“Petitioner” means a party who initiates a proceeding and includes, but is not limited to, the authority in cases where the authority has issued a summary order against a licensee or an order to cease and desist.

“Respondent” means the party against whom the petition is filed, the party against whom relief is sought, or any party who contests or controverts a proceeding.

“Rule” shall have the same meaning as provided in section 91-1(4), HRS.

“Rule relief” means the adoption, modification, or repeal of any regulatory rule by the authority which is initiated by petition. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-3 Commencement of proceedings. A proceeding shall commence by the filing of a petition for a permitted relief with the authority or hearings officer. Upon the filing of a petition, the authority or hearings officer shall docket the petition and assign a docket number to the petition. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-4 Legal counsel. (a) A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the authority or hearings officer.

(b) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the authority or hearings officer and shall be subject to the guidelines of DR 2-110 of the Code of Professional Responsibility and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 92-16, 26-9)

§16-201-5 Individual representing party. When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the authority or hearings officer, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized and qualified to so act. The individual at any time, however, may be required by the authority or hearings officer to furnish proof of authorization and qualification to act in that capacity. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-6 Substitution of parties. Upon motion and for good cause shown, substitution of parties may be ordered provided that the substitution shall:

- (1) Be conducive to effectuating the ends of justice;
- (2) Not unduly delay the proceeding; and
- (3) Not otherwise unduly harass, hinder, or prejudice the rights of any party.

In the case of the death or legal incapacity of any party, substitution may be ordered without the necessity of filing a motion therefor. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-7 Intervention. Upon timely motion and at the discretion of the authority or the hearings officer, the department or any person may be permitted to intervene and be admitted as a party in a proceeding before the authority or hearings officer if the department or that person has a substantial interest in the outcome of the proceeding which is not protected by the interests of any of the parties, or the intervention shall be conducive to effectuating the ends of justice and to achieving the goals and purposes of the authority; provided that no intervention shall be permitted if the intervention shall unduly delay the proceeding or harass, hinder, or prejudice the rights of any party to the proceeding. The complainant in a disciplinary case, however, shall not be permitted to intervene or be admitted as a party. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-8 Consolidation. The authority or hearings officer sua sponte, or upon any party's motion timely made and for good cause shown, may consolidate two or more proceedings which involve substantially the same issues, arise out of the same general transaction, or involve the same person or persons, provided the consolidation shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-9 Format and certification of pleadings. (a) Petitions, motions, and other pleadings shall be typed or printed in ten or twelve point pica or equivalent type size upon good quality paper, 8-1/2 x 11 inches in size and of at least sixteen weight, except that documentary exhibits may be larger, if folded to the size of the pleadings to which they are attached.

(b) All copies shall be legible on paper 8-1/2 x 11 inches in size and of at least sixteen weight. No "wet" type copies shall be accepted.

(c) The first page of every pleading shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the docket number, and the name of the proceeding.

(d) All pleadings shall be signed in black or other photo-reproducible ink by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the person's knowledge, information, and belief, the pleading is true or has good grounds to support it and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(e) Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the authority, except that when a petition has been assigned to a hearings officer, all pleadings, motions, memoranda, and other documents shall be filed with the hearings officer. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-10 REPEALED. [R 7/6/90]

§16-201-11 REPEALED. [R 7/6/90]

§16-201-12 Service, generally. (a) Unless otherwise provided by this chapter or by other applicable law, whenever service is required to be made on any party to a proceeding before the authority, the service shall be made personally or by first class mail, the document to be served at the party's last known address or to the party's attorney of record or to any other individual representing the party in the proceeding.

(b) If personal service or service by mail is unsuccessful the authority or hearings officer may authorize service by publication if permitted by statute. The authority or hearings officer may require that personal service be attempted prior to permitting service by publication. After service by publication has been authorized, whenever service is required to be made on that party thereafter, service by first class mail to the party's last known address shall be sufficient. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-13 Service by whom. (a) Unless otherwise provided by this chapter, a party filing a pleading, motion, memorandum, document, or other paper shall cause a copy of the pleading, motion, memorandum, document, or other paper to be served upon each of the other parties to the proceeding, or upon any agent or attorney representing the other party. The party shall file a certificate of service.

(b) The authority or hearings officer may cause each respondent to be served with a copy of the petition, or the authority or hearings officer may require the petitioner to serve each respondent with a copy of the petition and to file a certificate of service.

(c) The authority or hearings officer may cause the notice of hearing to be served upon the parties, or the authority or hearings officer may require the petitioner to serve notice upon the other parties and to file a certificate of service.

(d) Unless otherwise provided by this chapter, the authority shall cause to be served all notices, documents, orders, and other papers issued by it. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-210-14 Time. (a) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for the purpose of these computations.

(b) The hours of a day during which documents will be accepted for filing by the authority or hearings officer shall be those specified in section 80-1, HRS. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-15 Extensions of time. Unless otherwise provided, the authority or hearings officer may extend the time within which any action shall be taken at the request of any party. The authority or hearings officer, in their sole discretion, may require that the extension be stipulated to by all parties to the proceeding or that the request be by motion for good cause shown as to why the extension should be granted. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-16 Motions. (a) An application for any relief or order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law shall be accompanied by a memorandum in support.

(c) If a hearing is held on the motion, the party filing the motion shall serve a copy of the motion and notice of hearing on the motion upon all parties not later than seventy-two hours before the hearing and the opposing party shall file and serve any counter affidavits and memorandum in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the authority except that after a petition has been transferred to a hearings officer, all motions shall be filed with and decided by the hearings officer.

(e) Failure to comply with the requirements of this section may be the basis for denial of any motion.

(f) The decision on the motion may be made orally at the time of the hearing on the motion, or in writing, or as part of the authority's decision or the hearings officer's recommended decision. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-17 Powers of the authority or hearings officer in conducting hearing. Unless otherwise provided by law, the authority or hearings officer shall have the powers, in conducting a hearing, without limitation:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;

- (3) To consolidate hearings or sever proceedings, provided that those actions shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To subpoena and examine witnesses;
- (5) To issue subpoenas;
- (6) To rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, repetitious, cumulative, or merely scandalous and accordingly may restrict lines of questioning or testimony;
- (7) To regulate the course and conduct of the hearing;
- (8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To hold conferences, including prehearing conferences, before or during the hearing, for the settlement or simplification of issues;
- (11) To rule on motions and to dispose of procedural matters;
- (12) To certify any question to the authority for its consideration and disposition;
- (13) To submit in writing any report or recommended decision together with the findings of fact and conclusions of law and a recommended order to the authority for its consideration and final disposition;
- (14) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by this chapter, chapter 91, HRS, or any other related laws; and
- (15) To examine, after notice to all parties, any site or tangible evidence relevant to the case. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§92-16, 26-9)

§16-201-18 Subpoenas. (a) The authority or hearings officer, at the request of a party, shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents at the hearing. The authority or hearings officer may require that any request for the issuance of a subpoena identify with particularity the person to be subpoenaed or the documents desired. Witnesses summoned shall be paid the same fees and

mileage as are paid witnesses in courts in the State and the fees and mileage shall be paid by the party at whose instance the subpoena issues.

(b) Upon motion timely made, or sua sponte, the authority or hearings officer may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon advancement by the requesting party of the costs of producing the documents.

(c) A hearings officer shall not have the power to subpoena the authority or a majority of the members of the authority for whom the case is being heard. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§92-16, 26-9)

§16-201-19 Absence of hearings officer. When a petition has been assigned to a hearings officer for hearing or further proceedings, the powers and duties to be performed by the hearings officer in connection with the proceeding, without abatement of the proceeding, may be assigned to another hearings officer, provided no hearings officer shall render a report with recommendations to the authority for its consideration and disposition unless that hearings officer was present at opening and closing arguments and all presentations of evidence concerning those matters. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-20 Disqualification of member of authority or hearings officer. (a) No matter shall be heard by a member of the authority or by a hearings officer who:

- (1) Has any direct pecuniary interest in the matter being heard;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the proceeding or has participated in the development of the evidence to be introduced in the proceeding; or
- (4) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the member of the authority or hearings officer.

(b) Any member of the authority or hearings officer may be disqualified from hearing the matter sua sponte, or upon motion of any party. Any motion to disqualify a member of the authority or hearings officer shall be filed and decided before the evidentiary portion of the hearing. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-21 Evidence. (a) The admissibility of evidence at the hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The authority or hearings officer shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the nonavailability of the original and the reasons therefor shall be considered by the authority or hearings officer when considering the weight of the documentary evidence.

(c) The authority or the hearings officer may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity at the hearing to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-10, 26-9)

§16-201-22 Decision, generally. (a) Unless otherwise provided, every decision and order issued by the authority shall be in writing or stated in the record. Where the case has been contested and the decision is adverse to any party, the decision shall be accompanied by separate findings of fact and conclusions of law.

(b) The authority shall cause a certified copy of the decision and order together with the findings of fact and conclusions of law to be transmitted by hand or by certified or registered mail, return receipt requested, to each party within a reasonable time.

(c) In a contested case where notice of the hearing has been served by publication and the party so served has failed to appear at the hearing, service of the authority's decision is complete upon transmission by registered or certified mail, return receipt requested, to the party at the party's last known address. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-12, 26-9)

§16-201-23 Motion for reconsideration. Any party, within ten days after receipt of any final order may move the authority to reconsider its final order or decision. The motion shall be filed with the authority and shall state specifically what points of law or fact the authority has overlooked or misunderstood together with brief arguments on the points raised. No answer or reply to the motion shall be considered unless requested by the authority. Oral argument on the motion shall be with the discretion of the authority. Only one motion for

reconsideration may be filed by each party and the filing of the motion shall not operate as a stay of the authority's final order or decision. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-24 Judicial review of contested cases. (a) Any party aggrieved by a final decision or order of the authority in a contested case or by a preliminary ruling or order of the authority of such a nature that deferral of review pending the entry of a subsequent final order would deprive that party of adequate relief is entitled to judicial review in conformance with section 91-14, HRS.

(b) Any party requesting judicial review in writing, shall serve a copy of the request upon the authority and all other parties to the proceeding in accordance with the Hawaii Rules of Civil Procedure. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-14, 26-9)

§16-201-25 Ex parte communications. (a) In any proceeding before the authority:

- (1) Neither the department nor any person, either in private or public life, shall communicate privately on the merits of the case with any member of the authority, the authority's staff or with the hearings officer designated to hear and decide the matter unless specifically provided for by law; and
- (2) No member of the authority's staff or any other government agency who participates in the hearing as a witness or counsel shall privately communicate on the merits of the case with any member of the authority or with the hearings officer designated to hear and decide the matter, unless specifically provided for by law.

(b) It shall be improper for the department or any person interested in a proceeding to seek to influence the judgment of the authority or hearings officer.

(c) Except as otherwise provided herein, it shall be improper for the department:

- (1) To disclose or reveal to any member of the authority or hearings officer designated to hear and decide the matter the contents of any investigatory report concerning the matter before the authority or hearings officer; or
- (2) To furnish the report or a copy thereof to any member of the authority or hearings officer designated to hear and decide the matter.

(d) Nothing in this subsection, which is intended to prohibit the ex parte disclosure of the investigatory report, shall prohibit the introduction of the report at the hearing pursuant to and in conformance with sections 16-201-29 and 16-201-32. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 91-2, 26-9)

Subchapter 2

HEARING RELIEF

§16-201-26 Contents of petition for hearing relief. The department or any aggrieved person may petition the authority or hearings officer for a hearing to resolve a contested matter, including license denials, within the authority's jurisdiction. The petition for hearing relief shall state plainly and precisely the facts and circumstances of petitioner's grievance, the laws, rules involved, and the relief sought by petitioner. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-26.3 Action by authority. (a) Unless otherwise provided by law, upon the filing of the petition, and as expeditiously as possible, the authority shall determine whether or not to proceed further on the petition.

(b) If the authority determines to proceed further, it shall either set the matter for further proceedings before the authority or assign the petition to a hearings officer for further proceedings pursuant to sections 16-201-26 to 16-201-47.

(c) If the authority determines not to proceed further, the authority shall promptly provide the petitioner with a written notice of any determination not to proceed further, together with a statement as to the reasons therefor. The petitioner may request reconsideration of the authority's determination or pursue judicial review, pursuant to sections 16-201-23 or 16-201-24. [Eff and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-26.5 Notice of hearing. Unless otherwise provided by law, all parties shall be given written notice of the hearing at least fifteen days before the hearing. The notice shall include:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved; and
- (4) A short and concise statement of the issues involved and the facts giving rise to the petition. Attachment of a copy of the petition to the hearing notice satisfies this requirement.

The notice shall further apprise each party of their right to retain legal counsel if so desired. [Eff and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 91-9.5, 26-9)

§16-201-27 REPEALED. [R 1/25/85]

§16-201-28 Response. Before the hearing, each respondent may file and serve upon each petitioner, the authority, or hearings officer, a written response stating briefly therein facts, circumstances, laws, rules, or reasons in defense and shall further specifically admit or deny the allegations of the petition. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-29 Disclosure. (a) Any party, by timely written demand filed with the authority or hearings officer, and served upon any other party, may request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the party, including their addresses and phone numbers, if known;
- (2) The identity of all persons, including their addresses and phone numbers, known by the party to have material knowledge relevant to the proceeding; and
- (3) All exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced at the hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) A copy of the investigation report, in order to be admitted at hearing, shall be provided to all parties not later than seven days before the hearing. If a copy of the investigation report is not provided to all parties, the report shall not be permitted to be introduced at the hearing.

(c) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a duty to disclose the information requested as and when it becomes available.

(d) The information requested shall be disclosed to the requesting party at the prehearing conference or at least fourteen days before the hearing whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to be introduced at the hearing. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-30 Prehearing conference. (a) The authority or the hearings officer may order that a prehearing conference be conducted and attended by all parties to the proceeding. The purpose of the prehearing conference shall be to explore informal satisfaction of the petition and the simplification of issues. At the prehearing conference the authority or the hearings officer may require all parties to disclose to the other parties the information which may be requested pursuant to section 16-201-29(a).

(b) If no prehearing conference is held, the authority or hearings officer may require each party to submit a statement disclosing and identifying all witnesses to be called

at the hearing, all exhibits to be used at the hearing, and other matters as shall simplify the issues and facilitate the orderly progress of the hearing. A copy of the statement shall be served upon all other parties to the proceeding. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-31 Testimony. (a) A record shall be made of all oral testimony taken at the hearing.

(b) Testimony taken at the hearing may be electronically recorded and need not be transcribed. Unless otherwise provided, the cost of the transcription of the electronic recording of the testimony shall be paid by the requesting party.

(c) Any party may request that all of the testimony taken at the hearing be taken by a court reporter. The request shall be made in writing, at least ten days before the date of the hearing and shall be within the sole discretion of the hearings officer or the authority to grant or deny. The transcript of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the hearings officer or authority. The cost of the transcript shall be paid for by the requesting party. If a party desires a copy of the transcript, the requesting party shall pay the cost of a copy of that transcript.

(d) The authority or hearings officer shall make the electronic recording of the testimony available to the parties for use in preparing exceptions to or statements in support of a proposed decision or recommended order.

(e) If judicial review is requested, the authority or hearings officer shall cause a transcript of the hearing to be prepared if requested as part of the record on appeal. If a party desires a copy of the transcript for their personal use, the requesting party shall pay the cost of a copy of that transcript.

(f) Unless the authority has been notified in writing of a party's request for judicial review within the time permitted for requesting the review, the authority or hearings officer, after the time for requesting judicial review has passed, may erase the electronically recorded testimony. Where by statute judicial review is by trial de novo, a transcript need not be prepared unless expressly requested and paid for by the requesting party. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 91-9, 26-9)

§16-201-32 Record. (a) The record shall consist of the following:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the authority or hearings officer;

- (3) All offers of proof and rulings thereon;
- (4) All proposed findings and exceptions;
- (5) The recommended decision of the hearings officer who presided at the hearing, if the hearing was held before a hearings officer;
- (6) Any report of the hearings officer or of the member of the authority who conducted the hearing;
- (7) Staff memoranda submitted to the members of the authority in connection with consideration of the case, provided first, that the memoranda have also been timely provided to parties to the proceeding, and the parties have been permitted an opportunity at the hearing to rebut the memoranda; and
- (8) The investigation report, when the report has been made part of the record, after having been provided to all parties and admitted at the hearing pursuant to section 16-201-29.

(b) Unless the authority has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the authority or hearings officer, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 91-9, 26-9)

§16-201-32.5 Record for hearing on denial of application for license. Unless supplemented as provided in this section, in hearings where the issue for determination is whether the authority properly denied an application for licensure, the record shall consist of only the information presented to the authority for consideration in reviewing the application. No other information regarding qualification for licensure shall be admitted unless agreed upon by all parties. [Eff and comp 7/6/90] (Imp: HRS §§91-2, 91-13.1, 26-9) (Auth: HRS §§91-2, 91-9, 26-9)

§16-201-33 REPEALED. [R 7/6/90]

§16-201-34 REPEALED. [R 1/25/85]

§16-201-34.1 Dismissal of petitions. (a) A petition for hearing relief may be voluntarily dismissed by the petitioner without order of the authority or hearings officer by:

- (1) Filing a notice of dismissal at any time before service of the petition on the respondent or respondents; or

- (2) Filing a stipulation of dismissal signed by all parties who have been served with the petition or appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal shall be without prejudice, except that a notice of dismissal shall operate as an adjudication upon the merits when filed by a petitioner who has once dismissed a petition for hearing relief based on or including the same claim before the authority.

(b) Except as provided in subsection (a) a petition shall not be dismissed except upon motion and on order of the authority or hearings officer granting the motion and upon such terms and conditions as the authority or hearings officer deems proper. Unless otherwise specified in the order, a dismissal under this subsection shall be without prejudice.

(c) The authority or hearings officer may upon the motion of any party, or sua sponte, issue a notice of proposed dismissal to any petitioner based on:

- (1) The failure of the petitioner to prosecute or otherwise pursue the petitioner's claim for relief within one year from the filing of the request for relief excluding periods of delay caused by a party other than the petitioner; or
- (2) The failure of the petitioner to comply with this chapter or any order of the authority or hearings officer.

The notice of proposed dismissal shall set forth the basis for the proposed dismissal and shall provide an opportunity for the petitioner to request a hearing to contest the proposed dismissal at least fifteen days prior to the actual dismissal. The notice of proposed dismissal shall also provide that in the event the petitioner does not request a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the authority or hearings officer may thereafter issue an order dismissing the proceedings with prejudice. If a petitioner requests a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the authority or hearings officer shall schedule a hearing in accordance with this chapter or dissolve the notice of proposed dismissal. The petitioner shall have the burden of showing why the petition should not be dismissed pursuant to this section.

(d) Unless the order of dismissal issued by the authority or hearings officer specifies otherwise, a dismissal under subsection (c) and any other dismissal not provided for in this section, except a dismissal for lack of jurisdiction or improper venue, shall operate as an adjudication upon the merits. [Eff and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 91-9.5, 26-9)

§16-201-35 REPEALED. [R 1/25/85]

§16-201-36 Hearings. All hearings shall be conducted pursuant to chapter 91, HRS, and this chapter. All hearings shall be heard before the authority or a duly designated hearings

officer. All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The hearing shall be at the time and place set forth in the notice of hearing, but at that time and place may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. The authority or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 92-16, 26-9)

§16-201-37 Procedure at hearing. Unless otherwise stipulated by the parties, which stipulation is approved by the authority or the hearings officer, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
 - (A) Petitioner's opening statement; and
 - (B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of petitioner's evidence;
- (2) The petitioner's evidence shall be presented first, and shall be followed by the presentation of evidence in support of respondent's case;
- (3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;
- (4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
- (5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:
 - (A) Petitioner's final argument;
 - (B) Respondent's final argument; and
 - (C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and

- (6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to section 16-201-39, whichever is later. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-9, 91-10, 92-16, 26-9)

§16-201-38 Motion to dismiss. (a) After all evidence has been presented by petitioner in support of petition, the respondent may move the authority or the hearings officer for an order denying or dismissing the petition or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, respondent shall have the right to continue with the proceeding as fully as if the motion had never been made. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-39 Taking of further evidence. At any time before the filing of the hearings officer's recommended decision, or if the hearing has been held before the authority, then before the authority's final decision, the hearings officer or authority, sua sponte or upon motion for good cause shown, may reopen a hearing for the purpose of taking further evidence, and shall do so in writing with a statement of reasons therefor. The authority, sua sponte, shall have the discretion to remand a petition or proceeding to the hearings office for the purpose of taking further evidence. The reopening or remanding shall be at the sole discretion of the hearings officer or authority. Further evidence may be taken either through oral hearing or by certification of questions to the parties. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 26-9)

§16-201-40 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the authority, whichever has conducted the hearing.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon.

(c) When the hearing has been conducted by a hearings officer, the parties shall not file, under any circumstances, proposed findings of fact and conclusions of law with the authority. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-2, 91-12, 26-9)

§16-201-41 Authority's decision. When the hearing has been held before the authority, the authority, as expeditiously as possible, after the close of the hearing, shall issue its final decision and order together with separate findings of fact and conclusions of law. All findings of fact, conclusions of law, final decisions and orders issued by the authority shall be based upon the whole record and supported by reliable probative and substantial evidence,

including facts on which the authority properly took judicial notice. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-12, 26-9)

§16-201-42 Recommended decision. When the hearing has been held before a hearings officer, the hearings officer, as expeditiously as possible, after the close of the hearing, shall file with the authority a recommended decision together with separate findings of fact, conclusions of law, and a recommended order. The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by the reliable probative and substantial evidence, including facts of which the hearings officer properly took judicial notice. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 91-12, 26-9)

§16-201-43 Service of recommended decision. The hearings officer shall cause a copy of the recommended decision, including therein findings of fact, conclusions of law, and any recommended order, to be served upon each party by personal service or by registered or certified mail, return receipt requested. Service of the recommended decision shall be deemed complete upon its mailing to the party's last known address. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 26-9)

§16-201-44 Recommended decision, exceptions. Any party adversely affected by the hearings officer's recommended decision within fifteen days after the receipt of a copy of the decision, may file with the hearings officer written exceptions to the whole or any part of the recommended decision and request review by the authority. Each written exception shall specify the portions of the record and authorities relied upon to sustain each point. A copy of the written exceptions shall be served by the party so excepting upon each party to the proceeding. Unless the time has been extended, no written exceptions shall be filed or accepted for filing after the time specified, except by leave of the authority for good cause shown. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 26-9)

§16-201-45 Statement in support of recommended decision. Any party may file with the hearings officer and serve upon all other parties a statement in support of the recommended decision within fifteen days after receipt of a copy of the written exceptions. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 26-9)

§16-201-45.5 Transmittal to authority. The hearings officer shall transmit to the authority the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statement in support. [Eff and comp 1/25/85; comp 7/6/90] (Auth: HRS §91-2) (Imp: HRS §91-11)

§16-201-46 Argument on written exceptions. Whenever written exceptions have been timely filed and a party has requested the opportunity to present oral argument, all parties to the proceedings shall be afforded the opportunity to present oral argument to the authority concerning the recommended decision. The authority shall personally consider the

whole record or portions of the record as may have been cited by the parties either in support of or in opposition to the recommended decision. All parties shall be served with notice of the time and place of argument at least five days prior to the time for argument. Within a reasonable time after argument has been heard, the authority shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 26-9)

§16-201-47 No written exceptions. When no written exceptions have been filed, the authority, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting or modifying or reversing, in whole or in part, the hearings officer's recommended decision. The authority shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 7/11/81; comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-2, 26-9) (Imp: HRS §§91-11, 26-9)

Subchapter 3

DECLARATORY RELIEF

§16-201-48 Contents of petition for declaratory relief. The department or any interested person may petition the authority for a declaratory ruling as to the applicability of any statutory provision or of any rule or order adopted by the authority to a factual situation. Each petition shall state concisely and with particularity the facts giving rise to the petition, including the petitioner's interest, reasons for filing the petition, and the names of any potential respondents, the provision, rule, or order in question, the issues raised, and petitioner's position or contentions with respect thereto. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-49 Memorandum of law in support of petition. The petition for declaratory relief shall be accompanied by a memorandum of law in support of the relief requested. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-50 Disposition of petition. The authority, as expeditiously as possible after the filing of a petition for declaratory relief, shall:

- (1) Deny the petition where:
 - (A) The petition fails to conform substantially with section 16-201-48 or is not supported by a memorandum of law in support of the petition;
 - (B) The petition is frivolous;
 - (C) The matter is not within the jurisdiction of the authority;

- (D) The petition is based on hypothetical or speculative facts of either liability or damages;
 - (E) There is a genuine controversy of material fact, the resolution of which is necessary before any order or declaratory relief may issue; or
 - (F)T here is any other reason justifying denial of the petition.
- (2) Set the petition for argument before the authority in accordance with this Subchapter; or
 - (3) Assign the petition to the hearings officer for further proceedings in accordance with this Subchapter. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-51 REPEALED. [R 1/25/85]

§16-201-52 Parties. Unless a petition has been disposed of pursuant to section 16-201-50, in all petitions for declaratory relief where the department is not the petitioner, the department shall be made a party respondent to the proceedings and shall be served accordingly. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-53 Memorandum in opposition. Each respondent, within fifteen days after the receipt of the petition, may file and serve upon all parties a memorandum in opposition stating concisely and fully the respondent's position or contentions and reasons, including legal authorities. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-54 Intervention and intervenor's memorandum of law. Except where a petition has been denied pursuant to section 16-201-50 and subject to section 16-201-7, any interested person may request intervention in a proceeding for declaratory relief. Any person permitted to intervene in a proceeding for declaratory relief may file and serve upon petitioner, a memorandum of law which shall state concisely and fully the intervenor's position or contentions and reasons, including legal authorities. [Eff 7/11/81; comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-55 Request for additional facts or supplemental memorandum. The authority or the hearings officer at any time may request of the petitioner or any party, a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, contention, or issue provided the request shall aid the authority in effectuating the ends of justice, or in achieving its purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-56 Notice of argument. All parties shall be given written notice of the hearing of argument at least fifteen days before the time of the argument. The notice shall include:

- (1) The date, time, place, and nature of the argument;
- (2) The legal authority under which the argument is to be heard;
- (3) Particular sections of the statutes and rules involved; and
- (4) A short and concise statement of issues involved, and the basic facts giving rise to the petition. Attachment of a copy of the petition to the notice of argument satisfies this requirement.

The notice shall further apprise each party of their right to retain legal counsel if so desired. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-9, 91-9.5, 26-9)

§16-201-57 REPEALED. [R 1/25/85]

§16-201-58 REPEALED. [R 1/25/85]

§16-201-59 Argument. Argument shall be heard either before the authority or a hearings officer duly designated. All parties shall be afforded full opportunity to present argument on all issues involved. The argument shall be at the time and place set forth in the notice of argument but at that time and place may be continued from day to day and adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-9, 26-9)

§16-201-60 Material issue of fact, public interest. If, at any time, it appears that there exists a genuine controversy of material fact the resolution of which is necessary before any order of declaratory relief may issue, or that the petition raises issues of public concern and interest that a proceeding for rule relief would more fairly and effectively aid the authority in achieving its purposes and goals and protect that public concern or interest, the authority or hearings officer may:

- (1) Sua sponte or on motion of any party dismiss the petition for declaratory relief and allow same to be refiled as a petition for hearing or rule relief; or
- (2) Convert the proceeding to one for hearing or rule relief and proceed thereafter as if the petition had been brought originally for hearing or rule relief. If the proceeding is converted to a proceeding for hearing or rule relief, the issues may be restricted to those material facts in issue. [Eff 7/11/81; am and comp

1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 26-9)

§16-201-61 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the authority, whichever has conducted the hearing.

(b) Where ordered, written proposed findings of fact and conclusions of law shall be filed within fifteen days after the close of the hearing, and shall contain specific references to the record and the legal authorities relied upon.

(c) When the argument has been held before a hearings officer, the parties shall not, under any circumstances, file proposed findings of fact and conclusions of law with the authority. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-12, 26-9)

§16-201-62 Authority's decision. (a) When the argument has been held before the authority, the authority, as expeditiously as possible after the close of the argument or submission of all permitted or requested memoranda, whichever is later, shall issue its final decision and order.

(b) When the petition has been contested, and the authority's decision and order is adverse to any party, the authority shall also issue and serve upon each party to the proceeding, together with its final decision and order, separate findings of fact and conclusions of law.

(c) All final decisions and orders and any findings of fact and conclusions of law issued by the authority shall be based upon the whole record and supported by reliable, probative and substantial evidence, including those facts of which the authority properly took judicial notice. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-12, 26-9)

§16-201-63 Recommended decision. (a) When the argument has been held before a hearings officer, the hearings officer, as expeditiously as possible after the close of the argument or submission of all requested or permitted memoranda, whichever is later, shall file with the authority the hearings officer's recommended decision and any recommended order.

(b) When the petition has been contested and the recommended decision and order is adverse to any party, the hearings officer shall file with the recommended decision and order separate findings of fact and conclusions of law.

(c) The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by reliable, probative

and substantial evidence, including those facts of which the hearings officer properly took official notice.

(d) The hearings officer shall serve a copy of the recommended decision and any recommended order, together with any findings of fact and conclusions of law upon each party by personal service or by registered or certified mail, return receipt requested. Where notice of the argument has been served by publication and the party so served has failed to appear at the argument, service of the recommended decision is complete upon its mailing to the party at the party's last known address. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-11, 26-9)

§16-201-64 Authority's action on recommended decisions. (a) Where the petition has been contested, any party adversely affected by the hearings officer's recommended decision within fifteen days after the receipt of a copy of the decision, may file with the authority written exceptions to the whole or any part of the recommended decision and request review by the authority. Each written exception shall specify the portions of the record and authorities relied upon to sustain each point. A copy of the written exceptions shall be served by the party so excepting upon each party to the proceeding, and upon the hearings officer. Unless the time has been extended, no written exceptions shall be filed or accepted for filing after the time specified, except by leave of the authority for good cause shown.

(b) Where the petition has been contested and written exceptions filed, any party may file and serve upon all other parties and the hearings officer a statement in support of the proposed decision within fifteen days after receipt of a copy of the written exceptions.

(c) Whenever written exceptions have been timely filed and a party has requested an opportunity to present oral argument, all parties to the proceedings shall be afforded the opportunity to present oral argument to the authority concerning the recommended decision. The authority shall consider the whole record or portions of the record as may have been cited by the parties either in support or in opposition to the recommended decision. All parties shall be served with notice of the time and place of argument at least five days prior to the time for argument. Within a reasonable time after argument has been heard, the authority shall issue a final decision and order, either affirming, modifying, or reversing, in whole or in part, the hearings officer's recommended decision.

(d) Where the petition has not been contested, or if no written exceptions have been filed, the authority, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. The authority shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-8, 26-9) (Imp: HRS §§91-8, 91-11, 91-12, 26-9)

§16-201-65 REPEALED. [R 7/6/90]

Subchapter 4

RULE RELIEF

§16-201-66 Contents of petition for rule relief. The department or any interested person may petition the authority for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-6, 26-9)

§16-201-67 Disposition. (a) The authority, within the time permitted by chapter 91, HRS, shall either deny the petition or initiate public rulemaking procedures in accordance with this Subchapter and chapter 91, HRS.

(b) Without limiting the generality of the foregoing, the authority may deny any petition which:

- (1) Fails to substantially conform with the requirements of section 16-201-66;
- (2) Discloses insufficient reasons justifying the institution of public rulemaking procedures; or
- (3) Concerns a matter not within the jurisdiction of the authority. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-6, 26-9)

§16-201-68 Notice of determination. The authority shall promptly notify the petitioner in writing of its determination either to deny the petition or to initiate rulemaking procedures. If the authority denies the petition, the authority shall state the reasons for the denial in the notice to petitioner. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-6, 26-9)

§16-201-69 Determination final. Unless otherwise provided by law, the petitioner shall have no right to move the authority for reconsideration or to seek judicial review of any determination. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-6, 26-9)

§16-201-70 Additional facts or supplemental memorandum. The authority may require the petitioner or any person or the department to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the authority. [Eff 7/11/81; comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-6, 26-9)

§16-201-71 Public hearing. Subject to sections 16-201-76 and 16-201-77, a public hearing shall be held for a petition for rule relief considered by the authority. The hearing shall be at the time and place set forth in the notice of public hearing but at that time and place may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. The authority shall afford the department and all interested persons an opportunity to present data, their views or arguments, orally or in writing. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 26-9)

§16-201-72 Notice of public hearing. Notice of the public hearing shall be made in accordance with the provisions of chapters 91 and 92, HRS. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §91-6, 26-9) (Imp: HRS §§91-3, 92-41, 26-9)

§16-201-73 Procedure at public hearing. At the commencement of the public hearing the member of the authority presiding at the public hearing shall read the notice of hearing and shall then briefly prescribe the procedure to be followed at the public hearing. All witnesses testifying at the public hearing shall state their name, address, and who, if anyone, the witness represents. Every witness shall be subject to questioning by members of the authority or by any other representative of the authority. Questioning of witnesses by other persons shall not be permitted except when the presiding member of the authority expressly permits that questioning. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 26-9)

§16-201-74 Record of public hearing. (a) A record shall be made of all oral testimony taken at the hearing which record may be written minutes or verbatim.

(b) Testimony given at the public hearing may be electronically recorded verbatim by the authority at its sole discretion, either sua sponte or upon the request of any interested party. It shall not be necessary to transcribe the electronic recording.

(c) The written minutes or electronic record of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the authority.

(d) All written testimony shall be received and made part of the public record. [Eff 7/11/81; comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS 91-6, 26-9)

§16-201-75 Decision. The authority shall render its decision at the public hearing or at a time, date, and place as is announced at the public hearing. The authority, upon the request of any interested person, shall issue a concise statement of the principle reasons for and against its decision. In making its decision, the authority shall consider all written and oral submissions respecting the proposed rule relief. Unless otherwise provided by law, the requirements of section 16-201-22 shall not apply to a decision rendered pursuant to this section. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 26-9)

§16-201-76 Waiver. The requirements for public hearing and for notice thereof may be waived by the governor when the authority, as a condition to receiving federal funds, is required by federal provisions to adopt rules and the authority is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted. The authority shall make known to the public the proposed adoption, amendment, or repeal of any rule pursuant to this section by publishing in a newspaper of general circulation in this State, at least once prior to the waiver of the governor, a statement as to the substance of the proposed rule change. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 26-9)

§16-201-77 Emergency rulemaking. (a) The authority may adopt emergency rules pursuant to the requirements of sections 91-3 and 91-4, HRS.

(b) The authority's determination that there is imminent peril and the reasons therefor shall be stated in, and as a part of the emergency rule.

(c) The authority shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 91-4, 26-9)

§16-201-78 Approval. The adoption, amendment, or repeal of any rule shall be subject to approval of the governor as provided for in section 91-3, HRS. [Eff 7/11/81; am and comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS 91-3, 26-9)

§16-201-79 Filing and review. Upon approval of the governor, certified copies of any rules being adopted, amended, or repealed shall be filed with the lieutenant governor and legislative auditor as provided in sections 91-4, 91-4.1, and 91-4.2, HRS. All rules being adopted, amended, or repealed shall take effect as provided in section 91-4, HRS, and shall be subject to review as provided in section 91-4.1, HRS. [Eff 7/11/81; am and comp 1/25/85; am and comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-4, 91-4.1, 26-9)

§16-201-80 No restriction on authority. Nothing contained in this Subchapter shall be construed to prohibit or restrict the right of the authority, sua sponte, from initiating its own rulemaking proceeding on any matter, whether disclosed in any petition or not. [Eff 7/11/81; comp 1/25/85; comp 7/6/90] (Auth: HRS §§91-6, 26-9) (Imp: HRS §§91-3, 26-9)

Subchapter 5

INFORMAL INTERPRETATIONS

§16-201-85 Purpose, scope, and construction. (a) The purpose of this Subchapter is to clarify that any board or commission may issue informal interpretations in addition to and supplemental to any power to grant declaratory relief provided for elsewhere in this chapter. The purpose of this Subchapter is to facilitate prompt decision making in matters where no formal ruling is desired or needed by any person and where the interpretation can be stated without the necessity of an evidentiary hearing and without consideration of legal arguments.

(b) This Subchapter shall be construed in a way that will allow informal, just, speedy, and inexpensive resolution of inquiries.

(c) Nothing in this Subchapter shall be construed to require notice to the public pursuant to chapter 91, HRS, nor to require formal contested case procedures. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-86 Informal proceedings within discretion of board or commission. (a) Notwithstanding any rule by any board or commission adopting this chapter as its rules of practice and procedure, this Subchapter shall not require the issuance of informal interpretations.

(b) Nothing in this Subchapter shall preclude any person from seeking any other type of relief provided for in this chapter. Nothing in this Subchapter shall preclude any board or commission from declining to issue an informal interpretation in any particular situation or from initiating a proceeding pursuant to Subchapters 2, 3, or 4 at any time. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-87 Review of requests for informal interpretations. The board or commission may delegate to a subcommittee of its members, a single member, or its executive secretary, the authority to review each request for an informal interpretation to determine whether the request is suitable for processing under this Subchapter and, if it is, to recommend the interpretation that the board or commission should issue. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-88 Form of requests for informal interpretations. (a) A board or commission may consider any written communication from any person asking a question for processing under this Subchapter; provided that the board or commission shall not proceed under this Subchapter in response to a properly drawn petition for relief under the provisions of this chapter or where it is clear that the petitioner expects a formal and binding response without obtaining the consent of the petitioner to the issuance of an informal interpretation.

(b) In determining whether a particular inquiry is appropriate for the issuance of an informal interpretation, the following factors shall be among those considered:

- (1) Whether the facts set forth by the requester are sufficiently detailed and clear to allow the board or commission to understand the requester's circumstance;
- (2) Whether the question being asked is clear; and
- (3) Whether there has been a consistent historical pattern of deciding similar inquiries upon which the board or commission can base its response. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-89 Procedure for boards or commissions. Any matter on which an informal interpretation is to be rendered by a board or commission shall be included on the agenda of the board or commission. A copy of the agenda shall be sent to the person requesting an informal interpretation at the same time that notice of the meeting is sent pursuant to section 92-7, HRS. At the meeting of the board or commission, the subcommittee or person who has reviewed the request for an interpretation may make a presentation to the board or commission including a recommendation as to how the board or commission should rule. The interpretation of the board or commission and the facts upon which the interpretation was based shall be reflected in its minutes. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-90 Issuance of interpretation. (a) The board or commission or executive secretary shall notify the requester of the informal interpretation in writing and shall state that the interpretation is for informational and explanatory purposes only and is not an official opinion or decision, and that it therefore is not to be viewed as binding on the board, commission, or department. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-91 No appeal. No appeal or review of an informal interpretation by any judicial or administrative tribunal or authority shall be allowed. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8)

§16-201-92 Authority of staff not limited. Nothing in this Subchapter shall be construed to prohibit staff, including executive secretaries assigned to a board or commission or program, from giving advice and counsel to the public and to licensees and potential licensees on the law and rules relating to professions and vocations and to the administrative process. Any advice and counsel in writing shall be reported to the board or commission at its next meeting. Any advice or counsel shall include clear notice that the advice or counsel is not official and binding on the board, commission, or department. [Eff and comp 7/6/90] (Auth: HRS §91-8) (Imp: HRS §91-8) Amendments to and compilation of chapter 16-201 Hawaii Administrative Rules, on Summary Page dated June 1, 1990, were adopted on June 1, 1990, following public hearings held on April 3, 1990, and May 17, 1990, after public notices were given in the Honolulu Advertiser, Hawaii-Tribune Herald, West Hawaii Today, and Maui News on March 2, 1990, and in the Garden Island on April 16, 1990.

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

/s/ Robert A. Alm

ROBERT A. ALM
Director of Commerce
and Consumer Affairs

APPROVED AS TO FORM: Date 6/12/90

/s/ Winfred K.T. Pong

Deputy Attorney General

APPROVED: Date 6/25/90

/s/ John Waihee

JOHN WAIHEE
Governor
State of Hawaii

June 26, 1990

Filed
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-201

Hawaii Administrative Rules

June 1, 1990

SUMMARY

1. §§16-201-1, 16-201-2 and 16-201-4 are amended.
2. §§16-201-6 through 16-201-9 are amended.

3. §§16-201-10 and 16-201-11 are repealed.
4. §§16-201-12, 16-201-14, 16-201-16 through 21; 16-201-24, and 16-201-25 are amended.
5. §§16-201-26.3 and 16-201-26.5 are added.
6. §§16-201-28 through 16-201-32 are amended.
7. §16-201-32.5 is added.
8. §16-201-33 is repealed.
9. §16-201-34.1 is added.
10. §§16-201-39, 16-201-40, 16-201-48 through 16-201-50; 16-201-52 through 16-201-56, and 16-201-60 through 16-201-64 are amended.
11. §16-201-65 is repealed.
12. §§16-201-67, 16-201-68, 16-201-71 through 16-201-75; 16-201-77, and 16-201-79 are amended.
13. A new Subchapter 5 (§16-201-85 through 16-201-92) is added.
14. Chapter 201 is compiled.