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May 29, 2024

SUBMITTAL

TO: Co-chairs and Members
Hawaii Invasive Species Council
State of Hawaii

FROM: Chelsea Arnott
Program Supervisor
Hawaii Invasive Species Council

SUBJECT: Request for Approval to:

Hold public hearing(s) on proposed adoption of a new subtitle and new chapters under Hawaii Administrative Rules as Title 13, Subtitle 14, Chapters 325 “General Provisions” and 326 “Control and Eradication of Invasive Species,” to effectuate chapter 194, Hawaii Revised Statutes, including a list of invasive species that may be controlled on private and public property by the State, a county, or agent thereof;

and

Delegate authority to the Chairperson of the Department of Land and Natural Resources to set the dates and times for the aforementioned public hearing(s) and appoint a hearing officer for the public hearing(s)

The Hawaii Invasive Species Council (HISC) staff is proposing to adopt a new subtitle as Hawaii Administrative Rules Title 13, Subtitle 14, to effectuate chapter 194, Hawaii Revised Statutes (HRS).

This submittal summarizes the new subtitle 14 proposed to be added to title 13, HAR; discusses the background of HISC administrative rules; the reasons for the proposed new subtitle 14; describes the process for adopting the new subtitle 14; requests approval from HISC to hold public hearings pursuant to chapter 91, HRS; and requests that HISC delegate authority to the Chairperson of the Department of Land and Natural Resources (DLNR) to appoint a hearing master and designate dates and times for the public hearing(s).

Background

In 2003, HISC was established in statute by the enactment of Act 85. That law, as amended, is set out in chapter 194, HRS. The law sets out the duties and membership of the HISC. It also requires HISC to create a list to “[i]dentify and record all invasive species present in the State” and a list of “invasive species identified by the council for control or eradication.” HRS §§ 194-2(a)(6) (emphasis added), 194-4, 194-5. Once those lists are produced, it authorizes the departments of the HISC, the counties, and their agents to control or eradicate invasive species identified by the HISC on private property and the departments of the HISC and their agents to control any invasive species on public property. HRS §§194-5, 194-6.

At HISC’s first meeting on October 29, 2003, HISC voted to adopt three existing lists of invasive species, as codified in HAR, as an “initial list of invasive species” with the stated intent of producing a more comprehensive list at a later date. The three existing lists voted to be considered as “invasive” were:

- The List of Prohibited Animals, dated October 25, 2001 (HAR § 4-71 Attachment 1);
- The List of Plant Species Designated as Noxious Weeds for Eradication or Control Purposes, dated June 18, 1992 (attached at end of HAR § 4-68); and
- The List of Species of Injurious Wildlife in Hawaii, dated February 1, 1997 (HAR § 13-124 Exhibit 5).

At the 2003 meeting, HISC assigned the Working Group on Established Pests to take the lead responsibility in developing a method for updating the list, but no such method was produced. Since that time, HISC has not adopted any administrative rules to carry out chapter 194 HRS. There has been interest and efforts to do so over the years, but none were ultimately successful.

At its June 2011 meeting, HISC approved Resolution 11-1, which directed HISC staff to draft administrative rules for the implementation of chapter 194 HRS.¹ As HISC is administratively attached to an executive agency (DLNR), HISC must follow the rule making procedures outlined in HRS chapter 91. Between 2011 and 2015, HISC staff worked with DLNR and other agency staff, the Department of the Attorney General, and other partners to explore options for administrative rule processes that would allow HISC to maintain invasive species lists. HISC staff find that developing a list of all invasive species present in the State is an enormous task that would require a huge expenditure of money and staff resources, which are currently and historically unavailable. Such a list would need to be a dynamic list - it would need to be amended regularly as new invasive species were detected, species taxonomy changed, and, hopefully, species were eradicated.

HISC staff find that developing a list of invasive species “identified by the council for control or eradication” is a much more manageable task and sufficiently carries out the legislative intent in HRS chapter 194. As rules have not been adopted, HISC currently lacks those authorities to control or eradicate high-impact invasive species, as identified by HISC.

In June 2015, HISC considered a HISC staff submittal requesting direction on the promulgation

¹ <https://dlnr.hawaii.gov/hisc/files/2013/02/HISC-Reso-11-1-Admin-Rules.pdf>

of administrative rules, including the species lists required by chapter 194.² The submittal described a model of list maintenance set out in HRS § 150A-6.6, which allows the Hawaii Department of Agriculture (HDOA) to update its lists of prohibited and restricted species under HRS §§ 150A-6.1 through 150A-6.3. The model allows for public input and notification without going through the chapter 91 HRS rulemaking process. This statutory process would greatly reduce the time and cost associated with list making. However, to utilize that model, chapter 194 would need to be amended to provide authorities similar to those found in HRS § 150A-6.6. HISC approved a motion for HISC staff to draft amendments to chapter 194 for the consideration by the Legislature that would provide HISC a process similar to the that available to HDOA to update its invasive species lists.³ Since that time, HISC has worked to obtain the statutory amendments to carry out the 2015 motion. Unfortunately, that effort has not been successful.

High-impact invasive species continue to be detected and spread across the State. After ten years of containment to O‘ahu, the coconut rhinoceros beetle was detected on Kaua‘i in the summer of 2023. Soon after, new detections were found on Maui and Hawai‘i Island of the same year. The little fire ant continues to spread throughout the counties with particular concern for O‘ahu where infestations, particularly on the windward side have drastically increased with over 30 active sites as of May 2024. The Island Invasive Species Committees (ISCs) on O‘ahu and Kaua‘i have prevented invasive plants like Miconia from taking over forested watersheds with ongoing, dedicated control efforts.

In 2022, HISC staff restarted the rulemaking process by drafting administrative rules to carry out chapter 194, HRS. In September 2022, the Department of the Attorney General advised HISC staff that the list of invasive species identified by HISC for control or eradication must be adopted under chapter 91, HRS, as an administrative rule. HISC staff developed the attached draft proposed administrative rules (proposed rules) for consideration and promulgation by HISC. These rules focus on a list of invasive species identified by HISC for control or eradication; procedures for HISC departments, the counties, or their agents to carry out control or eradicate actions for those species on private property; and for HISC departments and their agents to carry out control or eradication actions on State or county property.

Discussion and Analysis

Process. HRS § 194-7 provides HISC authority to adopt administrative rules pursuant to chapter 91, HRS. Chapter 91, HRS, sets out the State’s rulemaking process, including a requirement for public hearing(s). Any proposed administrative rule is required to be reviewed by the Small Business Regulatory Review Board both before and after the public hearing. HRS §§ 201M-3, 201M-5. If the rules are ultimately adopted, any future amendment to the rules, including to the list of invasive species identified by HISC for control or eradication, must be made using the chapter 91, HRS, rulemaking process. While this process has many steps and takes time, it allows for full public participation in the rulemaking process. It is also the only process available to adopt or amend the HISC rules without a statutory change.

This submittal, and requested approvals from HISC, are the first formal step in rulemaking

² <https://dlnr.hawaii.gov/hisc/files/2015/04/2015-6-10-HISC-Submittal-1-Admin-Rules.pdf>

³ <https://dlnr.hawaii.gov/hisc/files/2015/04/2015-6-10-Minutes-HISC.pdf>

pursuant to chapter 91, HRS.

Placement of Rules. The draft rules are proposed to be placed in HAR title 13, a new subtitle 14, and new chapters 325 and 326.⁴ Title 13 houses the administrative rules of DLNR. Subtitle 14 will be reserved for HISC-related rules.

Need for rules. HISC has not adopted any administrative rules to carry out chapter 194, HRS. The authorities contained in chapter 194 are intended for the HISC departments, the counties, and their agents to carry out control or eradication actions on private property if an invasive species identified by HISC is: (1) found on private property; or (2) reasonably suspected to be on private property, based on the results of systematic surveys or reports or proximity to known populations. HRS § 194-5. Chapter 194 HRS further authorizes HISC departments and their agents to order the control or eradication of invasive species on public property. HRS § 194-6. Until administrative rules with procedures are properly adopted, these statutory authorities cannot be effectuated.

The species listed as invasive species identified by HISC for control or eradication are the highest impact invasive species that are continuing to spread within the State or that would require an immediate response if found in the State. A description of each species selected is as follows:

Plants:

Scientific name	Common name	Summary of Impacts
<i>Cenchrus setaceus</i> (formerly <i>Pennisetum</i> <i>setaceum</i>)	fountain grass	Fountain grass is a perennial, clumping grass that can grow in a variety of habitats, from bare lava, to rangeland, to urban roadsides in drier areas of the Hawaiian Islands. Fountain grass is an aggressive habitat-invader. It degrades the quality of pasture lands, particularly in drier areas. It is fire-adapted and can sustain fires that spread quickly into adjacent areas. Its dried biomass can increase the intensity of wildfires. It is listed as a State Noxious Weed under chapter 68 HAR. Fountain grass is a target pest of all the ISCs except for Molokai.
<i>Chromolaena odorata</i>	devil weed, Siam weed	Devil weed, siam weed, or bitter bush, is one of the most notorious tropical weeds in the world. Emerging as a shrub that quickly forms dense thickets, it can thrive in all environments except deep shade, flourishing in newly disturbed areas. It is listed as a State Noxious Weed under chapter 68 HAR and is a target

⁴ This placement is modeled after the placement of the administrative rules for the Kaho‘olawe Island Reserve Commission, which are set out in subtitle 12 of title 13 HAR. Both HISC and the Kaho‘olawe Island Reserve Commission are placed within DLNR “for administrative purposes.” HRS §§ 194-2(b), 6K-5(a).

		pest of the Oahu Invasive Species Committee and Big Island Invasive Species Committee.
<i>Cortaderia jubata</i>	pampas grass	Pampas grass grows rapidly, produces thousands of seeds per flower plume, and can accumulate large amounts of fire prone biomass. Seeds are viable for 4-6 months, but field evidence from Hawaii suggests viability could be greater. It can crowd out native species, impede access, degrade grazing lands, and create fire hazards. It is listed as a State Noxious Weed under chapter 68 HAR. Pampas grass is a target pest of all the ISCs except for Molokai.
<i>Cortaderia selloana</i>	pampas grass	Pampas grass grows rapidly and can accumulate large amounts of fire prone biomass. It can crowd out native species, impede access, degrade grazing lands, and create fire hazards. It is difficult to distinguish from other <i>Cortaderia</i> species and may hybridize with them.
<i>Miconia</i> – all species in the genus	miconia	<i>Miconia</i> is one of the top threats to Hawaii’s watersheds and forest ecosystems. The fast-growing tree in the melastome family invades areas from agricultural landscapes to forests by forming dense stands and shading out other native forest trees with its large leaves. Its uncontrolled growth can overwhelm highly diverse native wet forest ecosystems that are home to critically endangered species and essential as sources of fresh water. Each plant can produce approximately ten million seeds per year, which may remain viable for more than 20 years. It is listed as a State Noxious Weed under chapter 68 HAR. It is a target of the ISCs except Molokai.
<i>Pennisetum villosum</i>	feather-topped fountain grass; longstyle feather grass	Feathertop is another perennial, clumping grass that is grown in gardens with a similar growth structure and leaves to fountain grass. It is an early detection target pest of the Kauai Invasive Species Committee.
<i>Senecio madagascariensis</i>	fireweed	Fireweed invades pastures, disturbed areas, and roadsides. It is very toxic to cattle, horses and other livestock. When ingested it causes illness, slow overall growth, liver-malfunction and even death in severe cases. In Australia, fireweed costs over \$2 million per year in

		losses and control. It is listed as a State Noxious Weed under chapter 68 HAR. It is a target of the Kauai Invasive Species Committee, Oahu Invasive Species Committee, and Molokai Invasive Species Committee.
<i>Tibouchina</i> – all species in the genus	Tibouchina, glory bush	Tibouchina threatens native areas by forming monotypic thickets that outcompete and displace native plants. All 350 plants in the genus <i>Tibouchina</i> are designated as State Noxious Weeds under chapter 68 HAR. <i>Tibouchina</i> is a target pest of the Oahu Invasive Species Committee.

Invertebrates:

Scientific name	Common name	Summary of Impacts
<i>Aedes aegypti</i>	mosquito	<i>Aedes aegypti</i> is a serious human health risk. It is the known vector of several viruses including yellow fever virus, dengue virus chikungunya virus and Zika virus. It has limited distribution in the State and populations are monitored by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.
<i>Aedes scutellaris</i>	mosquito	<i>Aedes scutellaris</i> is a mosquito that can transmit dengue viruses. It is a semi-domesticated container breeding mosquito that is also considered a bush mosquito. Monitoring for this species is conducted by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.
<i>Aphis mellifera scutellata</i>	Africanized honeybee	Africanized Honeybees (AHB) are a “wild” bee that is not comfortable around people or animals and will readily defend its hive at greater distances from the disturbance, become more upset with less reason, and sting in much greater numbers. If it were to become established in Hawaii, it would be difficult to control, it could seriously impact Hawaii’s communities, businesses, and tourism. AHB could also impact commercial beekeepers, resulting in reduced yields to crops that rely on pollination. It could also impact honey and

		queen bee production in the State by infiltrating domestic honey bee colonies. Africanized honeybees are considered injurious wildlife under chapter 124 HAR.
<i>Anopheles</i> - all species in genus	western malaria mosquito	Anopheles mosquitos can transmit malaria. They are not known to be present in Hawaii. Monitoring for this species is conducted by the Hawaii Department of Health Vector Control Branch and the Interagency Port of Entry Monitoring Program coordinated under the HISC.
<i>Oryctes rhinoceros</i>	coconut rhinoceros beetle, CRB	CRB a pest of palms across the Pacific including Hawaii and have a wider host range that includes Pandanus and banana. Adults bite and bore into emerging palm fronds creating holes in the top of the tree that can eventually kill it. CRB is a target pest of the Kauai Invasive Species Committee, Maui Invasive Species Committee, Big Island Invasive Species Committee, and is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).
<i>Popillia japonica</i>	Japanese beetle	Japanese beetle feeds on a wide range of plants. The adult beetles skeletonize leaves by eating around the larger veins and chew on flowers. Hosts include small fruits, tree fruits, truck and garden crops, ornamental shrubs, vines, and trees. Feeding studies show a host range more than 300 plants in 79 plant families. It is monitored for by the Interagency Port of Entry Monitoring Program coordinated under the HISC.
<i>Prosapia bicincta</i>	two-lined spittlebug	The two-lined spittlebug (TLSB) feeds on grasses that are important to ranching and results in the loss of thousands of acres of kikuyu and pangola grass pastures. Pastures do not recover after infestation but instead are replaced by invasive plants that are challenging to control. The TLSB is a serious threat to the ranching industry in Hawaii, where most of our livestock depend on the grasses attacked by the insect. TLSB is a target pest of the Big Island Invasive Species Committee.

<i>Solenopsis invicta</i>	red imported fire ant, RIFA	RIFA pose a serious threat to human health. Large numbers of ants will rapidly swarm on and relentlessly sting anything unfortunate enough to disturb them. In the U.S., millions of people are stung each year. RIFA stings cause blisters filled with white pus which lasts for several days. In infested areas, they may cause injury or death to livestock, pets, and wildlife; damage crops, ornamental plants, electrical equipment, and irrigation systems; and cause serious declines in biodiversity. RIFA is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR). It is also monitored for through the Interagency Port of Entry Monitoring Program coordinated under the HISC.
<i>Wasmannia auropunctata</i>	little fire ant, LFA	LFA delivers a painful sting when disturbed. Welts can last for weeks. Infests agricultural fields and farms, where they damage crops and sting workers. Promotes plant pests such as aphids, white flies and scale insects, which secrete plant sap that the ants eat. They may sting, and even blind, pets such as cats and dogs. In the Galapagos, they eat tortoise hatchlings and attacks the eyes of adult tortoises. LFA is a target pest of the Kauai Invasive Species Committee, Oahu Invasive Species Committee, Hawaii Ant Lab, Maui Invasive Species Committee, and is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).

Vertebrates:

Scientific name	Common name	Summary of Impacts
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<p><i>Eleutherodactylus coqui</i></p>	<p>coqui frog</p>	<p>The coqui frog has no natural predators or competitors in Hawaii to keep populations in check. Populations have reached 55,000 frogs per hectare in some Hawaii populations (compared to 24,000 frogs per hectare in their native habitat, Puerto Rico). They eat huge quantities of insects, removing insects from forest floor to treetops. This results in the loss of insect services, such as pollination. The male calls are loud and incessant that can bother residents and visitors alike. Coqui are currently a rapid response species for HDOA and the Island Invasive Species Committees (ISCs) except for Hawaii Island. Coqui is designated by HDOA as a Pest Designated for Control or Eradication under chapter 4-69A HAR and by DLNR as an Hawaii Injurious Wildlife Species (Exhibit 5, Chapter 13-124 HAR).</p>
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Pathogens/Diseases:

Scientific name	Common name	Summary of Impacts
<i>Ceratocystis lukuohia</i>	rapid ohia death	<p>The two fungal pathogens attack and can quickly kill ohia trees (<i>Metrosideros polymorpha</i>). Ohia is endemic to Hawaii and comprises approximately 80% of Hawaii's native forests. *Note: the species of <i>Ceratocystis</i> fungi that cause Rapid Ohia Death has since been recognized as two distinct species; <i>Ceratocystis huliohia</i> (ROD canker disease) and <i>C. lukuohia</i> (ROD wilt disease), with significantly different pathologies – although both ultimately lead to tree mortality. There is a State quarantine preventing the movement of Ohia products from Hawaii Island and Kauai. The US Department of Agriculture implemented the Myrtaceae Rule that restricts the movement of myrtle plants from entering Hawaii through foreign ports.</p>
<i>Ceratocystis huliohia</i>	rapid ohia death	

The adoption of administrative rules to effectuate the authorities for HISC departments, and counties and agents where applicable, to control and eradicate species identified by HISC or order their control or eradication will provide the opportunity to effectively manage these invasive

species on a local, island, or State-wide basis.

Summary of Proposed Rules

The text of the proposed rules, to be found in chapters 325 and 326 of subtitle 14 to title 13, HAR, is provided as **Exhibit 1** of this submittal. **Exhibit 2** provides the text of HRS §§ 194-5 and 194-6 for reference. A summary of the proposed rules is as follows:

Chapter 325 contains 3 sections that set out the general provisions as follows:

- **Section 325-1 “Purpose”** sets out that the purpose of the rules is to implement HISC authorities under chapter 194 HRS.
- **Section 325-2 “Definitions”** sets out the definitions for the subtitle for the terms “agent,” “control,” “Council” or “Hawaii Invasive Species Council,” “county,” “department,” “eradicate,” “eradication,” “invasive species,” “non-native species,” “person,” and “public property.”
- **Section 325-3 “Relationship to other laws”** clarifies that the HISC administrative rules may not be construed to limit existing authorities provided to a HISC department or a county under any law or any other rule.

Chapter 326 contains 6 sections that are related to the authority of HISC departments, the counties, and their agents to carry out actions to control or eradicate invasive species identified by the HISC, as follows:

- **Section 326-1 “Invasive species identified by the council for control or eradication”** sets out the list of invasive species identified by HISC for control or eradication (identified species).
 - The list contains 20 invasive species taxa that are either: (1) currently causing substantial negative impacts in the State and that could still be controlled or eradicated over a large geographic area; or (2) not currently present in the State and would cause such impacts if not controlled or eradicated if detected in Hawaii.
 - A detailed description of each species is provided under heading “Discussion and Analysis” above.
 - This section carries out the statutory requirement that control or eradication actions on private property may only be carried out for “invasive species identified by the [HISC] for control or eradication.” HRS § 194-5.
- **Section 326-2 “Requirements for control or eradication on private property”** sets out the requirements for a HISC department or county or an agent to control or eradicate an identified species on private property. This section provides guidance to HISC departments and counties for carrying out HRS § 194-5, as follows:
 - The department or county must submit a detailed control or eradication program to HISC. The program must be narrowly tailored to control or eradicate the target invasive species, identify the specific geographic area where the control or eradication

- actions will be carried out, include a proposed schedule of the actions, describe the methods proposed to be used, and include an assessment of the reasonableness of those methods.
- The section requires the HISC department or county to provide updates to HISC on the control or eradication actions at least annually.
 - Subsection (b) requires that if two departments or counties intend to carry out control or eradication actions for the same identified species, those departments and counties shall ensure the actions are carried out efficiently and in a manner that does not result in unnecessary impacts to land owners, tenants, or occupants.
 - Subsection (c) authorizes a HISC department or a county to enter into a memorandum of understanding (MOU) with an agent that has appropriate expertise and experience to carry out actions under this section or sections 326-3 or 326-4 (see below).
- **Section 326-3 “Notice”** sets out the requirements for notice to a private property owner, or tenant or occupant if applicable, before control or eradication actions may be carried out on the private property. This section provides guidance on what is “reasonable notice” as required by HRS § 194-5.
 - If the owner, and tenant or occupant if applicable, consent to the control or eradication actions, the actions may be carried out immediately.
 - If the owner, and tenant or occupant if applicable, does not consent, the action may be carried out 30 days after notice is given if a court issues a warrant authorizing the actions under section 326-6 (see below).
 - Subsection (c) authorizes a HISC department or county or their agent to waive the 30 day notice requirements if the department or county determines that control or eradication of the identified species requires an urgent response on private property and the consent of the owner, or tenant or occupant if applicable, cannot be obtained immediately and the department or county obtains a warrant under section 326-6 (see below) that authorizes the entry onto the private property for emergency control or eradication actions.
 - **Section 326-4 “Requirement for control or eradication by private property owner”** authorizes a HISC department or county or their agent to order a private property owner to control or eradicate an identified species if the department or county or their agent determines the identified species was “intentionally and knowingly” established on private property by the property owner. This section provides guidance to HISC departments and counties to effectuate HRS § 194-5(c).
 - The property owner must be given 30 days notice and a reasonable amount of time to obtain needed equipment, supplies, and personnel to comply with the order.
 - Subsection (c) provides that if the owner fails to comply with the order, the HISC department or county or agent may, after notice, carry out the actions at the property owner’s if the owner consents or pursuant to a warrant sought under section 326-6 (see below).
 - Subsection (d) provides that the HISC department, county, or agent may seek to recover its expenses for carrying out the actions under subsection (c) at an appropriate proceeding.

- **Section 326-5 “Requirements for control or eradication on public property”** sets out the requirements for a HISC department or its agent to order an entity in charge of State or county property to control or eradicate an identified species on the public property. This section provides limitations on the authority provided in HRS § 194-6.
 - HRS § 194-6 authorizes a HISC department or its agent to order the entity in charge of any State or county property to control or eradicate any invasive species.
 - The proposed rules limit this authority by authorizing a HISC department (or agent operating under an MOU) to order the entity in charge of the public property to control or eradicate: (1) only an invasive species identified by HISC for control or eradication; and (2) only if the public property is located within a geographic area in which the HISC department or its agent is monitoring or carrying out control or eradication actions for that identified species.
 - Subsection (b) requires that the entity in charge of the public property be given 30 days notice and a reasonable amount of time to obtain needed equipment, supplies, and personnel to comply with the order.
 - Subsection (c) provides that if the entity in charge of the public property fails to comply with the order, the HISC department or its agent may, after notice, carry out the actions if the owner consents or pursuant to a warrant sought under section 326-6 (see below).
 - Subsection (d) provides that the HISC department or its agent may seek to recover its expenses for carrying out the actions under subsection (c) at an appropriate proceeding.
 - Subsection (e) authorizes a HISC department or its agent to waive the 30 day notice requirement if: (1) the HISC department or agent determines that control or eradication of the identified species requires an urgent response on the public property; (2) consent of the entity in charge cannot be obtained immediately; and (3) the HISC department obtains a warrant under section 326-6 (see below) that authorizes the entry onto the public property for emergency control or eradication actions.
 - Subsection (f) authorizes a HISC department to enter into a MOU with an agent that has appropriate expertise and experience to carry out actions under this section.

- **Section 326-6 “Warrants”** sets out the requirements for a HISC department or county to seek a warrant to carry out a control or eradication action on private or public property without the consent of the property owner, tenant, occupier, or entity in charge, as appropriate. The section requires an affidavit be submitted to the district court of the circuit in which the private or public property is situated.

Legal Authority

HRS § 194-7 HRS authorizes HISC to adopt rules pursuant to chapter 91, HRS.

HRS § 91-3(a) authorizes an agency seeking to adopt administrative rules to hold public hearings and afford all interested persons opportunity to submit data, views, or arguments for the agency to consider when contemplating adoption of proposed rules.

Recommendations:

That the Hawaii Invasive Species Council (HISC):

1. Approve the proposed adoption of HAR Chapters 13-325, “General Provisions” and 13-326, “Control and Eradication of Invasive Species,” for statewide public hearing(s), attached hereto as Exhibit 1;

and

2. Delegate authority to the Chairperson of the Department of Land and Natural Resources to set dates and times for the aforementioned public hearing(s) and appoint a hearing officer for the public hearing(s).

EXHIBIT 1

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Subtitle 14 of Title 13,
Containing Chapters 13-325 and 13-326
Hawaii Administrative Rules

[DATE]

SUMMARY

1. Chapter 13-325, Hawaii Administrative Rules, is adopted.
2. Chapter 13-326, Hawaii Administrative Rules, is adopted.
3. Subtitle 14 of Title 13, Hawaii Administrative Rules is adopted.

EXHIBIT 1

§13-325-1

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 325

GENERAL PROVISIONS

§13-325-1	Purpose
§13-325-2	Definitions
§13-325-3	Relationship to other laws

§13-325-1 Purpose. This chapter implements the Hawaii invasive species council authorities in chapter 194, Hawaii Revised Statutes, for the purpose of preventing, controlling, and eradicating harmful invasive species infestations throughout the State.

[Eff] (Auth: HRS §194-7) (Imp: HRS §§194-2, 194-4)

§13-325-2 Definitions. As used in this chapter:

"Agent" means a person authorized by law to carry out a provision of this chapter.

"Control" means, with respect to an invasive species, containing, suppressing, or reducing the invasive species.

"Council" or "Hawaii invasive species council" means the invasive species council established under section 194-2, Hawaii Revised Statutes.

"County" means the city and county of Honolulu, and the county of Hawaii, the county of Kauai, and the county of Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this chapter.

"Department" means each of the following:

- (1) The department of agriculture;

EXHIBIT 1

§13-325-2

- (2) The department of business, economic development, and tourism;
- (3) The department of health;
- (4) The department of land and natural resources;
- (5) The department of transportation; and
- (6) The University of Hawaii.

"Eradicate" means, with respect to an invasive species, to remove or destroy an entire population of the invasive species.

"Eradication" means, with respect to an invasive species, actions to eradicate the invasive species.

"Invasive species" means, with regard to a particular ecosystem, a non-native species, genera, or other taxon that causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

"Non-native species" means, with respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

"Person" means an individual, corporation, firm, association, partnership, or other public, private, or not-for-profit entity, or any governmental unit.

"Public property" means any property owned or controlled by the State or a county.

[Eff _____] (Auth: HRS §194-7) (Imp: HRS §§194-1, 194-2)

§13-325-3 Relationship to other laws. Nothing in this chapter may be construed to limit an authority provided to a department or a county under any provision of law or any other rule to regulate, control, or eradicate any invasive species." [Eff _____] (Auth: HRS §194-7) (Imp: HRS §194-4)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

HAWAII INVASIVE SPECIES COUNCIL

CHAPTER 326

CONTROL AND ERADICATION OF INVASIVE SPECIES

- §13-326-1 Invasive species identified by the council for control or eradication
- §13-326-2 Requirements for control or eradication on private property
- §13-326-3 Notice
- §13-326-4 Requirement for control or eradication by private property owner
- §13-326-5 Requirements for control or eradication on public property
- §13-326-6 Warrants

§13-326-1 Invasive species identified by the council for control or eradication. (a) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are those invasive species that have a record of causing economic or environmental harm, or harm to human, animal, or plant health in the scientific literature or in environmental conditions found in Hawaii.

(b) The invasive species identified by the council for control or eradication for purposes of sections 194-4 and 194-5, Hawaii Revised Statutes, are the following:

	Scientific name	Common name
(1)	Plants:	
(A)	<i>Cenchrus setaceus</i> (formerly <i>Pennisetum setaceum</i>)	fountain grass
(B)	<i>Chromolaena odorata</i>	devil weed, Siam weed
(C)	<i>Cortaderia jubata</i>	pampas grass
(D)	<i>Cortaderia selloana</i>	pampas grass

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|--------------------|--|--|
| (E) | <i>Miconia</i> - all species in the genus | miconia |
| (F) | <i>Pennisetum villosum</i> | feather-topped fountain grass, longstyle feather grass |
| (G) | <i>Senecio madagascariensis</i> | fireweed |
| (H) | <i>Tibouchina</i> - all species in the genus | Tibouchina, glory bush |
| (2) Invertebrates: | | |
| (A) | <i>Aedes aegypti</i> | mosquito |
| (B) | <i>Aedes scutellaris</i> | mosquito |
| (C) | <i>Aphis mellifera scutellata</i> | Africanized honeybee |
| (D) | <i>Anopheles</i> - all species in genus | western malaria mosquito |
| (E) | <i>Oryctes rhinoceros</i> | coconut rhinoceros beetle, CRB |
| (F) | <i>Popillia japonica</i> | Japanese beetle |
| (G) | <i>Prosapia bicincta</i> | two-lined spittlebug |
| (H) | <i>Solenopsis invicta</i> | red imported fire ant, RIFA |
| (I) | <i>Wasmannia auropunctata</i> | little fire ant, LFA |
| (3) Vertebrates: | | |
| (A) | <i>Eleutherodactylus coqui</i> | coqui frog |
| (4) Pathogens: | | |
| (A) | <i>Ceratocystis lukuohia</i> | rapid ohia death |
| (B) | <i>Ceratocystis huliohia</i> | rapid ohia death |

(c) If the scientific name or common name of a taxon referred to in this section is changed to a new scientific name or common name accepted by the International Code of Zoological Nomenclature (ICZN), the International Plant Names Index (IPNI), or other appropriate authority the reference in this section shall be construed to refer to the new scientific name or common name, as appropriate.

[Eff] (Auth: HRS §194-7) (Imp: HRS §194-4)

§13-326-2 Requirements for control or eradication on private property. (a) A department or county seeking to conduct control or eradication actions on private property pursuant to this chapter for an invasive species listed in section 13-326-1(b) shall:

- (1) Prior to conducting any such action, develop and submit to

the council a detailed control or eradication program that:

- (A) Is narrowly tailored to include only the needed control or eradication of the target invasive species, recognizing that general vegetation removal, other removal or modification of non-target species, and other habitat modification may be needed for access to or control or eradication of the target invasive species;
 - (B) Identifies the specific geographic areas where control or eradication actions will be carried out and the reasons each area is selected, including that the target invasive species is known or reasonably suspected to be in each area, based on the results of systematic surveys or reports or proximity to known infestations of the invasive species;
 - (C) Includes a proposed schedule for the actions;
 - (D) Describes the control or eradication methods proposed to be used; and
 - (E) Includes an assessment of the reasonableness of the methods proposed; and
- (2) Provide regular updates, not less than annually, to the council on the control or eradication actions carried out by the department or county.

(b) If two or more departments or counties intend to carry out control or eradication actions pursuant to this chapter for the same invasive species, those departments and counties shall ensure that all control or eradication actions are carried out efficiently and in a manner that does not result in unnecessary impacts to land owners, or tenants or occupants, if applicable.

(c) A department or county may enter into a memorandum of understanding with an agent of the department or county that has appropriate expertise and experience to carry out actions under this section or section 13-326-3 or 13-326-4. [Eff _____]
(Auth: HRS §194-7) (Imp: HRS §§194-4, 194-5)

§13-326-3 Notice. (a) The time period for reasonable notice to the owner, and tenant or occupant if applicable, of private property that a department or county intends to enter to control or eradicate an invasive species pursuant to section 194-5, Hawaii Revised Statutes, is the earlier of

- (1) Thirty days after notice is given to the owner, and the tenant or occupant if applicable; or
- (2) The date that the owner, and the tenant or occupant if applicable, consents to the entry.

(b) If the owner, or the tenant or occupant if applicable, of the private property does not consent to the entry by a department or a county within thirty days after notice is given under subsection (a), the department or county may seek a warrant under section 13-326-6 that authorizes the entry for control or eradication actions.

(c) Notwithstanding subsections (a) and (b), if a department or

county determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on private property and the consent of the owner, or tenant or occupant if applicable, cannot be obtained immediately, the department or county may seek a warrant under section 13-326-6 that authorizes the entry onto the private property for emergency control or eradication actions. [Eff _____] (Auth: HRS §194-7) (Imp: HRS §194-5)

§13-326-4 Requirement for control or eradication by private property owner. (a) If a department or county determines that an invasive species listed in section 13-326-1(b) was intentionally and knowingly established on private property by the property owner, the department or county may order the property owner to control or eradicate the invasive species to the satisfaction of the department or county.

(b) The time limit set by a department or county to require an owner of private property to control or eradicate an invasive species pursuant to section 194-5(c), Hawaii Revised Statutes, shall be not less than thirty days and shall provide a reasonable amount of time for the owner to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

(c) If the owner fails to comply with an order issued under subsection (a), the applicable department or county may after notice required by section 13-326-3 carry out the actions required by the order:

- (1) If the owner consents to the department or county carrying out the actions; or
- (2) Pursuant to a warrant sought under section 13-326-6.

(d) A department or county that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding.

[Eff _____] (Auth: HRS §194-7) (Imp: HRS §194-5)

§13-326-5 Requirements for control or eradication on public property. (a) If a department determines that an invasive species listed in section 13-326-1(b) is found on public property that is within a geographic area in which the department or its agent is carrying out monitoring or control or eradication actions for the invasive species, the department may, after notice required by subsection (b), order the government entity in charge of the public property to control or eradicate the invasive species to the satisfaction of the department.

(b) The notice required by this subsection shall be not less than thirty days and shall provide a reasonable amount of time for the government entity in charge of the public property to obtain the necessary equipment, supplies, and personnel to control or eradicate the invasive species.

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(c) If the government entity in charge of the public property fails to comply with an order issued under subsection (a), the applicable department may carry out the control or eradication actions required by the order:

(1) If the government entity in charge of the public property consents to the department carrying out the actions; or

(2) Pursuant to a warrant sought under section 13-326-6.

(d) A department that carries out control or eradication actions under subsection (c) may recover the expenses incurred to carry out those actions by appropriate proceeding.

(e) Notwithstanding subsections (a) and (b), if a department determines that control or eradication of an invasive species listed in section 13-326-1(b) requires an urgent response on public property and the consent of the government entity in charge of the public property cannot be obtained immediately, the department may seek a warrant under section 13-326-6 that authorizes the entry onto the public property for emergency control or eradication actions.

(f) A department may enter into a memorandum of understanding with an agent of the department that has appropriate expertise and experience to carry out actions under this section.

[Eff] (Auth: HRS §194-7) (Imp: HRS §194-6)

§13-326-6 Warrants. A department or county seeking a warrant to control or eradicate an invasive species pursuant to this chapter on private or public property shall submit to the district court of the circuit in which the property is situated an affidavit that:

(1) Is made by an individual having knowledge of the facts alleged; and

(2) Establishes grounds for issuing the warrant."

[Eff] (Auth: HRS §194-7) (Imp: HRS §§194-5, 194-6)

EXHIBIT 1

DEPARTMENT OF LAND AND NATURAL RESOURCES

The adoption of subtitle 14 of title 13, containing chapters 13-325 and 13-326, Hawaii Administrative Rules, on the Summary Page dated [DATE], was adopted on [DATE], following a public hearing on [DATE], after public notice was given in the Honolulu Star-Advertiser on [DATE].

The adoption of subtitle 14 of title 13, containing chapters 13-325 and 13-326, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Dawn S. Chang
Co-Chairperson
Hawaii Invasive Species Council

Sharon Hurd
Co-Chairperson
Hawaii Invasive Species Council

APPROVED:

Josh Green, M.D.
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

EXHIBIT 2

§194-5 HRS Entry; Private Property

- (a) Whenever any invasive species identified by the council for control or eradication is:
 - (1) Found on private property; or
 - (2) Reasonably suspected to be on private property, based on the results of systematic surveys or reports or proximity to known populations,

regardless of whether the presence of the invasive species is due to natural dispersal from neighboring or nearby properties or to intentional establishment by the owner, tenant, or occupant of the property, a department or applicable county, or its employees or authorized agents may enter the premises to control or eradicate the invasive species after reasonable notice is given to the owner of the property and, if entry is refused, pursuant to the court order in subsection (d).

- (b) If applicable, a duplicate of the notice so given shall be left with one or more of the tenants or occupants of the premises. If the premises are unoccupied, notice shall be mailed to the last known place of residence of the owner, if residing in the State. If the owner resides out of the State or cannot be expeditiously provided with notice, notice left at the house or posted on the premises shall be sufficient.
- (c) The department or applicable county, or its employees or authorized agents may instead cause notice to be given, and order the owner to control or eradicate the invasive species, if the species was intentionally and knowingly established by the owner on the owner's property and not naturally dispersed from neighboring properties, at the owner's expense within a reasonable time as the department or county may deem proper, pursuant to the notice requirements of this section.
- (d) If the owner thus notified fails to comply with the order of the department, the applicable county, or its employee or authorized agent, within the time specified by the department or county, or if entry is refused after notice is given pursuant to subsection (a) and, if applicable subsection (b), the department, the applicable county, or its employee or authorized agent may apply to the district court of the circuit in which the property is situated for a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid and to assist the department member, county employee, or agent in gaining entry onto the premises, and executing measures to control or eradicate the invasive species.
- (e) The department or applicable county may recover by appropriate proceedings the expenses incurred by its order from any owner who, after proper notice, has failed to comply with the department's or county's order.
- (f) In no case shall the department, the county, or any officer, employee, or authorized agent thereof be liable for costs in any action or proceeding that may be commenced pursuant to this chapter.

§194-6 HRS Entry; Public Property

- (a) Whenever any invasive species is found on state or county property or on a public highway, street, lane, alley, or other public place controlled by the State or county, notice shall be given by the department or its agent, as the case may be, to the person officially in charge thereof, and the person shall be reasonably notified and ordered by the department to control or eradicate the invasive species.
- (b) In case of a failure to comply with the order, the mode of procedure shall be the same as provided in case of private persons in section 194-5.