DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Adoption of Chapter 15-212
Hawaii Administrative Rules

November 5, 2008

Chapter 15-212, Hawaii Administrative Rules, entitled "Kewalo Basin Rules for Vessel and Harbor Controls", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 212

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KEWALO BASIN RULES FOR VESSEL AND HARBOR CONTROLS

SUBCHAPTER 1

GENERAL PROVISIONS

§15-212-1 Harbormaster; general authority. (a) A master or person in charge of any vessel shall obey and carry into effect any orders given by the harbormaster relative to the method and manner of bringing vessels to anchorage, entering or leaving Kewalo Basin, or coming alongside of or leaving any wharf within Kewalo Basin, or anchorage without permission of the harbormaster.

(b) The berthing of vessels at Kewalo Basin shall be in conformity with this part and where not covered by this part at the discretion of the harbormaster in a reasonable manner such as to protect the public interest.

(c) The master of every vessel and crew thereof, when requested by the harbormaster shall give and afford the harbormaster all possible aid in the performance of any of the harbormaster's duties in relation to such vessel.

(d) If there is no person aboard a vessel with proper authority or if there is an insufficient number of persons aboard such vessel or if the master and crew of a vessel refuse to aid the harbormaster in moving, pumping, mooring, or unmooring of such vessel when so directed by the harbormaster, the harbormaster may pump, moor or unmoor, place, or remove such vessel and may, if necessary, hire such assistance, equipment, and tackle and purchase and put aboard such quantity of ballast as seems requisite, all at the expense of the master, operators, charterers, owners, or agents of such vessel. All such costs shall be

paid to the HCDA before permission for departure is given. The HCDA shall in no way be liable for any damage or loss occurring to any vessel in consequence of such proceedings except where the HCDA has been proven to be legally negligent.

(e) No person without the consent of the harbormaster shall cut or cast off any mooring lines, rope, or tackle made fast or attached to any vessel, wharf, mooring, buoy, or other place when the same has been fastened or attached by the harbormaster or by the harbormaster's order. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-2 Trying engine of vessels. The engines of any vessel lying at any wharf in Kewalo Basin shall not be tried except by permission of the harbormaster. The speed of engines being tried shall not exceed the speed of such engines when operated under a dead slow bell. Any vessel trying its engines shall be held responsible for any damage to wharves or vessels as the result of the trying of its engines. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-3 Mooring lines from vessels. No person shall make fast any rope or mooring lines from any vessel, other than a small craft, to any wharf or part thereof except to the mooring piles, bitts or cleats provided for that purpose. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-4 Display light after sunset and gangway requirements for certain vessels. All vessels over three hundred gross registered tons lying alongside a wharf shall display a light visible from the harbor or fairway during the period between sunset and sunrise. All vessels over three hundred gross registered tons, other than barges, shall have a safe and proper gangway to the wharf when lying alongside a wharf.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-5 Vessel arrival and departure schedules. Except for regular mooring and commercial permits, the master agent or owners of a vessel, other than small craft, arriving at or departing from Kewalo Basin shall provide to the harbormaster as soon as practicable all information necessary to effectively plan for vessel arrival and departure scheduling purposes. The information shall include, but not be limited to the hour of expected arrival and also that of expected departure, as well as the type and tonnage of cargo to be loaded and off-loaded. In case of a change in arrival or departure time, the harbormaster shall be notified immediately. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-6 Removal of vessel, raft, log or floating object causing damage to wharf. No person shall cause or permit any vessel, raft, log, or other floating object to come alongside of or to be moored to or near any wharf in any manner that may cause damage to such wharf or to interfere with the use of such wharf by others rightfully entitled to its use. Where circumstances permit, the harbormaster, if able to ascertain the owner of the vessel, raft, log, or other floating object, shall demand the removal of same by the owner. Where circumstances require immediate removal of the vessel, raft, log, or other floating object, the harbormaster may remove such offending items to some suitable place. Inquiries concerning the removal of any such offending items above mentioned shall be directed to the harbormaster. Where the removal involves a vessel falling under the provisions of chapter 200, Hawaii Revised Statutes, disposition of such vessel shall be made pursuant to chapter 200, Hawaii Revised Statutes. In all other cases and when in the opinion of the harbormaster, the offending items have no value, they may be destroyed

or disposed of in any manner. The HCDA shall not be responsible for loss or damage to the items removed under this section. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-7 Deposit required to guarantee payment for charges incurred by vessels. Any agent, charterer, master, operator, or owner who proposes to enter a vessel, other than a small craft, within Kewalo Basin and utilize any of the facilities of the HCDA shall deposit in cash or other legal tender, funds in an amount as determined by the HCDA as being sufficient to guarantee the payment of any and all bills for normal charges incurred by, for, or on behalf of such vessel or its cargo for a period of ninety days. This deposit will not be required for those agents, charterers, masters, operators, or owners who are placed on the HCDA approved credit list following submission of a written application in which they agree to:

(1) Ensure payment of any and all bills for normal charges incurred by, for, or on behalf of such vessel or its cargo (for agents, only during the period while so engaged as the vessel's agent);

(2) Provide a bond or irrevocable letter of credit from a bank doing business in Hawaii equivalent to the amount of expected charges to be incurred within a ninety-day period. This requirement is waived for those who have maintained a satisfactory payment record with the State for the immediate preceding two-year period; and

(3) Pay interest at the rate of one per cent per month and a delinquent account service charge on payments which are delinquent in accordance with section 15-214-5 and pursuant to section 206E-22, Hawaii Revised Statutes. In this regard the following is applicable:

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(A) Any invoice unpaid for a period of ten calendar days from the date of invoice is delinquent; or

(B) Reports which are submitted on a monthly basis to HCDA or its assigns, not later than thirty days after due date. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-8 Performance bond required of idle vessel. Before being allowed entry into Kewalo Basin an owner of an idle vessel, not actively engaged in commerce, shall post a performance bond issued by a firm doing business in Hawaii guaranteeing the vessel's removal from the harbor by a specified date. This bond shall be for an amount equal to ten per cent of either the value of the vessel and its cargo as appraised by a competent marine surveyor or the estimated costs to be incurred to remove and dispose of the vessel, whichever is greater. The appraisals shall be obtained at the expense of the owner of the vessel. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-9 Agents for vessel; liability for fees. Any owner, master, operator, agent, charterer, partnership, trust, corporation, or individual who is duly accredited with the HCDA and purports to act for a vessel by telephoning or otherwise communicating with the HCDA on behalf of a vessel assumes responsibility for all sums due the State in accordance with the fee schedules as set forth in these rules and for timely submission of required HCDA reports on forms provided by the HCDA for that vessel and its cargo as well as for any barge and its cargo which the vessel may have in tow. For agents, this applies only for the period they are engaged as agents for the vessel. If an agent is dismissed from representing a vessel, the agent shall notify the harbormaster's office within two working days. Agent

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shall remain responsible for the provisions of this section until such notice is given and acknowledged. Whenever any vessel under the terms of these rules shall become obligated to pay any sum of money for any purpose whatsoever, the owner, charterer, agent, master, operator, possessor, and person in whose service the vessel is operated or maintained shall be jointly and severally liable for the payment of such sums. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-10 Damage to state property. The person, or persons, responsible for, and the person or persons to whom a wharf, facility, or other state property may be assigned, or by whom it is being used, and the master, owner, operator, or agent of any vessel, vehicle, or other instrumentality involved in any damage to such state properties or facilities, in excess of fair wear and tear shall promptly give a full report thereof to the appropriate harbormaster, giving the date and hour the damage occurred, the names and addresses, or, if unknown, a description of witnesses and other persons, vessels or instrumentalities involved in the damage, as well as all other pertinent facts and information that may be available. Refusal, neglect, or failure to make or give any damage report shall subject a person to applicable penalties under these rules, including section 15-214-6. The State may also refuse the use of any wharf or facility until the report has been received. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-11 Responsibility for repair of damage to state property. Any person responsible for damage to state property shall make repairs in accordance with state specifications. Failure to do so shall result in the State effecting the repairs at the expense of the responsible party or parties.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-12 Inspection of vessels. The executive director and such other persons as the executive director may designate may enter upon and inspect any vessel using state facilities or upon any premises rented or permitted from the HCDA for the purposes of either ascertaining the kind and quantity of cargo thereupon or to ensure the safety, welfare, and health of the general public. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-13 Compliance with federal, state, and county laws, ordinances, and rules. Use of Kewalo Basin and harbor facilities is subject to compliance with all applicable federal, state, or county laws, ordinances, rules, and regulations. Particular attention is directed to:

(1) Rules of the United States Public Health Service and of the state department of health, relating to the use of rat guards, and other measures required to prevent rodents from leaving the vessel;
(2) Rules of the state department of health pertaining to air and water pollution; and
(3) Rules of the fire department.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-14 Citation for violation. Citations issued pursuant to section 206E-22, Hawaii Revised Statutes, to a commercial firm for violation of this part may be issued to any agent, officer, or manager of the firm. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

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§15-212-15 Suspension of loading or unloading operation. Suspension of any loading or unloading operation may be ordered when in the opinion of the harbormaster, harbor manager, or harbor agent, such suspension is necessary to ensure the safety, health and welfare of the public. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-16 Requirement for a local, 24-hour point of contact. Vessel booking agents must ensure the availability of an individual designated as the 24-hour point of contact representative in writing, should the need arise to make and implement operational decisions on short notice. This local representative must be present on Oahu and must have the authority to speak for and act on behalf of the owner, charterer, or operator of the vessel. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §205E-4)

§§15-212-17 to 15-212-24 (Reserved)

SUBCHAPTER 2

VESSELS

§15-212-25 Priorities for berths and moorings. The HCDA shall allocate small craft berths and moorings in Kewalo Basin in order to promote the maximum safe, convenient, and efficient utilization of the facilities, in the following priorities:

(1) Charter or cruise boats have priority in the assignment of berths along the front paralleling Ala Moana Boulevard and all berths at Pier A; and
(2) Priority in the assignment of all other berths shall be as follows:

(A) Highest priority: commercial fishing boats;
(B) Second priority: charter or cruise boats; or
(C) Third priority: pleasure craft.

If any of these berths are empty, and if there are no higher priority boats on the waiting list, the next priority vessels may be given a mooring in these berths; vessels with mooring permits for these berths will not be displaced by higher priority boats applying for regular mooring permits. Exceptions to the above priorities may be made when determined by the executive director to be in the interest of public safety, health, and welfare. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-26 Vessel moored without authorization, unlawful; removal. It shall be unlawful to make fast to, moor, dock or anchor at, or lay alongside any pier, wharf, quay, bulkhead, landing, dolphin, mooring, or other moored vessel in Kewalo Basin without the specific authorization of the harbormaster, harbor manager, or harbor agent who has jurisdiction over the facility. Removal of any offending vessel shall be accomplished in accordance with these rules. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-27 Conditions for use of harbor property and facilities. Before any property or facility in Kewalo Basin is utilized by any vessel, its owner shall execute a revocable permit appropriately conforming to the description provided below, obtain the approval of the HCDA which shall be evidenced by an endorsement on the revocable permit to that effect, and follow such other procedures and requirements as may be established by the HCDA to facilitate effective management of the permits; provided, that the HCDA may waive the requirements of this section in the case of

trivial and infrequent uses of state property or facilities, or as the circumstances may warrant. A revocable permit may contain the following terms, covenants, and conditions:

(1) The owner's certification of all information contained in the application and submitted as being true;

(2) The owner's covenant to abide by the current charges, tolls and fees and the incorporation by reference of the rules into the agreement;

(3) The owner's authorization for the State to assign and reassign berths and spaces for the owner's vessel;

(4) A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants, and conditions thereof;

(5) The owner's authorization to the HCDA and the State to board the owner's vessel to effect reasonable inspection and audit the owner's records;

(6) The owner's covenant to pay all applicable fees, tolls and charges, and the owner's authorization of the HCDA and the State to assess collection and service charges for the delinquent payment thereof;

(7) The owner's authorization to have HCDA and State remove owner's vessel, at owner's expense, with or without notice, should it lose power or otherwise become disabled in Kewalo Basin, entry channel or shoreline should owner not remove vessel within three hours of it becoming disabled;

(8) The owner's covenant to indemnify the HCDA and the State and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the revocable permit;

(9) A provision that the term of the revocable permit shall terminate upon expiration of the stated period, thereby requiring a

renewal of the permit to continue to use Kewalo Basin and its facilities;

(10) A provision that the revocable permit with its attendant privileges is revocable and the owner's covenant to pay, upon the owner's failure to promptly remove the owner's vessel from Kewalo Basin upon revocation, cancellation, or termination of the mooring permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages;

(11) The owner's authorization to the HCDA and the State to reasonably effect the removal of the owner's vessel;

(12) The owner's covenant to pay all costs and attorney's fees, including cost of collection of delinquent fees and charges in the event the HCDA or the State is forced to institute a suit against the owner and is successful in such a suit;

(13) A provision stating that, except as provided, neither the agreement nor the privileges attendant thereto are assignable or in any way transferable, in whole or in part;

(14) An open provision to enable the HCDA and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage, security deposit and performance and compliance bonds in such amounts as may be warranted under the circumstances;

(15) A provision allowing multiple vessels owned by a permittee or trade association to share berth(s) provided that at no time will more than one vessel be moored at any one berth;

(16) A provision that a permittee may be allowed to use or install a ticket booth upon such

conditions as contained in the revocable permit; and

(17) A provision that in the event charges that accrue in favor of the HCDA are not paid, the HCDA may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies provided by law or otherwise.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-28 Assignment and reassignment of moorings. Reassignments may also be made within Kewalo Basin if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of harbor facilities or if a reassignment in any other manner permits maximum and efficient public utilization of harbor facilities. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-29 Revocable permits; types. Revocable permits may be issued for the following respective uses:

(1) Mooring permit. A revocable permit authorizing the docking, mooring, or anchoring of a vessel:

(A) Regular mooring permit. A revocable permit which on the date of issuance authorizes the permittee to moor a vessel for a period of one year. A regular mooring permit may be transferable, subject to the assignment provisions contained in the permit, including, but not limited to credit

worthiness or experience of assignee and payment of any permit premium to HCDA; or

(B) Temporary mooring permit. A nonrenewable revocable permit which on the date of issuance authorizes the permittee to moor a vessel for a period of ninety days or less as specified in the permit;

(2) Commercial permit. A revocable permit which authorizes the owner of a commercial vessel to use the harbor and its facilities for commercial activities as specified in the permit. A commercial permit may be transferable, subject to the assignment provisions contained in the permit, including, but not limited to credit worthiness or experience of assignee and payment of any permit premium to HCDA. An original permittee holding a commercial permit who sells its vessel without assignment of the permit may, upon written application to and approval by the HCDA, retain the commercial permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of these rules; or

(3) Miscellaneous permit. A revocable permit authorizing use of the harbor for such other purpose as may be permitted by the HCDA, including mooring at the bulkhead to offload catch or take on provision, office, retail and storage usage, consistent with these rules and applicable laws; provided that such other use shall be stated in the revocable permit. Miscellaneous permit shall also include a bulk permit for a pier or portion thereof requiring permittee to incur out of pocket expenditures to repair or replace the pier. A miscellaneous permit may be transferable, subject to the

assignment provisions contained in the permit, including, but not limited to credit worthiness or experience of assignee and payment of any permit premium to HCDA. Revocable permits shall be issued only after a determination by the HCDA that all applicable laws have been complied with and that all fees and charges payable at the time of the issuance or reissuance of a permit have been paid. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-30 Original application for revocable permit. Any interested person or corporation may apply for a revocable permit by completing in full the application provided for that purpose. In the case of a corporation, partnership, association, or other group however organized, evidence of corporate organization must be submitted by producing a current general excise tax license, and articles of incorporation registered with, approved and issued by the department of commerce and consumer affairs. Applications for revocable permits shall be valid for one year. Applicants may apply for any one or more of the various types of revocable permits. Separate waiting lists may be maintained for each type of permit or berth. An applicant for a mooring permit must state the activity in which the applicant's vessel is intended to be employed. A separate application shall be made for each such use or activity and a separate waiting list will be maintained for each activity. A fee for each original application in each waiting list category shall be levied by the HCDA. Since berths are assigned on a best usage basis the length overall of the vessel for which a permit is being applied must be stated on the application. If the precise length is not known at the time of application the applicant will be allowed to deviate five feet from the stated length. Should the applicant desire to change the declared length of the applicant's vessel as shown on the application,

the applicant's seniority shall be determined by the date the change is made. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-31 Renewal of application. An application for a revocable permit may be renewed within a ninety-day period preceding its expiration date. An application renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application. HCDA shall endeavor to mail an application renewal notice to an applicant, prior to the expiration of the applicant's application, at the address the applicant has furnished to the HCDA pursuant to these rules. However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the HCDA. A fee for each renewal of an application shall be levied by the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-32 Applicant required to furnish address and report changes; effect of failure to report change. An applicant shall include the applicant's address in the application to the HCDA for a revocable permit. An applicant shall immediately inform the HCDA in writing of any changes in the applicant's address in order to maintain the validity of the applicant's application. An application shall be void if the HCDA is unable to notify the applicant of a vacancy at the address (1) appearing on the application or (2) furnished in writing to the HCDA by the applicant as a change of address subsequent to submitting the application. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-33 Review and acceptance or rejection of application for revocable permit. The HCDA shall examine and determine the genuineness and regularity

of each application and may conduct any investigation as may be deemed necessary for its examination and determination. It may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application. An application for a revocable permit for the purpose of conducting commercial operations may be rejected for any of, but not necessarily limited to, the following reasons:

(1) The corporation, partnership, association or group, however organized, is not licensed by the department of commerce and consumer affairs to do business in the State;
(2) The applicant cannot produce a current general excise tax license;
(3) The investigation of credit discloses information detrimental to the best interests of the State (applicant is a poor credit risk);
(4) The applicant is delinquent in the payment of any moneys due and payable to the State;
(5) The vessel described in the application is not properly documented, certificated, or registered with the appropriate federal or state agencies concerned;
(6) The application is for other than commercial maritime purposes; or
(7) The applicant makes a deliberate misstatement or willfully fails to disclose any material fact in the application. The HCDA shall inform the applicant in writing, within a reasonable time, of the rejection of an application and the reasons therefore. The applicant's application fee shall be refunded. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-34 Withdrawal of application; effect if application has become void, expires, or been withdrawn. An application may be withdrawn by an applicant upon written notice to the HCDA. An

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applicant who withdraws an application, or whose application has expired or becomes void, may submit a new application for acceptance by the HCDA. An applicant's seniority begins on the date the new application is accepted for consideration as provided in these rules. The application fee shall not be refunded if an applicant's application is withdrawn, expires, or becomes void. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-35 Waiting lists. When the HCDA cannot issue a revocable permit to an applicant, a waiting list of applicants shall be maintained by the HCDA or its designated representatives. Waiting lists shall be kept in the order of the date of acceptance of the initial, fully completed application. Timely and satisfactorily renewed applications will continue their priorities from the initial or adjusted date of application. Separate waiting lists shall be maintained for each type of revocable permit or berth or each use or activity in which the vessel is to be employed. A waiting list shall be maintained for holders of regular mooring permits who wish to apply for movement to another similar berth. A person desiring to moor that person's vessel where no berths are available for allocation may have that person's application placed on a waiting list based on the date of that person's initial fully completed application. An applicant shall be allocated a berth when (1) that person becomes the senior applicant on the list and (2) a berth suitable for that person's vessel becomes available. The senior applicant for a regular mooring permit may decline the HCDA's offer of a revocable permit one time and still retain seniority, although the applicant shall not be offered another regular mooring permit for six months. If the senior applicant declines the HCDA's offer a second time, the applicant's application shall be considered void and the applicant's name shall be removed from the waiting list. If the applicant is a corporation and there is a change in officers of the corporation or if the

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applicant is not a corporation but decides to incorporate, the effective date of these changes shall determine the applicant's seniority on the waiting list. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-36 Allocation of berths; policy. It is the policy of the HCDA to promptly assign an available berth on a first-come, first-served basis to the first qualified applicant for the type of use requested; provided that the proposed use by the vessel affords maximum, safe, convenient, and efficient utilization of facilities and is in conformance with sections 15-212-25 and 15-212-44; and provided further that such assignment is not contrary to public interest, or is not otherwise unlawful or contrary to these rules. Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the harbor, the HCDA reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge of available facilities, prevailing harbor conditions, safe boating practices, effective harbor management procedures and other factors which shall be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel. The many factors that the HCDA may take into consideration in accepting an application and in allocating a berth include, but are not limited to the applicant's vessel length, draft, beam, weight, method of propulsion; proposed vessel use; and any other special or unique vessel handling problems in relation to the size of the available berth; berth location; water depths; prevailing winds and currents and other pertinent factors relative to the available berth. If the senior applicant is refused a berth because of such considerations, the berth shall be offered to the next senior applicant with an acceptable vessel. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

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§15-212-37 Notice to owner of available revocable permit. (a) When an offer of any revocable permit, except a temporary permit, is provided, the HCDA shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant at the post office address furnished to the HCDA in writing by the applicant.

(b) The HCDA shall offer a temporary mooring permit to the applicant by telephone, personal service, or first class mail, postage prepaid addressed to the applicant at the post office address furnished to the HCDA in writing by the applicant. If the senior applicant cannot be contacted after a reasonable effort, the next senior applicant will be offered the temporary mooring permit. Unless circumstances beyond the former senior applicant's control can be demonstrated, the former senior applicant shall lose seniority. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-38 Offer of regular mooring permit valid only ten calendar days; written notice of intention; acceptance; void offer, declining offer. If the applicant decides to accept the offer, the applicant shall, within ten calendar days after the date of receipt of the offer, either deliver a written notice of intention to accept the offer to the HCDA or accept the offer by securing a revocable permit and moving the applicant's vessel into the assigned berth. An applicant who has delivered a written notice of intention to accept the offer shall accept the offer by securing a revocable permit and moving the applicant's vessel into the assigned berth within ten calendar days after the applicant mails or personally delivers the notice of intention to accept to the HCDA. The applicant's application for a revocable permit and the offer by the HCDA of a revocable permit shall be void if the applicant fails to either secure a revocable permit and move the applicant's vessel into the assigned berth or to give notice of intention to accept or decline the offer in writing, within ten

calendar days after the date of receipt of the offer, and the revocable permit shall then be offered to the next senior applicant. The failure of an applicant to secure a revocable permit and move the applicant's vessel into the assigned berth within ten calendar days after mailing or personally delivering the notice of intention to accept the offer shall also void the notice of intention, application for a revocable permit and offer by the HCDA of a revocable permit. An applicant for a regular mooring permit may decline an offer to the applicant of a regular mooring permit and retain seniority if the applicant declines the offer in writing addressed to and received by the HCDA, not later than ten calendar days after the date the offer is received. An applicant, who declines an offer in writing and retains seniority pursuant to this section, shall not be considered for a second offer on the basis of seniority until six months elapses after the date of the applicant's first refusal. An applicant's application for a regular mooring permit shall also be void if the applicant fails to accept the second offer of a regular mooring permit to use a berth. Since time is of the essence, an offer delivered or mailed pursuant to section 15-212-37 shall contain a statement that the offer will lapse unless accepted in accordance with this section. For the purpose of this section, an applicant who declines a berth shall not be classified as having declined a berth if conclusive evidence is presented to the HCDA that for reasons of safety or navigation the berth offered is unsuitable for the applicant's vessel. The HCDA may extend the deadline for acceptance if the applicant presents conclusive evidence to the HCDA that the granting of additional time is necessary for the construction and delivery of the vessel or reasonable and essential to prevent undue hardship. Any extension of time for compliance shall not exceed a period of one-hundred-twenty days from the date the HCDA received from the applicant a written notice of intention to accept the offer of a revocable permit. This exception is only applicable to an applicant who has been offered a regular mooring

permit. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-39 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance. (a) An applicant for a temporary mooring permit to moor in a temporarily vacant berth which has been offered the use of a berth shall, within seven days after the offer notify the HCDA of any intention to accept or decline the offer. If the offer is declined, an applicant's application for a temporary mooring permit shall be void and the berth shall be offered to the next senior applicant.

(b) An applicant who has notified the HCDA of an intention to accept the offer shall accept by (1) securing a temporary mooring permit for use of the offered berth within five calendar days after the date of offer; and (2) otherwise complying with the requirements of these rules and (3) moving the vessel into the assigned berth within seven days after the date of the offer. Failure to comply renders the application, the offer, and the notion of intention to accept void. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-40 Offer of commercial and miscellaneous permits. (a) An applicant for a commercial or miscellaneous permit who has been offered one of these permits shall within seven days after the offer is made notify the HCDA of an intention to accept or decline the offer. If the applicant declines the offer, the applicant's application shall be void and the permit offered to the next senior applicant.

(b) An applicant who has notified the HCDA of an intention to accept the offer shall comply with conditions and terms set forth in the offer of the revocable permit pursuant to section 15-212-38 above. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-41 Issuance of revocable permit. (a) A revocable permit shall be issued only if:

(1) Proper application has been submitted;

(2) An adequate berthing facility is available, and, in the case of a commercial or miscellaneous permit, the necessary HCDA property or facility becomes available;

(3) The applicant is eligible for assignment under these rules;

(4) The permittee executes the revocable permit;

(5) The vessel is properly documented, registered or certificated with the appropriate federal or state agencies concerned;

(6) The vessel is seaworthy and in the case of commercial fishing vessels the vessel shall have a United States Coast Guard Commercial Fishing Vessel Safety Decal issued by the United States Coast Guard in accordance with federal regulations, 46 CFR Part 28; and

(7) The owner and its assigns shall purchase and provide to HCDA and its assigns a comprehensive general liability insurance policy during the entire period of the permit with the written approval and consent of HCDA and its assigns for any one of the following:

(A) There exists a comprehensive general liability insurance policy or policies, or a certificate of insurance in lieu thereof, evidencing that such policy has been issued and is in force, with a combined single limit of not less than $100,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than $300,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than $500,000 for vessels authorized to carry more than twenty-five passengers

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for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it; or

(B) In lieu of a comprehensive general liability insurance policy or policies, a vessel owner may have P & I (protection and indemnity) insurance as defined in section 431:1-207(2), Hawaii Revised Statutes, for the vessel naming state of Hawaii, HCDA and harbor agent as additional insureds.

(b) The insurance shall:

(1) Be issued by an insurance company or surety company as deemed acceptable by HCDA;

(2) Name the State of Hawaii, HCDA and harbor agent and its assignees and/or management agents as an additional insured;

(3) Provide that the HCDA shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;

(4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises;

(5) Permittee's insurance will be deemed primary and non contributory in the event of loss or damage. Permittee waives all rights of recovery against State of Hawaii, HCDA and Harbor Manager to the extent any losses, claims or damages are:

(A) Covered by any policy of insurance available to permittee, and/or

(B) Not covered by permittee's insurance because of deductibles, the inadequacy

of policy limits, policy limitation or exclusions or failure to maintain or preserve coverage as required by this Agreement or by policy terms; and

(6) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. The permittee shall submit a certificate of insurance as evidence to the HCDA of renewals or other actions to indicate that the insurance policy remains in effect as prescribed in this section.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-42 Period of validity of revocable permit. Regular mooring permits shall be issued for a period not to exceed one year. Temporary mooring permits shall be issued for the period stated in the permit but not to exceed ninety days. Commercial and miscellaneous permits shall be valid for the period of time indicated by the HCDA at the date of issuance. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-43 Renewal of revocable permit. The HCDA may issue or renew a revocable permit for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate. No revocable permit shall be renewed unless the conditions of the original issuance are met, nor shall a revocable permit be issued or renewed unless all fees and charges due and payable are paid. The HCDA shall not renew a revocable permit which has been terminated or revoked. A revocable permit may be renewed at any time preceding the expiration date of the mooring permit. The same revocable permit number shall be retained if the renewal application is received prior to the expiration date of the old permit and there is no

change in status of the boat. Requests to renew revocable permits which have been expired for less than thirty days, may be granted by the HCDA if there is no change in status of the boat and the permittee's account with the HCDA is current. Requests to renew revocable permits received thirty days or more after the expiration date of the permit shall be treated as an original application with seniority commencing on the date of filing the new, complete application. HCDA's policy is to mail a renewal notice to a permittee prior to the expiration of the permit, at the address furnished by the permittee to the HCDA pursuant to these rules. However, the permittee is responsible for the timely renewal of the permit without receipt of a renewal notice from the HCDA. Temporary mooring permits are not renewable. In view of the acute shortage of available berths, certain levels of the activity for which the regular mooring permit was issued (i.e., cruise, charter, commercial fishing) should be achieved in order to be eligible for renewal of the permit. These levels are established in terms of the minimum gross receipts which should be realized by a permittee in the preceding twelve-month period as follows:

For Cruise Boats	Minimum Gross Receipts
Vessels registered by the State or documented by the United States Coast Guard to carry six passengers or less	$25,000
Vessels certificated by the United States Coast Guard to carry seven to twenty-five passengers	$50,000
Vessels certificated by the United States Coast Guard to carry more than twenty-five passengers	$100,000

For Charter Boats	Minimum Gross Receipts
Vessels registered by the State or documented by the United States Coast Guard to carry six passengers or less	$25,000
Vessels certificated by the United States Coast Guard to carry seven to forty-nine passengers	$50,000

For Commercial Fishing Boats	Minimum Gross Receipts
Vessels of less than five net volume tons	$6,000
Vessels documented by the United States Coast Guard as commercial fishing vessels with a crew of six or less	$20,000
Vessels documented by the United States Coast Guard as commercial fishing vessels with a crew of more than six	$60,000

Failure of a permittee to demonstrate that the permittee's vessel's activities generated these minimum gross receipts during the twelve-month period of the permittee's permit may result in a refusal to renew the revocable permit by the HCDA.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-44 Priority and procedures in allocation of berths. (a) An unassigned berth (a berth that is not assigned to a permittee by a regular mooring permit) shall first be offered to the senior applicant holding a regular mooring permit authorizing the applicant to moor in the harbor who has applied for movement to another berth; provided that the vacant berth is of the same characteristics, category or type

as the berth currently allocated to the applicant or the move to the vacant berth would promote greater, safer, more convenient and more efficient utilization of the facilities.

(b) Except as provided in subsection (a), an unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules. If the senior applicant's vessel is not suitable for the available berth, the berth shall then be promptly offered to the next senior qualified applicant whose vessel is suitable for the berth.

(c) In addition to the other priorities expressed in these rules, the HCDA shall also employ a "Best Usage" priority which is a matching of the size of the vessel to the size of the available berth. Usually the length of the vessel shall be the prime consideration, however, the beam and other dimensions also may be considered. "Best Usage" usually shall be determined by the following table:

PRIORITY FOR ASSIGNMENT

Vessel		Pier Length in Feet							
Length in Feet		40'	45'	50'	60'	70'	85'	90'	100'
From	But Less Than	.	.	.	.	.	.	.	.
0	25	3	4	5	--	--	--	--	--
25	35	2	3	4	5	--	--	--	--
35	45	1	2	3	4	5	--	--	--
45	55	.	1	1	3	4	5	--	--
55	65	.	.	2	1	3	4	5	5
65	75	.	.	--	2	1	3	4	4
75	85	.	.	--	--	2	2	3	3
85	95	.	.	--	--	--	1	1	2
95	.	.	.	--	--	--	--	2	1

To ensure that the assignment of moorings is oriented to those who have been waiting the longest, assignment may be made to an adjacent category of berth, if the applicant is senior to the applicant at the top of the

adjacent list, and the vessel length is within five feet of the limits set for that category.

(d) Since commercial fishing vessels may have a priority on the assignment of berths, an inspection of the vessel in question shall be made to review the validity of the vessel's claim to being a commercial fishing vessel before a berth is awarded. This inspection shall be made by a team consisting of the harbor agent and a representative from the harbormaster's office. The team shall assess a vessel's claim to being a commercial fishing vessel based on such items as: crew, design of vessel, fishing equipment on board, prior record of owner, vessel insurance, and excise license and vessel documentation. The burden shall be on the boat owner to demonstrate that the vessel is a commercial fishing boat. The team shall forward its assessment of a vessel to the HCDA for a decision after its review has been completed. Should the HCDA decide that the vessel is not a bona fide commercial fishing boat, the offer of a berth shall be withdrawn. The owner of the vessel can refute this decision by engaging at the owner's own expense an approved marine surveyor who will certify to the HCDA that the owner's vessel is outfitted for and capable of being used as a commercial fishing boat. In the case of such a contest, the HCDA and the boat owner's surveyor will consult and jointly select a second approved marine surveyor to inspect the vessel. The opinion of this second surveyor will be considered final. The costs of the second surveyor shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a berth designated for a commercial fishing boat in accordance with these rules, provided that such costs shall be borne by the HCDA if it is determined that the vessel does meet minimum requirements. "Approved marine surveyor" as used in this section means an employee of the HCDA or other person who has been designated or approved by the executive director to inspect a vessel for an owner seeking a permit to moor the owner's vessel in a berth designated for a commercial fishing

boat. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-45 Temporary mooring permit; reasons for issuance. The HCDA may issue a temporary mooring permit for a berth because of the following reasons:

(1) A berth assigned to a regular permittee will be temporarily vacant while the regular permittee's vessel is temporarily absent;

(2) A berth will be temporarily vacant during the time an old permittee vacates the berth and the time the berth is assigned and the newly assigned regular permittee actually moves that person's vessel into the berth; and

(3) Assigning a temporary mooring permit affords maximum, safe, convenient, and efficient utilization of harbor facilities.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-46 Temporary permittee's use of berth and liability. Temporary use of a berth by a temporary permittee does not grant the temporary permittee any right to retain the use of the berth or any other space in the harbor. The temporary permittee shall remove the temporary permittee's vessel from the berth and the harbor upon expiration of the temporary mooring permit or upon lapse of forty-eight hours notice to vacate the berth from the HCDA, whichever event occurs first. Failure of a temporary permittee to vacate the berth upon expiration of the temporary mooring permit or upon lapse of forty-eight hours notice shall subject the temporary permittee to liability for any damages incurred by the regular permittee assigned to the berth resulting from the temporary permittee's failure to vacate, pursuant to section 206E-22, Hawaii Revised Statutes, and to a fine not to exceed $10,000, and entitles the HCDA to remove the temporary permittee's

vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the HCDA and the State from any liability for damages arising from the temporary permittee's failure to vacate the berth and the harbor and from the removal of the vessel to an impounding area by the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-47 Temporary mooring permits; priority of allocation. Priorities for allocation of temporarily vacant berths for interim use as they become available shall be as prescribed in this section:

(1) First priority. The senior applicant to moor a transient vessel who applied in advance in writing for interim use of a temporarily vacant berth to begin at a specified time and whose application was received and accepted by the HCDA; provided that a transient vessel shall be allocated to a berth that has been set aside and designated by the HCDA for use by transient vessels only, unless the transient berths available for allocation at that time are not suitable for the vessel, or no transient berths have been set aside in that harbor;

(2) Second priority. The senior applicant who applied in advance in writing to moor a vessel, other than a transient vessel, for an interim period whose application was received and accepted by the HCDA; and

(3) Third priority. The berth shall be offered on a first-come, first-served basis.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-48 Revocation of revocable permit. If the permittee fails to remedy any breach of any of the duties, covenants, or conditions of the permit or to desist from violating of these rules, the HCDA may

revoke the permittee's revocable permit, or, at its discretion, refuse to renew the permittee's revocable permit. A revocable permit may be terminated or revoked for the following reasons, although termination and revocation are not necessarily limited to these reasons:

(1) Failing to report to the HCDA within seven days:
    (A) A change in ownership of the vessel;
    (B) A change in address of the permittee;
    (C) A change in status of the vessel from one category to another, e.g., from commercial fishing to charter fishing;
    (D) The permittee's vessel has been involved in the destruction of or damage to State property or to another vessel; or
    (E) A material change in a corporation's stock ownership or change in corporate officers;
(2) Abandoning a vessel at a berth or mooring;
(3) Failing to renew a mooring permit within the provisions stipulated herein;
(4) Failing to refloat or to remove a sunken vessel within seven days of notification;
(5) Failing to satisfactorily meet delinquent outstanding indebtedness due the State;
(6) Failing to maintain established State standards of sanitation on a permittee's vessel or in the area within the assigned berth;
(7) When a vessel is not used for the purpose indicated in the application for a revocable permit;
(8) Whenever in the opinion of the HCDA the safety, health, and welfare of the public shall so require;
(9) Whenever in the opinion of the HCDA a vessel is incapacitated for a period in excess of thirty days or otherwise is unable to meet the test of seaworthiness;

(10) Failure to obtain the HCDA's approval prior to the making of extended repairs as required in section 15-212-55;
(11) Failing to submit a monthly report showing gross receipts to the HCDA within thirty days after the last day of the month being reported together with net charges due;
(12) Failing to ensure that the vessel named in the mooring permit is properly documented, certificated, or registered with the appropriate federal or state agencies concerned; or
(13) Failing to maintain insurance coverage as required in section 15-212-41.

Unless the time limit to remedy the breach is otherwise specified in these rules or in a notice given to the permittee, the permittee shall have thirty days to remedy the breach. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-49 Cancellation of revocable permit by owner. A revocable permit may be cancelled by a boat owner upon thirty days' written notice to the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-50 Use of mooring space. The awarding of a regular mooring permit entitles the owner to the use of a specific mooring or berthing facility identified by berth number and location. The permittee may occupy the assigned berth. In some berths, however, the HCDA reserves the right to nest another vessel alongside provided no hazard is presented. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-51 Exchange of berths. A permittee holding a regular mooring permit to moor in the harbor

may, upon written approval by the HCDA, exchange the permittee's berth with another permittee holding a regular mooring permit to moor in the harbor if:

(1) The vessels are suitable for the berths as determined by the HCDA;

(2) There is mutual agreement between the permittees; and

(3) The berths to be exchanged are of the same characteristics. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-52 Revocable permit and assigned berth transferability. A permittee may transfer, temporarily or permanently, a revocable permit or berthing space in accordance with the terms of its permit which will require HCDA's consent and may be conditioned upon such factors as the credit worthiness or experience of the assignee and payment of any permit premium to HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-53 Inspection. All small craft moored or berthed in Kewalo Basin shall be subject to inspection by the HCDA or any peace officer of the State at any time where necessary and proper for the purpose of enforcing these rules. Except in event of emergency HCDA shall give twenty-four hour notice prior to inspection. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-54 Audit. The HCDA reserves the right to conduct audits to determine the validity of maintaining a vessel's classification, the fees owing to the HCDA, and any other information necessary and proper to enforce these rules. Information normally needed includes standard business records. For example, in the case of commercial fishing vessels, the following records are deemed pertinent:

(1) Monthly fish catch reports;

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(2) Records showing the number of days fished in a given month;
(3) Pertinent sales records both from the sale of fish whether fresh or frozen and from any other activity in which the vessel had been engaged;
(4) Annual general excise tax returns; and
(5) Any other records the boat owner/operator deems pertinent. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-55 Small craft repairs, reconstruction or major modification. Minor repairs to small craft may be made at the assigned berth and shall be completed within thirty days. If repairs are estimated to, or actually do, require that the vessel be out of service for more than thirty days, prior approval shall be sought from the HCDA to initiate or complete the repairs in the harbor. Prior approval shall be sought from the HCDA for any repairs requiring the use of cranes, lifts, and any similar devices within the harbor. Repair, reconstruction or major modification that would interfere with the free flow of other vessels, pedestrian, or vehicle traffic shall only be accomplished in an area designated by the HCDA. Failure to seek approval as required by this section shall be grounds for the revocation of the revocable permit. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-56 Living aboard. No person shall moor any vessel or contrivance used solely or principally for the purpose of living aboard.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-57 Safety watch. For safety reasons, one person may remain aboard a vessel with a valid mooring agreement twenty-four hours a day as a safety

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watch. A list of the name or names of persons who will rotate as the single safety watch shall be submitted to the HCDA in writing for approval. The HCDA retains the right to conduct reasonable inspections of vessels in Kewalo Basin to ensure that only a single authorized safety watch remains aboard a vessel. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-58 Illegal mooring of any small craft. The HCDA is vested with the sole authority to issue regular and temporary mooring permits. Any vessel occupying a berth without a valid mooring permit issued by the HCDA is in violation of these rules. The vessel owner shall be subject to appropriate legal action and the boat shall be subject to removal and impoundment by the HCDA. Furthermore, the boat owner shall be charged a mooring fee in an amount equal to twice the normal fee for the time period the vessel was illegally moored. The owner of an illegally moored small craft who has been ordered, by certified mail, or by posting a notice on or as near to the offending vessel as possible, by personal service or by any other reasonable means shall remove the illegally moored vessel within seventy-two hours from the time the notice was posted or notification given. Failure to remove the vessel shall result in the impounding and removal of the vessel by the HCDA at the sole cost and risk of the owner of the illegally moored vessel, if such vessel is not removed after the seventy-two hour period or if during said period the vessel is removed and re-moored in Kewalo Basin without a revocable permit. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-59 Removal and impoundment procedures. The HCDA may impound and remove or dispose, or engage others to impound and remove or dispose, from the harbor, or from a particular berth, any vessel whose presence is contrary to law, or these rules or when

the HCDA deems it necessary to protect persons using the harbor, facilities owned by the HCDA, or the property of other persons that may be lawfully within the confines of the harbor. Vessels in the harbor illegally, or under a permit which has expired or which has been revoked may be impounded and removed after the appropriate seventy-two hour notification period elapses as delineated in section 15-212-58; except that where there is an imminent peril to life, property, or to public health and safety, notice to the owner is not required. Any vessel whose presence creates a danger to persons or property may be impounded immediately. Where circumstances allow, the HCDA shall notify the vessel's owner by certified mail, by posting a notice on or as near to the vessel as possible, by personal service or in any other reasonable manner, to effect the removal of the vessel within seventy-two hours or a reasonable time set by the HCDA. If the vessel's owner cannot be identified, located, or notified, or the owner does not comply with the order to remove the vessel, the HCDA may proceed to remove the vessel. If no emergency exists, an independent marine surveyor shall be engaged to inspect the vessel and to certify its seaworthiness prior to its removal. An inventory of loose property shall be conducted and easily removed property shall be removed for safekeeping. The vessel's owner shall be responsible for all costs of removal and impoundment. Appropriate fees and charges stemming from impoundment and removal shall be charged to the boat owner. Custody of the offending vessel shall not be repermitted until all fees including costs of removal and storage, and fines levied by a court are paid. Any action taken by the HCDA to impound and remove the vessel or contrivance and/or remove any property or personal articles located on board the offending vessel, including its tackle, apparel, fixtures, equipment, and furnishings, shall be at the sole cost and risk to the owner. In addition, the HCDA, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or

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operator and/or all lien holder(s) of record of any impounded vessel. The owner or operator of an impounded vessel shall have ten days after receipt of the notice of impoundment of the vessel to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the HCDA for the impoundment of the vessel. The administrative hearing must be held within five days, or such longer period as may be allowed by statute, of the HCDA's receipt of the written request excluding Saturdays, Sundays and holidays designated under section 8-1, Hawaii Revised Statutes. The procedures for the administrative hearing are contained in sections 15-212-60 and 15-212-61 of these rules. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-60 Administrative hearing. The procedures under this section shall be used for any administrative hearing conducted by the HCDA as required by law. An administrative hearing officer shall be appointed by the executive director. Upon setting the time for the hearing, the administrative hearing officer shall transmit a notice to the last known address of the owner or their representative, if any, containing the following:

(1) The date, time, place and nature of hearing;
(2) The legal authority under which the hearing is to be held; and
(3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an authorized officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association. All parties shall be afforded an opportunity to present evidence and argue on all relevant issues involved. Any

procedure in the administrative hearing may be modified or waived by stipulation of the parties and disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default. Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-61 Rules of evidence. The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice. In administrative hearings:

(1) Any oral or documentary evidence may be received, but the HCDA shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The HCDA shall give effect to the rules of privilege recognized by law;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original;

(3) Every party shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of hearing; and

(4) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof by a preponderance of the evidence which includes the burden of producing evidence as well as the burden of persuasion. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-62 Sale of vessel to collect outstanding delinquent indebtedness; sale of abandoned vessel; mooring of unauthorized vessel; impoundment and disposal proceedings. If a boat owner is delinquent in the payment of any fee or charge, including costs of impoundment and removal, or if a vessel is abandoned, the HCDA may institute proceedings pursuant to law to secure the attachment and sale of the vessel. In order to recover unpaid indebtedness, the HCDA may initiate legal process including impoundment and sale of a vessel following the mailing of three past due invoices, the last billing being approximately ninety days following the date money was due and payable. Abandoned vessels or contrivances shall be disposed of at the owner's expense, and any administrative hearing shall follow the procedure as set forth in sections 15-212-60 and 15-212-61.

(1) No person shall moor a vessel in Kewalo Basin without obtaining a permit; nor shall a person continue to moor a vessel in Kewalo Basin if the permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a permit or with a permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (2) to (5);

(2) HCDA or its assigns shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel

must be removed within seventy-two hours from the time the notice was posted;

(3) An unauthorized vessel may be impounded by HCDA or its assigns at the sole cost and risk of the owner of the vessel, if such vessel is not removed after the seventy-two hour period or if during said period the vessel is removed and re-moored in Kewalo Basin without a permit;

(4) Custody of an impounded vessel shall be returned to the person entitled to possession upon payment to HCDA or its assigns of all fees and costs due, and fines levied by a court. In addition, HCDA and its assigns within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel. The owner or operator of an impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by HCDA or its assigns for the impoundment of the vessel. The administrative hearing must be held within seventy-two hours of HCDA or its assigns receipt of the written request. HCDA or its assigns shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process; and

(5) Any unauthorized vessel impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or lien holder for more than thirty days, may be sold by HCDA or its assigns at public auction.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-63 Salvage, sinking boats. The owner of a vessel in danger of wreckage, damaging other property, sinking, or obstructing waterways shall be advised by the HCDA to take immediate remedial action. If upon due notice and after a reasonable time (not to exceed three hours) has elapsed and the owner has failed to institute appropriate measures, the HCDA may take such action as the circumstances require to save or rescue the vessel, prevent damage to other property or to prevent obstruction of waterways; provided that in an emergency where life or property is endangered or where the vessel may interfere with other vessels or with free and proper navigation of waterway, immediate remedial action may be instituted by the HCDA without prior notice. Any action taken under this section shall be done pursuant to these rules. Any action taken by the HCDA shall be at the sole cost and risk to the vessel owner. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-64 Vessel loading zone. No person shall stop or moor a vessel for any purpose other than for the expeditious loading, unloading, or fueling in any place marked as a vessel loading zone during the hours when the regulations applicable to such loading zone are effective. No person shall leave a vessel unattended at a vessel loading zone. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-65 Anchoring of small craft. The anchoring of small craft in heavily traveled channels or main thoroughfares is prohibited. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-66 Nesting. The HCDA shall nest vessels when it deems it to be necessary. Nesting assignments shall be made with due regard to the relative lengths of the vessels involved, their construction and any other pertinent characteristics. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-67 Permittee's responsibility for wharf area. Each permittee shall be responsible for keeping the area near the permittee's assigned mooring free from litter, debris, and discard. Water hoses attached to available hose bibs must be fitted with automatic shut-off nozzles. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-68 Structures on and modifications to the wharf. No structure shall be built on or placed on and no modification shall be made to the wharf, pier, or terminal area without the prior written approval of the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-69 Sailing vessels in Kewalo Basin channel. Sailing vessels shall only be permitted in the Kewalo Basin channel if they are equipped with and are using motor power. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-70 Safety regulations for small craft. Safety regulations in sections 15-212-118 to 15-212-120 and sections 15-212-122 to 15-212-123 shall be observed by small craft, if applicable. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-71 Emergency conditions. During emergency conditions and when necessary to protect

life and property, the HCDA may deviate from these rules. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-72 Application to be placed on the list of approved marine surveyors. A qualified marine surveyor can apply to be placed on the list of approved marine surveyors by writing a letter of application to the HCDA citing the applicant's qualifications including schooling, work experience or other germane background and requesting to be considered by the HCDA as an approved marine surveyor. If approved, the applicant's name will be retained on the list of approved marine surveyors for a period of three years unless removed for other reasons. At the end of this period, the applicant must re-apply for a renewal of status. If the application is not approved, the applicant may request reconsideration by providing additional evidence. In cases of dispute, the HCDA's decision will be final. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§§15-212-73 to 15-212-80 (Reserved)

SUBCHAPTER 3

WATERWAYS

§15-212-81 Applicability of laws and rules. Navigation within state waterways shall be in accord with the state boating law, federal statutes and regulations governing vessel navigation and these rules. In case of conflict the more specific and severe provisions shall apply. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

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§15-212-82 Vessel not to obstruct approach to wharf. No vessel shall anchor in any fairway or any channel or so as to obstruct the approach to any wharf. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-83 Maximum speed of vessels. All vessels over sixty-five feet shall proceed at a rate of speed (except in case of emergency) commensurate with safe navigation and slow enough so as not to cause damage to other vessels and property. Vessels under sixty-five feet may proceed at a rate of speed not to exceed ten nautical miles per hour. From inside the mouth of the channel shall be a no wake zone. Nothing in this section shall preclude the harbormaster from setting a different rate of speed to meet special conditions. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§§15-212-84 to 15-212-91 (Reserved)

SUBCHAPTER 4

SAFETY, CLEANLINESS, AND USE OF FACILITIES

§15-212-92 Conflict of provisions. This subchapter shall not be construed to limit the power and authority of any other state or federal agency. If any of these provisions are in conflict with any rule adopted by any state or any federal agency, the rule more severe in discipline shall prevail. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-93 Fire alarm. In the event of fire occurring on board any vessel in the Kewalo Basin, except vessels under way such vessels shall sound five

prolonged blasts of the whistle or siren as an alarm indicating fire on board or at the dock to which the vessel is moored. The signal may be repeated at intervals to attract attention, and is not a substitute for, but shall be used in addition to, other means of reporting a fire. The words "prolonged blast" means a blast from four to six seconds duration. This signal shall not be used for other purposes. [Eff DEC 0 3 2008 (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-94 Containers for flammable liquids. No empty containers which have been used to hold flammable liquids shall be delivered onto Kewalo Basin unless the same are securely closed with metal screw plugs. Any such containers shall be delivered onto the wharf or structure only at such times as a carrier is prepared to take immediate delivery. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-95 Flammable substances; leaky containers. No gasoline, distillate, kerosene, benzene, naphtha, turpentine, paints, oils, or other flammable substances in leaky containers shall be delivered onto Kewalo Basin. All such substances unloaded from any vessel in leaky containers shall be removed immediately. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-96 Heating combustibles on vessels. No combustible material such as pitch, tar resin, or oil shall be flame heated on board any vessel within the Kewalo Basin without the permission of a harbormaster. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-97 Fumigation of vessel. No vessel shall be fumigated or smoked at the Kewalo Basin without the prior permission in writing from the executive director or the harbormaster. If fumigation is to be with cyanogen products or hydrocyanic acid gas in any form, however generated, the applicant or applicant's agent shall be in possession of a permit as required by the state department of health rules, and shall have a guard on duty so long as any danger exists, in order that no one, unless properly entitled to do so, be allowed to board such vessel.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-98 Use of fuel burning steam generating appliances. All fuel burning steam generating appliances, when used on Kewalo Basin or on any scow, pile driver, or other vessel working alongside or near Kewalo Basin, shall be equipped with spark arresters satisfactory to the harbormaster. At the close of each day's work, all ashes, cinders, waste, or other deposits caused by such appliances upon any wharf shall be promptly removed and shall not be disposed of in or upon the waters of the harbor.
[Eff] (Auth: HRS §206E-4) (Imp: HRS §206E-4) DEC 0 3 2008

§15-212-99 Repair, manufacturing, construction, or maintenance work on wharf. No person shall make any repair or do any kind of manufacturing, construction, or maintenance work on any wharf without the permission of the harbormaster.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-100 Smoking prohibited. Smoking is positively prohibited at all times within any shed, or upon any wharf apron, and during the time cargo is being loaded, unloaded, or stored on any unshedded

pier at the Kewalo Basin; no person shall enter into, stand in, or under, or pass through any such wharf or structure with a lighted pipe, cigar, cigarette, match, fire, or any flame of whatever nature, excepting only within those areas designated by the harbormaster and plainly marked "Smoking Area". No smoking or lighting of a match or any other fire-creating device shall be permitted within fifty feet of any fueling operation. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-101 Keeping wharf in sanitary condition and clear of fire hazard. Vessel owners, charterers, agents or private terminal operators utilizing wharves and sheds at the Kewalo Basin for the handling of merchandise shall keep such wharves and sheds in a clean and sanitary condition, clear of materials which create a fire hazard and shall ensure that passageways and established fire lanes are not obstructed. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-102 Standards of cleanliness. All vessels moored at the Kewalo Basin mooring or berthing facility shall be kept, at all times, in a condition of reasonable cleanliness and sanitation so as not to constitute a common nuisance or potential source of danger to public health. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-103 Charges for cleaning wharves. In cases where the HCDA takes over the cleaning of wharves, the charge therefore shall be assessed against the vessel which is responsible for the necessity of cleaning. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-104 Identification of mobile equipment. All mobile equipment used at Kewalo Basin such as forklifts, tractors and straddle trucks, shall be clearly identified as to the owner thereof. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-105 Load limits on wharves. (a) Loads on wharves shall not exceed the following limits unless otherwise authorized:

(1) All reinforced concrete wharves: five hundred pounds per square foot over the area supported by piles, cylinders or seawall. One thousand pounds per square foot over the area supported by land or fill. The five hundred pounds per square foot load limit applies to all reinforced concrete wharves in general. Wharves and special wharf sections with higher allowable load limits will be handled individually as covered in subsection (b) of this section;

(2) All other wharves: two hundred fifty pounds per square foot over the area supported by piles and wooden structure. One thousand pounds per square foot over the area supported by land or fill; and

(3) Operation and movement of motor vehicles and heavy equipment, including mobile cranes and drayage assemblies, over all reinforced concrete wharves: Vehicle or equipment gross weights, axle loads, wheel loads and applied loads from outriggers and supports shall not exceed the limits established in paragraph (1).

(b) Special arrangements may be made with the HCDA in the event that it is necessary to handle loads greater than specified in this section. Occasional loads exceeding the limits established in this section may be permitted, provided such loads do not exceed the load capacity of the specific wharf area where the loads are to be applied. Requests for such special

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arrangements shall be considered by the HCDA provided sufficient load data is furnished by the applicant. On special wharves and wharf sections, continuous operation may be allowed with loads in excess of those established in paragraph (1) of subsection (a). Such operation shall be permitted where special allowable load limits are established by the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-106 Fowl, animal, or livestock. No fowl, animal, or livestock of any kind shall be allowed to remain on Kewalo Basin for a period longer than six hours without being properly fed and watered. After any fowl, animal, or livestock shall have been unloaded on Kewalo Basin, it shall be removed from same within twenty-four hours. No shipment of such fowl, animal, or livestock subject to quarantine shall be unloaded on Kewalo Basin by any shipping company or its agents unless first passed by the state department of agriculture or unless arrangements have been made for acceptance for quarantine. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-107 Private use of Kewalo Basin property or facilities; business activities; signs. (a) No regular or extensive use of Kewalo Basin property or facility for private gain or purpose shall be permitted without corresponding and reasonable benefits and returns to the public.

(b) No person shall engage in any business or commercial activity without the prior written approval of the HCDA. Without limiting its generality, the term "engage in any business or commercial activity" as used in this section includes (1) solicitation, and (2) distribution of advertisement or circulars, intended for private gain or purpose.

(c) No person shall post or display any signs at Kewalo Basin without the prior written approval of the HCDA, except that approval will not be required for

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the posting or displaying of any sign on a vessel which relates solely to the sale of such vessel if the maximum dimension of such sign does not exceed three feet. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-108 Placement of goods and equipment. Any person handling goods or using equipment on a wharf or within a shed under control of the HCDA or bringing goods thereon or therein for shipment, shall place, store, or stack such goods or equipment in such a way as not to be an impediment to the approaches to same nor an obstacle to the removal of other goods, not to cause damage to the shed or wharf. No goods shall be so placed as to restrict or prevent the use of mooring bitts, cleats, or any other device used for mooring purposes. No goods shall be so placed as to restrict or prevent the use of tracks, water connections, fire hydrants, gutters, liquid connections or drains, telephone or electric connections. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-109 Closing of wharves for safety reasons. The harbormaster may close the wharves or any portion thereof and regulate and control the use of the same whenever, in the harbormaster's opinion, it is advisable to do so for reasons of safety, fire prevention, or probable interference with cargo handling or vessel operations. No person shall enter upon any wharf so closed without the permission of the harbormaster. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-110 Liability for damage to or loss of merchandise and cargo. (a) The HCDA shall not be liable for any damage to or loss of merchandise or other property on any wharf under its control.

(b) It shall be the responsibility of shipping concerns or their agents to exert every effort to protect cargo from the effect of weather conditions while same is stored on state wharves. This responsibility shall include the proper closing of all openings such as outside doors and windows, and the placing of cargo on pallets or dunnage so that it will not be damaged by moisture from the shed floors. Unless the above precautions are taken and unless carelessness on the part of HCDA employees can be shown, no claim for damage due to inclement weather shall be considered. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-111 Littering or polluting land areas prohibited. (a) No person shall throw, place, leave, deposit or abandon, or cause or permit to be thrown, placed, left, deposited or abandoned any litter, except in receptacles designated by the HCDA for the disposal of such materials. "Litter" as used in this section includes any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses or any other substances which render harbor lands or facilities unsightly, noxious or otherwise unwholesome to the detriment of the public health and welfare and effective and safe operation of the harbor.

(b) No person shall deposit oil, oily refuse, sludge, chemicals or other hydrocarbons on state property except in specially designated collection points. These items may not be left in or near standard refuse containers or anywhere else on harbors property. Penalties, including but not limited to the revocation of mooring permits and the right to use the facilities, may be invoked. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-112 Littering or polluting of water prohibited. No person shall place, throw, deposit, or

discharge, or cause to be placed, thrown, deposited, or discharged into the waters of Kewalo Basin any litter, or other gaseous, liquid or solid materials which render the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health and welfare, or a navigational hazard. No person shall discharge oil sludge, oil refuse, fuel oil or molasses either directly or indirectly, or pump bilges or ballast tanks containing other than clean water into the waters of Kewalo Basin.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-113 Disposal or salvage of derelict craft. When any owner, agent or individual contemplates or plans the disposal or salvage of a derelict craft, vessel or other object of any size, type or description, by transporting across, within or on navigable waters, whether a part or whole craft or whether a floating or suspended object of any sort which might, if sunk, lost or abandoned in the harbors, channels or shore waters, become a hazard to navigation, to dredging or to other operation of state or federal government, or the public in those waters, that person shall obtain the written permission of the harbormaster before taking such action.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-114 Duty of persons who lose, drop or abandon any floating or sinking object. Should any owner, operator, charterer, agent, or individual, without permission of the harbormaster, lose, sink, drop, or abandon any floating or sinking object in or on the navigable waters and shore waters of the Kewalo Basin, that person shall immediately notify the harbormaster and shall immediately take such action as is necessary for removal of the object. Upon failure on the part of the owner, operator, charterer, agent or individual to remove such object, the HCDA will take such actions through federal or commercial

channels as are necessary for such removal, and will charge all costs incurred by the HCDA in effecting the necessary removal to the owner. The harbormaster may require the posting of a bond to assure payment. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-115 Approved backflow prevention device required for water supply system. No person shall connect a vessel's water supply system, siphon or other water-operated device, equipment or mechanism connected to the water supply system or operate any water-operated device, equipment or mechanism connected to the water supply system, unless an approved backflow prevention device has been installed at the faucet or other point of connection. An "approved backflow prevention device" means a backflow prevention device that meets the requirements contained in Standard 1001, American Society of Sanitary Engineers, as it existed on June 1, 1993, or the Uniform Plumbing Code, adopted by the International Association of Plumbing and Mechanical Officials (IAPMO) and as it existed on June 1, 1993. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-116 Waste outlets; permit required. Notwithstanding the issuance of a permit, no person shall do any of the following within the Kewalo Basin without first having obtained a permit from the state department of health (not applicable to vessels):

(1) Discharge any wastes from shore into the waters of Kewalo Basin so as to reduce the quality of the water below the standards of water quality adopted for such waters by the state department of health;

(2) Construct, install, modify, alter, or operate any treatment works or part thereof or any extension or addition thereto which discharges from shore into the waters of the Kewalo Basin; or

(3) Construct or use any new outlet for the discharge of any wastes from shore into the waters of the Kewalo Basin.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-117 Loading or unloading flammable liquids. Loading or unloading of flammable liquids shall be in strict accordance with applicable federal laws and regulations. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-118 Appliances and electrical wiring. All cooking or heating appliances or any other machinery, equipment, utensils, or apparatus which are used by small craft and could be the cause of fire shall be so constructed, installed, wired, situated, maintained, and used so as not to constitute a potential fire hazard. The failure to conform to any statute, rule, regulation, standard, or ordinance affecting fire safety may be considered by the HCDA in determining any violation of this section. Particular attention is directed to the applicable provisions of the state boating rules of the department of land and natural resources. In addition, the approval of any machinery, equipment, utensils, or apparatus by Underwriters' Laboratories, Factory Mutual System, Marine Testing Institute, Inc., or any other nationally recognized electrical testing agency, may be considered by the HCDA in determining compliance with this section. All electrical equipment must be properly grounded. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-119 Fire extinguishing equipment for small craft. Any small craft utilizing the waters of Kewalo Basin shall be provided with approved fire extinguishers as prescribed in the applicable provisions of the state boating rules of the

department of land and natural resources. The fire extinguishers shall, at all times, be maintained in good and serviceable condition for immediate and effective use, and shall be mounted on wall brackets so located as to be readily accessible.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-120 Fueling. (a) All fueling operations shall be done in compliance with the stricter of any applicable federal, state, and county rules and in accordance with the instructions of HCDA or its harbor manager as to location and times. The fueling of vessels at the Kewalo Basin where a marine fueling station has been established, or where authorized tank trucks or tank trailers are available shall be accomplished only at a station, or by tank trucks or tank trailers with a state permit. A permit shall be issued only if:

(1) Proper application has been submitted;
(2) Established fees have been paid to the HCDA by the applicant; and
(3) There exists a comprehensive general liability insurance policy or policies, or a certificate of insurance in lieu thereof evidencing that a policy has been issued and is in force with a combined single limit of not less than $500,000. The specification of limits contained in this section shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it. The insurance shall:
    (A) Be issued by an insurance company or surety company authorized to do business in the State;
    (B) Name the State and HCDA, its assigns and managing agent as additional insureds;
    (C) Provide that the HCDA shall be notified at least thirty days prior to any

termination, cancellation, or material change in its insurance coverage;

(D) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises; and

(E) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. The permittee shall submit evidence to the HCDA of renewals or other actions to indicate that the insurance policy remains in effect as prescribed in this section.

(b) Prior to fueling a vessel at the Kewalo Basin, the operator shall:

(1) Securely moor the vessel;

(2) Stop all engines, motors, fans, and devices which could produce sparks;

(3) Extinguish all fires;

(4) Close all ports, windows, doors, and hatches; and

(5) Clear the area of people not directly involved with the operation of the vessel or servicing of the vessel.

(c) Persons fueling a vessel at the Kewalo Basin shall:

(1) Refrain from smoking, striking matches, or throwing switches; and

(2) Keep the nozzle of the fuel hose, or fuel can in continuous contact with fuel tank opening to guard against static sparks.

(d) After fueling is completed, the following actions shall be taken:

(1) Close fill openings;

(2) Wipe up all spilled fuel;

(3) Open all ports, windows, doors, and hatches;

(4) Leave vessel to ventilate for at least five minutes; and

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(5) Check that there are no fuel fumes in the vessel's bilges or below deck spaces before starting machinery or lighting fires.

(e) Fueling a vessel from a fuel barge or barge shall be allowed only when it is done in accordance with operational procedures approved by the United States Coast Guard. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-121 Fishing prohibited. Fishing, as defined in section 187A-1, Hawaii Revised Statutes, is prohibited from all piers, wharves, and bulkhead walls. Casting of fishing lines beyond the shallow marginal reef and into the boat channel is prohibited from the Waikiki side of the Kewalo Basin entrance channel. Fishing with nets is prohibited in the basin and channel areas of Kewalo Basin, except for the use of hand-held scoop nets for landing hooked fish at the shallow marginal reef at the Waikiki side of the Kewalo Basin entrance channel, and as provided in these rules. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-122 Lifesaving equipment required. Any small craft utilizing the waters of Kewalo Basin shall be equipped with lifesaving equipment as required by and approved by the United States Coast Guard. Wearable PFDS must be readily accessible and throw able devices must be immediately available for use.

(1) Boats sixteen feet or over in length shall carry one Type I, II, or III (wearable) PFD for each person on board and one Type IV (throw able) PFD in each boat; and

(2) Boats less than sixteen feet in length and all canoes and kayaks shall carry one Type I, II, III or IV PFD for each person on board. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

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§15-212-123 Liquor prohibited on Kewalo Basin and waterfront properties without HCDA approval. Except in accordance with a permit issued by the city and county liquor commission or provided in a revocable permit, no person shall consume any liquor as defined in section 281-1, Hawaii Revised Statutes, at Kewalo Basin or its waterfront property except by prior permission from the HCDA for each occasion. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-124 Responsibility for vessel gangplanks. It shall be the responsibility of the vessel to provide a reliable and safe means of access and egress to and from the vessel and the pier for crew members, passengers and visitors to the vessel. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§§15-212-125 to 15-212-132 (Reserved)

SUBCHAPTER 5

WELDING AND BURNING OPERATIONS ON PIERS AND WHARVES AND ABOARD VESSELS

§15-212-133 Welding and burning operations; permits. Before any welding or burning operation can be done on Kewalo Basin facility or on a vessel moored thereto, the party intending to do the work shall secure a permit from the harbormaster of the Kewalo Basin. Applicants for permits to do hot work shall fill out fully a prescribed form, after which the application shall be presented to the harbormaster, and if in the harbormaster's judgment all safety precautions have been provided for, and the welding and burning operations will not involve the possibility of fire or explosion, the harbormaster may approve the permit to do the work. The party

intending to do the work shall also secure permits from any other governmental agencies as required by law, and notify the fire marshall and United States Coast Guard of the intended work.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-134 Proximity to ammunition and dangerous cargo. If ammunition or other dangerous cargo is in close proximity to or on board the ship where the welding and burning operations will be done, the captain of the port, United States Coast Guard, and all other appropriate federal and state agencies shall be notified, and an inspection shall be conducted, and if in the inspector's opinion the welding and burning operations will not involve the possibility of fire or explosion, permission may be granted to perform the work. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-135 Inspections; chemist's certificate. (a) Before any welding, burning, spark or flame-producing operations may be undertaken aboard any ship, dock, wharf, or waterfront facility, all spaces subject to the accumulation of dangerous gas or gas-producing materials in or on which hot work is to be performed, and other spaces as may be required by the harbormaster having jurisdiction over the operations, or as required under the provisions of the American Bureau of Shipping as they existed on June 1, 1993, National Fire Protection Association standards as they existed on June 1, 1993, or United States Coast Guard regulations as they existed on June 1, 1993, shall be inspected by an American Bureau of Shipping certified chemist or other qualified chemist. Such spaces include but are not limited to oil and ballast tanks, cofferdams, voids, boiler and machinery spaces, pump rooms, compartments treated with combustible rust preventives, including hollow rudders and skegs, paint lockers and shaft alleys.

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(b) Upon completion of the inspection, the chemist shall issue a certificate setting forth in writing the conditions found at the time of inspection and indicating by appropriate designations whether, in the chemist's judgment, the contemplated repairs or alterations can be undertaken with safety.

(c) One copy of the chemist's certificate shall accompany the application for a permit, and one copy shall be left aboard the ship or waterfront facility, preferably posted in a conspicuous place near the gangway.

(d) Loading or movement of cargo or the movement of ships from one location to another within the shipyard or installation for which a chemist's certificate has been issued is permissible without requiring an additional inspection and issuance of a chemist's certificate when in the judgment of the inspecting authority, such movement has not been sufficient to create a hazardous situation; provided that the movement of ships from one jurisdictional area to another shall require an additional inspection and issuance of a chemist's certificate before continuing hot work. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-136 Welding and burning; procedures. (a) Hot work shall be done only in locations and under the procedures as designated in writing on the permit and chemist's certificate.

(b) All welding and burning operations shall be under the supervision and control of a competent foreperson or supervisor who shall ensure that all rules pertaining to welding and burning operations are complied with. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-137 Welding and burning operations; fire prevention. (a) In all types of operations, fire prevention shall be the watchword. It shall be the

responsibility of each individual worker to prevent fires.

(b) All combustible materials shall be removed from the area in which the welding and burning operations are being conducted; provided that the combustible materials shall be properly protected if removal is not feasible.

(c) Welding or burning operations shall not be conducted around hatches or companionways unless these are sealed with their own covers or doors. If sealing is not possible, an asbestos blanket or other flame-proof material may be substituted. Such substitution shall meet with the approval of the inspecting authority issuing the permit.

(d) When welding or burning operations are being conducted in locations where sparks could spatter or fly over the outside of the ship hull, a protective shield composed of metal or other flame-proof material shall be used to prevent the sparks from igniting the wharf, dock, barges, oil slicks on the water, or any combustible materials.

(e) Water-charged fire mains, with attached hose and nozzles of sufficient length so that water can reach the base of any fire which may occur, shall be on each deck of the ship where welding or burning operations are being conducted.

(f) Trained fire watchers, the number of which shall be approved by the harbormaster, shall be on board and assigned to each group or individual welder or burner to watch for and extinguish incipient fires. Each fire watcher shall be provided with an approved fire extinguisher or hose line to control any fire which may occur during the welding or burning operations. All fire watchers shall be instructed by the foreperson or supervisor as to their duties in respect to fire prevention and the manner of contacting their plant, or the industrial or municipal fire department when necessary.

(g) When welding or burning operations are conducted on a wooden wharf or on a fire resistive paved wharf with cracks or crevices, the entire surrounding area shall be drenched with water by means

of a hose line and shall be kept wet during entire operations to prevent sparks from igniting the flooring or timbers below. [Eff DEC 03 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-138 Petroleum and other flammable products. (a) No refueling of equipment with flammable petroleum products shall be permitted on any pier or wharf.

(b) On waterfront facilities which are used for repair work, no gasoline or other flammable liquid shall be stored except as required for normal operation, and then only when stored in approved metal lockers and in quantities approved by the harbormaster.

(c) Petroleum-based cleaning fluid which has been treated to satisfactorily reduce the flash point may be used for washing grease from machinery parts in an approved location safe from hot work operations. All paint or other flammable liquid materials shall be kept securely covered except when in actual use.

(d) Gasoline-powered generators and compressors shall not be operated on the ship, but shall be kept on the wharf. The generators and compressors shall be equipped with a spark arrester on the exhaust pipe, and a drip pan set in a position to protect the wharf in the event of any gasoline or oil spillage. An attendant shall stand by at all times, equipped with an approved fire extinguisher to extinguish any fires which may occur. At the conclusion of operations, the gasoline-powered equipment shall be removed from the wharf. Insulated wire cables in the path of traffic shall be protected from damage by crossovers, and cables leading onto the ship shall be protected from chafing damage by a protective-wrapped covering. Where electric cables lead from one ship to another, the same protective measures shall be complied with.

(e) When acetylene or oxygen cylinders are used, the following precautions shall be followed:

(1) Compressed gas cylinders shall be used in a vertical position only, and shall be secured at all times to prevent falling. Cylinders, when in use, shall be kept on the pier at all times;
(2) To avoid any possibility of explosion resulting from a ruptured gas cylinder, cylinders shall not be dropped. Cylinders shall not be used for rollers, anvils, or supports;
(3) When cylinders are not in use, valves shall be closed and protection caps shall be replaced;
(4) Cylinders shall not be handled by cranes, except when placed in specially constructed bottle racks or in a skip box. Gas cylinders shall not be hoisted by magnet, manila line, steel cable, chains, slings, or nets;
(5) Cylinders shall be secured on a wheeled truck to be easily moved if a fire occurs in the immediate vicinity;
(6) When permanently installed on a pier and exposed to the sun, cylinders shall be provided with adequate protection;
(7) Valve and hose connections shall be kept tight to prevent leaks. To check for leakage, liquid detergent or soapy water solution shall be applied. Flame shall not be used to check for leaks;
(8) Cylinders shall be kept away from sparks, flame or heat;
(9) Acetylene hose shall be tested frequently for leaks. If acetylene has been escaping in confined areas, the areas shall be properly cleared of all gas before welding or burning operations are again carried on. Acetylene hose in the path of traffic shall be protected from damage by use of crossovers;
(10) No acetylene torch shall be left unattended while burning, and when not in use, the hose

shall be neatly and properly coiled or looped and placed on bracket at cylinders, and the pressure in the hose shall be relieved by closing off the valves on the cylinders and opening the valves on the torch. Lines left unattended during meal times or other extended periods shall be either removed from compartments or disconnected at the cylinders;

(11) Oxygen cylinders shall be kept free from oil and grease at all times;

(12) Oxygen shall not be used to blow out oil pipes, for paint spraying, or for pneumatic tools;

(13) Manifolding or the coupling together of cylinders when necessary to obtain greater amounts of acetylene and oxygen shall be done in conformity with the rules and regulations of the Standards of the American Society of Mechanical Engineers as they existed on June 1, 1993, or the Regulations of the National Board of Underwriters as they existed on June 1, 1993; and

(14) Compressed gas cylinders shall not be refilled on any wharf. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-139 Penalties. Violation of sections 15-212-133 to 15-212-138 shall be cause for immediate revocation of a permit issued for welding and burning operations and subject such party to such other penalties as provided by law and pursuant to section 206E-22. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-140 Notification of other agencies. When the harbormaster has issued a permit to do hot work, the appropriate federal and local agencies shall be notified. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§§15-212-141 to 15-212-147 (Reserved)

SUBCHAPTER 6

PRIVATE INSTALLATION OR CONSTRUCTION

§15-212-148 Dredging, filling, and construction. (a) Any person, firm, or corporation desiring to perform any dredging, filling, or erecting of any construction within Kewalo Basin and entrance channel for Kewalo Basin, shall first obtain a permit therefore from the HCDA.

(b) The application for any dredging, filling, or construction shall be in the form prescribed by the HCDA, accompanied by maps and drawings which shall clearly show the location, scope, character, and details of the proposed work, and shall be further accompanied by a fee of $50 to cover costs of the necessary investigation. This fee is not refundable whether or not a permit is granted.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-149 Jurisdiction of other agencies. The United States Army Corps of Engineers, the state department of health, and the state department of land and natural resources may have certain jurisdiction over navigable waters. The approval of these agencies shall also be secured before performing work within their jurisdictions. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-150 Installation of buoys. Any person desiring to install mooring or anchorage buoys in Kewalo Basin shall apply to the HCDA in writing for permission to install such buoys. Applications must

be accompanied by comprehensive plans showing the exact proposed location of buoys and anchors, as well as plans and specifications of the type and size of buoy and anchoring equipment. The executive director may grant permission for the installation of moorings or buoys in Kewalo Basin if, in the executive director's judgment, it is advisable and will not be a menace to, or interfere with, navigation. The right is reserved by the executive director to revoke any license or permission for installation at any time, if in the executive director's opinion revocation is necessary or advisable. Upon revocation, the owner shall remove the moorings or buoys without delay. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-212-151 Construction of structures. No buildings or structures of any nature shall be erected or constructed on HCDA property, nor shall existing structures be modified, without obtaining the prior permission of the HCDA and any other governmental agency as required by law. The HCDA may require plans, specifications, and other pertinent data to accompany any request for construction or modification of state facilities. In general, approval shall be dependent on an agreement to return the property to its original state when vacating the property, if requested by the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§§15-212-152 to 15-212-158 (Reserved)

Chapter 15-212, Hawaii Administrative Rules, on the Summary Page dated November 5, 2008, was adopted on November 5, 2008, following a public hearing held on August 1, 2007, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on July 2, 2007.

The adoption of Chapter 15-212 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
Governor
State of Hawaii

Date: NOV 24 2008

LIEUTENANT GOVERNOR'S OFFICE
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