

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

May 8, 2020

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

Land Board Members:

SUBJECT: REQUEST FINAL APPROVAL TO REPEAL HAWAII ADMINISTRATIVE RULE (HAR) CHAPTER 13-251, SUBCHAPTER 1 CATAMARAN CAPTAIN, CANOE CAPTAIN, CANOE SECOND CAPTAIN, SURFBOARD INSTRUCTOR, SAILBOARD INSTRUCTOR AND COMMERCIAL MOTORBOAT OPERATOR PERMITS, SUBCHAPTER 2 SUSPENSION OR REVOCATION OF OPERATOR PERMITS, SUBCHAPTER 3 VIOLATION OF OPERATOR PERMIT PROVISIONS, AND SUBCHAPTER 7 SPECIAL OPERATING RESTRICTIONS, TO REMOVE ALL CERTIFICATION REQUIREMENTS REGARDING CATAMARAN CAPTAIN, CANOE CAPTAIN, CANOE SECOND CAPTAIN, SURFBOARD INSTRUCTOR, SAILBOARD INSTRUCTOR AND COMMERCIAL MOTORBOAT OPERATOR PERMITS.

The current version of HAR Chapter 13-251 can be reviewed online at: <http://ltgov.hawaii.gov/the-office/administrative-rules>. The current version of HAR Chapter 13-251 can also be viewed online at: <https://dlnr.hawaii.gov/dobor/rules>.

RELEVANT AUTHORITY:

Hawaii Revised Statutes (HRS) Section 91-3(g) provides as follows regarding an agency's intent to repeal sections, chapters, or subchapters of its administrative rules:

(g) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:

(1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:

(A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and

- (B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person;
 - (2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the Internet as provided in section 91-2.6; and
 - (3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to section 91-6.
- This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words, phrases, or other material within a section that does not constitute the entire section to be repealed.

DOBOR will not be amending any language in HAR Chapter 13-251 and will only be repealing Subchapters 1, 2, 3, and 7. HRS Section 91-3(g) therefore applies here, and public hearings are not necessary.

REMARKS:

HAR Chapter 13-251, Subchapters 1, 2, 3, and 7 concern DOBOR's Waikīkī Operator Permit requirements and are specific only to Waikīkī. All individuals wishing to provide surfing instruction or serve as an outrigger canoe captain for commercial purposes in Waikīkī Ocean Waters are required to obtain an operator permit, also known as a "Blue Card." All applicants must take a series of tests and will receive an Operator Permit from DOBOR if approved.

DOBOR is responsible for issuing Waikīkī Operator Permits but does not have the resources or expertise to continue conducting the testing and approval process. DOBOR has also been advised by the Department of the Attorney General that issuance of Waikīkī Operator Permits could impose liability on the State if customers are injured while on a tour with or receiving instruction from a permit holder because Waikīkī Operator Permits are issued by a State agency. Removing Waikīkī Operator Permit requirements from administrative rules would allow commercial operators to set their own employee qualification standards and keep the State, which is not a subject matter expert on surfing or canoe operation techniques, out of the process.

DOBOR has been working with Waikīkī operators to develop regulations for the various commercial activities taking place in Waikīkī Ocean Waters. DOBOR believes that repealing the abovementioned subchapters would provide the best solution while replacement regulations are developed to address the issues surrounding Waikīkī Operator Permits.

BACKGROUND:

DOBOR requested approval from the Board of Land and Natural Resources (Board) to publish a public notice of repeal pursuant to HRS Section 91-3(g) at the Board's regularly scheduled January 10, 2020 meeting. The Board approved DOBOR's request and additionally required that DOBOR include in the public notice a statement that all interested persons were invited to provide comments to DOBOR regarding the proposed repeal.

DOBOR went before the Small Business Regulatory Review Board (SBRRB) at its regularly scheduled January 16, 2020 meeting to discuss small business impacts. DOBOR informed SBRRB that repealing HAR Chapter 13-251, Subchapters 1, 2, 3, and 7 would lessen restrictions on small businesses that are subject to the operator card requirements and that existing commercial use permit rules and restrictions would remain unaffected by the repeal. SBRRB voted unanimously to recommend approval of the public notice of repeal.

DOBOR received approval from the Governor to publish the public notice of repeal for HAR Chapter 13-251, Subchapters 1, 2, 3, and 7 on January 31, 2020. DOBOR published the public notice of repeal in newspapers statewide on March 4, 2020.

PUBLIC NOTICE ASSESSMENT:

No individuals submitted any comments or petitions to DOBOR regarding HAR Chapter 13, 251, Subchapters 1, 2, 3, and 7 during the 30-day publication period.

RECOMMENDATION:

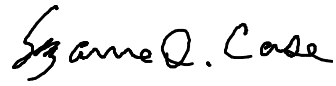
That the Board of Land and Natural Resources grant DOBOR final approval to repeal HAR Chapter 13-251, Subchapters 1, 2, 3, and 7.

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. Ramseyer document for repeal of HAR Chapter 13-251, Subchapters 1, 2, 3, and 7.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Repeal of Subchapters 1, 2, 3, and 7 of
Chapter 13-251
Hawaii Administrative Rules

[Date of adoption by agency]

1. Subchapter 1 of Chapter 13-251, Hawaii Administrative Rules, entitled "Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits", is repealed.

2. Subchapter 2 of Chapter 13-251, Hawaii Administrative Rules, entitled "Suspension or Revocation of Operator Permits", is repealed.

3. Subchapter 3 of Chapter 13-251, Hawaii Administrative Rules, entitled "Violation of Operator Permit Provisions", is repealed.

4. Subchapter 7 of Chapter 13-251, Hawaii Administrative Rules, entitled "Special Operating Restrictions", is repealed.

5. The repeal of subchapters 1, 2, 3 and 7 of Chapter 13-251, 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