

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

December 13, 2019

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL AND ADOPTION OF AMENDMENTS TO TITLE 13, HAWAI'I ADMINISTRATIVE RULES (HAR), SECTION 13-234-26, PASSENGER FEES TO REVISE FEE AND CHARGE REQUIREMENTS AND INCREASE PASSENGER CRUISE-RELATED FEES.

The proposed rules can be reviewed in person at a Division of Boating and Ocean Recreation (DOBOR) district office from 8:00 am to 3:30 pm, Monday through Friday, except state Holidays as follows: Hawai'i District: Honokōhau Small Boat Harbor, 74-380 Kealakehe Parkway, Kailua-Kona, HI 96740; Kaua'i District: Nawiliwili Small Boat Harbor, 2494 Niumalu Road, Līhu'e, HI 96766; Maui District: Ma'ālaea Small Boat Harbor, 101 Ma'ālaea Boat Harbor Road, Wailuku, HI 96793; O'ahu District: Ke'ehi Small Boat Harbor, 4 Sand Island Access Road, Honolulu, HI 96819.

The proposed rules can be reviewed online at: <http://ltgov.hawaii.gov/the-office/administrative-rules>. The proposed rules can also be viewed online at: <http://dlnr.hawaii.gov/dobor/draft-rules>.

Location and contact information for DOBOR offices is available online at: <http://dlnr.hawaii.gov/dobor/contact>.

PURPOSE:

The purpose of these amendments is to revise fee requirements and increase fees in HAR § 13-234-26 Passenger fees. The proposed amendments will increase passenger fees for cruise vessels using DOBOR facilities. The proposed amendments also make clarifications to the reporting requirements of the section. Proposed amendments are attached as **Exhibit A**.

BACKGROUND:

DOBOR received approval on August 22, 2019 from the Small Business Regulatory Review Board (SBRRB) to hold public hearings. DOBOR received approval on August 23, 2019 from

the Board of Land and Natural Resources (Board) to hold public hearings. DOBOR received approval from the Governor to hold public hearings on September 3, 2019.

The Department of the Attorney General, Land and Transportation Division has reviewed the draft rules and approved them as to form, pending approval by the Board, SBRRB, and the Governor pursuant to HRS Chapter 91. DOBOR is not recommending any substantive changes to the proposed rules from the draft that was presented at the public hearings.

Legal ads were placed in newspapers in accordance with HRS § 91-3 to notify the public of the public hearings on the proposed amendments. Print copies of the proposed amendments were made available for viewing at DOBOR district offices.

PUBLIC HEARING ASSESSMENTS

HAWAI'I ISLAND 10/21/2019 PUBLIC HEARING ASSESSMENT (KONA):

No persons attended the public hearing on Hawai'i Island.

MAUI 10/22/2019 PUBLIC HEARING ASSESSMENT:

No persons attended the public hearing on Maui.

OAHU 10/23/2019 PUBLIC HEARING ASSESSMENT:

No persons attended the public hearing on O'ahu.

MAILED TESTIMONY (POSTMARKED BY 10/28/2019)

No mailed testimony received.

EMAILED TESTIMONY (RECEIVED BY 10/28/2019 11:59 P.M.):

DOBOR received email testimony from one individual representing the Cruise Lines International Association-Alaska (CLIA-Alaska), a nonprofit trade association that represents the major cruise lines operating in Alaska and Hawaii, such as Carnival Cruise Lines, Celebrity Cruises, Disney Cruise Lines, and Norwegian Cruise Line.

CLIA-Alaska raised concerns that implementation of the proposed fee increases would not provide a reasonable transition time for cruise lines to update their fees and costs. Therefore, CLIA-Alaska recommends that all fees be raised to \$2.00 per passenger, then the proposed fee increase for Lahaina take effect after one year after the effective date of any amendments to HAR § 13-234-26.

After consideration of CLIA-Alaska testimony and discussion with CLIA-Alaska representatives, DOBOR staff recommends adopting the rule draft that was presented at public

hearing without any revisions because any decrease in fee amounts from those proposed will likely result in a net loss for the applicable cruise vessel facilities.

RECOMMENDATION:

DOBOR requests that the Board:

1. Approve adoption of the amendments to Hawaii Administrative Rules Section 13-234-26.
2. Approve transmittal of the amendments to the Governor for final approval and filing with the Office of the Lieutenant Governor; and

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

- A. Proposed amendments to HAR Section 13-234-26 Passenger fees.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to section 13-234-26
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-234-26, Hawaii Administrative Rules, is amended to read as follows:

§13-234-26 Passenger fees. (a) Any passenger or cruise vessel ~~[which is]~~ used for private gain ~~[and]~~ that does not have a valid mooring permit or commercial permit and ~~[which]~~ uses state small boat harbors, property, or facilities ~~[shall pay the following fees in addition to any other fees required by this chapter:~~

- ~~(1) Per passenger (includes in transit) --
embarking to or from shore to
ship.....\$2~~
- ~~(2) Passengers in transit on a vessel on a
continuous trip whose point of origin and
termination is a state small boat harbor, a
total of disembarking and embarking at each
port per passenger.....\$1.50~~
- ~~(3) Passengers] for embarking and disembarking
passengers ~~[on occasional and infrequent
use] on a special charter [when] approved in
[advance of voyage as provided in]
accordance with section 13-231-
57(c) (3) [.....\$1.50]~~
shall pay \$2.00 per passenger.~~

(b) ~~[Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:~~

- ~~(1) Passenger vessels engaging only in
interisland commerce:.....\$.30~~
- ~~(2) Passenger vessels engaging in international
or inter-state commerce:.....\$1.00~~

~~Vessels operated by a federal or state agency are exempt from the provisions of this subsection.]~~ Any passenger or cruise vessel which uses a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender while moored offshore shall pay a fee per passenger as follows:

- (1) For Lahaina small boat harbor..\$3.00 per day
- (2) For all other small boat harbors or facilities.....\$2.00 per day

(c) Passenger counts shall be determined by a vessel's passenger list. A passenger or cruise vessel required by this section to pay passenger fees shall file [A] a report [shall be filed] with the department on a form acceptable to the department within thirty [days after the date of embarking or disembarking of passengers over state facilities] calendar days after the vessel departs a state small boat harbor or state boating facility, and [the] any charges due shall be remitted along with the report.

(d) Fees required by this section shall be in addition to any other fees required by this chapter.

(e) Vessels operated by a federal, state, or county agency in an official capacity shall be exempt from the provisions of this section. [Eff 2/24/94; am

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. The amendments to section 13-234-26, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General