

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 169

Hawaii Administrative Rules

- Sec. 13-169-44 - Interim Instream Flow Standard for East Maui
- Sec. 13-169-45 - Interim Instream Flow Standard for Kauai
- Sec. 13-169-46 - Interim Instream Flow Standard for Hawaii
- Sec. 13-169-47 - Interim Instream Flow Standard for Molokai
- Sec. 13-169-48 - Interim Instream Flow Standard for West Maui
- Sec. 13-169-49 - Interim Instream Flow Standard for Leeward Oahu

§13-169-44 Interim instream flow standard for East Maui. The Interim Instream Flow Standard for all streams on East Maui, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or establish new standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Oct. 8, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)

§13-169-45 Interim instream flow standard for Kauai. The Interim Instream Flow Standard for all streams on Kauai, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or new establish standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Oct. 8, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)

§13-169-46 Interim instream flow standard for Hawaii. The Interim Instream Flow Standard for all streams on Hawaii, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or new establish standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Oct. 8, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)

§13-169-47 Interim instream flow standard for Molokai. The Interim Instream Flow Standard for all streams on Molokai, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or establish new standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the streams water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Oct. 8, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-169, Hawaii Administrative Rules

October 19, 1988

Summary

1. Sec. 13-169-48 is added.
2. Sec. 13-169-49 is added.

§13-169-48 Interim instream flow standard for West Maui. The Interim Instream Flow Standard for all streams on West Maui, as adopted by the commission on water resource management on October 19, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or establish new standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Dec. 10, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)


§13-169-49 Interim instream flow standard for Leeward Oahu. The Interim Instream Flow Standard for all streams on Leeward Oahu, as adopted by the commission on water resource management on October 19, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or new establish standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.
[Eff. Dec. 10, 1988] (Auth: HRS Sec. 174C-8) (Imp: HRS Sec. 174C-2, 174C-3, 174C-5, 174C-71)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to chapter 13-169, Hawaii Administrative Rules, on the Summary Page dated October 19, 1988, were adopted as standards on October 19, 1988, following public meetings held on September 12, 1988 (Leeward Oahu) and September 15, 1988 (West Maui). Public notice was given in the Honolulu Star-Bulletin and Maui News on August 21, 1988 and September 5, 1988.

These amendments shall take effect as rules ten days after filing with the Lieutenant Governor.

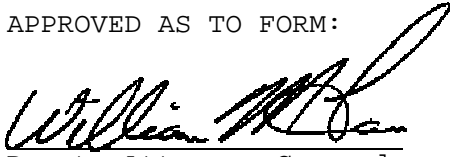


WILLIAM W. PATY, Chairperson
Commission on Water Resource
Management

NOV 18 1988

Dated: _____

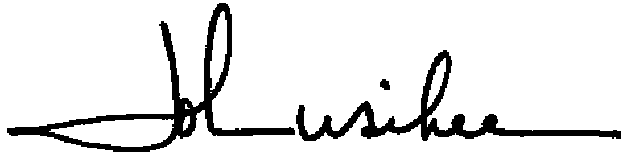
APPROVED AS TO FORM:



Deputy Attorney General

Dated: 10/10/88

APPROVED: NOV 30 1988



JOHN D. WAIHEE, Governor
State of Hawaii

Date Filed