

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Adoption of Chapter 21.1
Hawaii Administrative Rules

September 5, 2003

SUMMARY

Subtitle 2.1 of Title 14, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure State Merit Appeals Board," consisting of chapters 14-21.1, 14-22.1, 14-23.1, 14-24.1, and 14-25.1 is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 2.1

RULES OF PRACTICE AND PROCEDURE
STATE MERIT APPEALS BOARD

CHAPTER 21.1

GENERAL APPLICABILITY

| | |
|-------------|--|
| §14-21.1-1 | Purpose |
| §14-21.1-2 | Construction of rules |
| §14-21.1-3 | Limitation of jurisdiction |
| §14-21.1-4 | Procedure and terms |
| §14-21.1-5 | Definitions |
| §14-21.1-6 | Merit appeals board office |
| §14-21.1-7 | Meetings |
| §14-21.1-8 | Minutes |
| §14-21.1-9 | Hearings |
| §14-21.1-10 | Quorum and number of votes necessary to validate acts |
| §14-21.1-11 | Administration |
| §14-21.1-12 | Public records |

Historical Note: Chapter 21.1 of Title 14 is based substantially upon Part I of the State civil service commission rules of practice and procedure. [Eff 6/26/78; R July 9, 1981]

§14-21.1-1 Purpose. The rules in this part govern practice and procedure before the merit appeals board of the State under the civil service laws, chapter 76, Hawaii Revised Statutes, as provided for under chapters 91 and 92, Hawaii Revised Statutes. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-21.1-2 Construction of rules. The board shall construe these rules liberally to secure the just and speedy determination of every proceeding. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-21.1-3 Limitation of jurisdiction. (a) Where the terms of collective bargaining agreements pursuant to chapter 89, Hawaii Revised Statutes, conflict with these rules, the terms of the agreements shall prevail; provided that the terms are not inconsistent with section 89-9(d), Hawaii Revised Statutes.

(b) The board shall defer action on an appeal, if there is controversy on whether the matter is within its jurisdiction or that of the Hawaii labor relations board. The Hawaii labor relations board shall determine which of these boards has jurisdiction in the appeal.

(c) The board shall not act on an appeal if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement.

(d) The board requires that all internal complaint procedures, including administrative reviews and departmental complaint procedures, have been exhausted before an appeal shall be accepted by the board. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2, 76-14)

§14-21.1-4 Procedure and terms. (a) The terms used in rules promulgated by the board pursuant to powers granted by statute shall have the meaning defined by statute, unless the context otherwise specifically requires.

(b) A rule that defines a term without express reference to the statute or to these rules or to a portion thereof, defines the term for all purposes as used both in the statute and in these rules, unless the context otherwise specifically requires.

(c) Words indicating the singular number may be

extended and applied to several persons or things; words indicating the plural may include the singular; and words indicating the masculine gender may be applied to females. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-21.1-5 Definitions. As used in these chapters:

"Adverse action," as used in section 14-25.1-1(b)(4)(B), means an involuntary separation from service, an involuntary demotion, involuntary transfer, a suspension without pay, a reduction in pay, or a denial or delay of a standard pay adjustment. Adverse action does not include a notice to improve performance, a performance improvement period, or a return to the employee's former position or comparable position as required by law because of failure to successfully complete a new probationary period.

"Aggrieved," means an individual who has suffered a loss such as the denial of some personal or property right. As used in section §14-25.1-1(b)(1), concerning examination appeals, it includes, in addition to other examination issues, a person whose application has been rejected for failure to meet the qualification requirements for a class, a person who has been terminated during an initial probationary period for failure to successfully complete an initial probationary period, and a person whose non-selection involved improprieties.

"Appointing authority" means a department head or designee having the power to make appointments or changes in the status of employees in the State.

"Board" means the merit appeals board of the State.

"Chairperson" means the chairperson of the merit appeals board.

"Civil service employee" means an employee who has met all requirements for membership in the civil service under section 76-27, Hawaii Revised Statutes.

"Classification" means the assignment of a civil service position to a class of work.

"Day" means a calendar day unless otherwise specified.

"Director" means the director of the department of human resources development of the State.

"Employee" means any person holding a State position, irrespective of the type of position or appointment.

"Employer" means the governor, and any individual who represents or acts in the interest of the governor in dealing with public employees in the State.

"Examination" means any test or accepted personnel assessment technique used to measure the fitness and ability of applicants for employment which may include but is not limited to: written tests, oral tests, interviews, essays, tests of physical fitness or ability, medical examinations, performance tests, training and experience evaluations, background and suitability determinations, probation period, in-basket assessment, biodata assessments, personality measures and assessment centers.

"Hearing" means any proceeding under the jurisdiction of the board that is governed by sections 76-14, 76-41, 76-46, 76-47, 91-8, and 91-9, Hawaii Revised Statutes.

"Hearing officer" means a competent and qualified disinterested person appointed by the board to hear an appeal in the same manner as if it were before the board and, upon conclusion of the hearing, report in writing the findings of fact with conclusions and recommendations for the board's final decision.

"Initial pricing" means the determination of the appropriate pay range and pay relationships for a new class based on appropriate factors.

"Mediation" means the process whereby a neutral third party or "mediator" is authorized to assist the parties in voluntary resolution of a complaint.

"Meeting" means the convening of the board for which a quorum is required to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

"Merit appeals board" means the State's appellate body for purposes of section 76-14, Hawaii Revised Statutes.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as

of right to be admitted as a party in a proceeding.

"Presiding officer" with respect to proceedings means the chairperson and includes any member of the board designated as such, or other persons authorized by law, to conduct hearings.

"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than governmental agencies.

"Proceedings" means the board's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the board's jurisdiction, initiated by a filing or submittal or request or a board's notice or order. It shall include proceedings involving the adoption, amendment or repeal of any rule of the board, whether initiated by board order or notice or petition of any interested person.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-21.1-6 Merit appeals board office. The address and office hours of the board will be published in merit appeals board procedures.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§80-1, 91-2)

§14-21.1-7 Meetings. The board may meet and exercise its powers in any part of the State. The following governs meetings before the board, but shall not apply to adjudicatory functions exercised by the board and governed by the Hawaii Revised Statutes.

- (1) All meetings of the board, except executive meetings governed by section 92-4, Hawaii Revised Statutes, and meetings governed by section 92-5, Hawaii Revised Statutes, shall be open to the public.
- (2) The board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of a majority of the members present. A meeting closed to the public shall be limited to matters

exempted by section 92-5, Hawaii Revised Statutes.

- (3) The rules governing meetings shall not apply to any chance meeting, as defined by section 92-2, Hawaii Revised Statutes, at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of the meeting provisions to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.
- (4) For the purpose of minimizing travel and per diem expenses, the board may use more cost efficient means such as teleconferencing which does not require all parties to convene at a single site, whenever practicable, to conduct its proceedings.
- (5) Special meetings of the board for the transaction of its business may be held at any time and place as scheduled by the board.
- (6) If the board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 14-21.1-7(7), the board may hold an emergency meeting provided:
 - (A) The board states in writing the reasons for its findings;
 - (B) A majority of board members agree that an emergency exists;
 - (C) An emergency agenda and the findings are filed with the office of the lieutenant governor and in the board's office; and
 - (D) Persons requesting notification pursuant to section 14-21.1-7(7) are contacted by mail or telephone as soon as practicable.
- (7) Requirements for notice for meetings are as follows:
 - (A) The board shall give written public notice of any regular, special, or rescheduled meeting. The notice shall include an agenda which lists all of the

items to be considered at the forthcoming meeting, the date, time and place of the meeting.

- (B) The board shall file the notice in the office of the lieutenant governor and in the board's office for public inspection at least six days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. The board shall not add items to the agenda, once filed, without a majority recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda in this manner if it is of reasonably major importance and action thereon by the board will affect a significant number of persons.

- (C) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to those persons at their last recorded address no later than the time the agenda is filed under section 14-21.1-7(B).

[Eff OCT 24 2003] (Auth: HRS §91-2)
 (Imp: HRS §§92-3, 92-3.1, 92-3.5, 92-4, 92-5, 92-7, 92-8)

§14-21.1-8 Minutes. The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed and the views of the participants.

The minutes shall be public records and shall be available within thirty days after the meeting except where disclosure would be inconsistent with section 92-5, Hawaii Revised Statutes, provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS

§92-9)

§14-21.1-9 Hearings. In contested cases or as otherwise provided by statute or these rules, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include a statement of:

- (1) The date, time, place, and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the party in support thereof; provided that if the party is unable to state the issues and facts in detail when the notice is served, the initial notice may be limited to a statement of the issues involved; and
- (5) The fact that the appealing party may retain counsel at its own expense if the party so desires. [Eff OCT 24 2003] (Auth: HRS §91- 2) (Imp: HRS §91-9)

§14-21.1-10 Quorum and number of votes necessary to validate acts. A majority of all members to which the board is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the board is entitled shall be necessary to make valid any action of the board. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§92-3, 92-3.5, 92-4, 92-5, 92-8)

§14-21.1-11 Administration. (a) The chairperson of the board shall be responsible for the administrative functions of the board.

(b) All decisions, orders, and other actions of the board shall be authenticated or signed by the board members acting in the proceeding or by the chairperson upon delegation by the board members acting in the

proceeding. Official copies of decisions, orders, and other board actions may be promulgated under the signature of the chairperson of the board or the chairperson's designee.

(c) All documents required to be filed with the board shall be filed in the office of the board at Honolulu, Hawaii, within the time limits prescribed by law, rules of the board, or order of the board. Requests for public information, copies of official documents or opportunity to inspect public records may be made in writing to, or in person at, the board's office.

(d) The board may delegate to any competent and qualified individual the power or authority vested in the board as it deems reasonable and proper to carry out its functions as prescribed by chapter 76, Hawaii Revised Statutes, except the power to make, amend or repeal rules.

(e) The board may, by written resolution adopted by a majority of the members to which it is entitled, appoint competent and qualified disinterested persons to act as its hearing officer or panel of subject matter experts. The board, at its discretion, may designate the chairperson or one of its members to serve as a hearing officer. The hearing officer or panel of experts shall hear the matter in the same manner as if it were before the board and, upon the conclusion of the hearing, shall report the hearing officer's findings of fact and conclusions and recommendations based thereon to the board. The board shall provide each party to the proceeding the opportunity to file exceptions and present argument to the Board. After review of the whole record or those portions cited by the parties, the board shall render a decision in accordance with section 91-11, Hawaii Revised Statutes.

(f) The board may develop and promulgate procedures needed to carry out its functions.
 [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§14-21.1-12 Government records. (a) The term "government records," as used in this chapter is

defined in chapter 92-F, Hawaii Revised Statutes, and shall include all rules, written statements of policy or interpretations formulated, adopted or used by the board, all complaints, opinions and orders, written testimony, minutes of meetings of the board and any other material on file in the board's office unless accorded confidential treatment pursuant to law or the rules of the board.

(b) All government records shall be available for inspection in the office of the merit appeals board, Honolulu, Hawaii, during established office hours unless public inspection of the records is in violation of any state or federal law; provided that, except where the records are open under any rule of court, the Office of Information Practices may determine which records may be withheld from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding, before its commencement, to which the board, the State or any governmental agency or subdivision is or may be a party, or when the records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

(c) Government records printed or reproduced by the board shall be given to any person requesting the same and paying the fees established by the board or by section 92-21, Hawaii Revised Statutes.

(d) Requests for public information, for permission to inspect government records or for copies of government records shall be handled within a reasonable period of time, as determined by the board and as required by law. Any material with respect to the board will not be released without the approval of the chairperson or the chairperson's designee.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-2.5, 92-9, 92-21, 92F)

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 2.1

RULES OF PRACTICE AND PROCEDURE
STATE MERIT APPEALS BOARD

CHAPTER 22.1

PROCEEDINGS BEFORE THE BOARD

- §14-22.1-1 General provisions
- §14-22.1-2 Appearances and practices before the board
- §14-22.1-3 Disqualification of board member or hearing officer
- §14-22.1-4 Consolidation
- §14-22.1-5 Filing of documents
- §14-22.1-6 Amendment of documents and dismissal
- §14-22.1-7 Retention of documents
- §14-22.1-8 Computation of time
- §14-22.1-9 Continuances or extensions of time
- §14-22.1-10 Service of process
- §14-22.1-11 Board decision

Historical Note: Chapter 22.1 of Title 14 is based substantially upon Part II of the State civil service commission rules of practice and procedure. [Eff 6/26/78; R July 9, 1981]

§14-22.1-1 General provisions. (a) The board may hold proceedings as it may deem necessary in the performance of its duties or the formulation of its rules.

(b) Procedures to be followed by the board shall be those which will best serve the purpose of the proceeding, as determined by the board.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-22.1-2 Appearances and practices before the board. (a) A person may appear in the person's own behalf; and a public employer may appear in its own behalf or through a person or persons duly designated and authorized by the employer.

(b) In any proceeding under these rules, any person or public employer may be represented by counsel or any other person to whom written or verbal authority has been given.

(c) When an individual acting in a representative capacity appears in person or signs a paper in practice before the board, the personal appearance or signature shall constitute a representation to the board that, under these rules and the law, that person is authorized and qualified to represent the particular person. The board may at any time require any person transacting business with the board in a representative capacity to show that person's authority and qualification to act as a representative.

(d) Limitations to appearances before the board are as follows:

- (1) No individual who has been associated with the board as a member, officer, employee, or counsel shall be permitted to appear before the board as a representative of any party in any proceeding or matter that the individual has handled or passed upon while associated with the board.
- (2) No person or agency appearing before the board in any proceeding or matter shall, in relation thereto, knowingly accept assistance from and compensate any individual who would be barred by this subsection.
- (3) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted to appear before the board as a representative of any party in any proceeding or matter that was pending before the board at the time of that person's association with the board, unless that

person first obtains a written consent from the board.

This subsection shall not apply to any individual or agency that has terminated association with the board for a period of one year. [Eff OCT 24 2003]
(Auth: HRS §91-2) (Imp: HRS §§91-2, 91-9, 76-47)

§14-22.1-3 Disqualification of board member, hearing officer or other staff. Any party to a hearing may file an affidavit that one or more of the board members, subject matter experts, legal counsels, or a hearing officer has a personal bias or prejudice. The affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within that time. The person against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the board. If the person chooses to answer the affidavit, the board shall decide by a majority of all the members (or the remaining members, where a board member is involved) whether that person should be disqualified from proceeding therein. Any person may file with the chairperson a certificate providing that the person is unable, for any reason, to participate with impartiality in the pending hearing.
[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-22.1-4 Consolidation. The board, upon its own initiative or upon motion, may consolidate two or more appeals that involve substantially the same parties or issues. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-22.1-5 Filing of documents. (a) All documents required to be filed with the board in any proceeding shall be filed at the office of the board at Honolulu, Hawaii, during normal working hours and within the time limits prescribed by law, the rules of

the board or by order of the board. The date on which the papers are received shall be regarded as the date of filing.

(b) Appeals shall identify the issue on appeal, including a concise statement of the relevant facts, and the remedy sought, including the rationale and legal basis, as appropriate, for the remedy.

(c) All requests and appeals filed with the board shall be handwritten, typewritten, photocopied, or printed; shall be plainly legible; and shall be on strong, durable paper no larger than 8-1/2 x 11" in size, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.

(d) The original of all documents must be signed in indelible ink by the party or the party's duly authorized agent. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement contained therein is true and is not misleading; and that it is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the board, an original and six copies of all papers shall be filed.

(f) All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, mailing address, and telephone number, if any, of the individual or individuals who may be served with any documents filed in the proceeding.

[Eff OCT 24 2003] (Auth: HRS §§91-2, 91-6, 91-8)
(Imp: HRS §§91-2, 91-6, 91-8)

§14-22.1-6 Amendment of documents and dismissal.

If any document filed in a proceeding is not in substantial conformity with the applicable rules of the board as to contents thereof, is not in compliance with the procedures of the board, or is otherwise insufficient, the board may, on its own motion or on motion of any party, strike the document or require its amendment. If amended, the document shall be effective as of the date of receipt of the amendment.

[Eff OCT 24 2003] (Auth: HRS §§91-2, 91-6, 91-8)

(Imp: HRS §§91-2, 91-6, 91-8)

§14-22.1-7 Retention of documents. All documents filed with or presented to the board shall be retained in the files of the board as required by law and in accordance with the State administrative requirements in effect at that time. The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-6, 91-8) (Imp: HRS §§91-2, 91-6, 91-8)

§14-22.1-8 Computation of time. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is not a Saturday, a Sunday, or a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§76-47, 91-2)

§14-22.1-9 Continuances or extensions of time.
 (a) Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by these rules, the board may, upon motion and the concurrence of a majority of all the members to which the board is entitled, permit the act to be done after expiration of the specified period if the delinquency is shown to have been unavoidable and excusable.

(b) The board may grant an extension of the usual time limits contained in section 14-25.1-2 to refile an appeal to those appellants whose timely appeal to the civil service commission was not heard before its expiration on June 30, 2002. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§76-47, 91-2)

§14-22.1-10 Service of process. (a) The board shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) All papers served by either the board or any party shall be served upon all parties or their counsel. Any counsel entering an appearance after the proceeding shall notify all other counsel then of record and all parties not represented by counsel of that fact.

(c) The final order, and any other paper required to be served by the board upon the parties, shall be served upon the parties and a copy shall be furnished to any counsel of record.

(d) Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail to the last known address.

(e) Service upon parties, other than the board, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped, and properly addressed to the parties involved.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-22.1-11 Board decision. All final orders, opinions, or rulings entered by the board in the proceeding shall be served upon the parties participating in the proceeding by regular mail or personal delivery by the board. The material shall be available for inspection and copies thereof may be obtained as provided under section 14-21.1-12.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 2.1

RULES OF PRACTICE AND PROCEDURE
STATE MERIT APPEALS BOARD

CHAPTER 23.1

RULES APPLICABLE TO RULEMAKING PROCEDURES

| | |
|------------|--------------------------------------|
| §14-23.1-1 | Initiation of rulemaking proceedings |
| §14-23.1-2 | Notice of public hearing |
| §14-23.1-3 | Conduct of hearing |
| §14-23.1-4 | Board action |
| §14-23.1-5 | Emergency rulemaking |
| §14-23.1-6 | Filing of rules |
| §14-23.1-7 | Taking effect of rules |
| §14-23.1-8 | Publication of rules |

Historical Note: Chapter 23.1 of Title 14 is based substantially upon Part III of the State civil service commission rules of practice and procedure. [Eff 6/26/78; R July 9, 1981]

§14-23.1-1 Initiation of rulemaking proceedings.

(a) The board may, at any time on its own motion, initiate proceedings for the adoption, amendment or repeal of any rule of the board. Procedures to be followed in rulemaking shall be as set forth in rules of the board and the applicable statutes.

(b) Any interested person or agency may petition the board for the adoption, amendment, or repeal of any rule of the board. Petitions for rulemaking filed with the board will become matters of public record.

(1) Petitions for rulemaking shall conform to the requirements of section 14-22.1-5 and shall

contain: the name, address and telephone number of each petitioner; the signature of each petitioner; a draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; and a statement of the reasons in support of the proposed rule, amendment, or repeal. The original and five copies of the petition and other documents shall be filed with the board.

- (2) The board shall, within thirty days after the filing of a petition for rulemaking, either deny the petition or initiate public rulemaking proceedings.
- (3) Any petition that fails in material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings will not be considered by the board. The board shall notify the petitioner in writing of the denial, stating the reasons therefor. Denial of a petition shall not operate to prevent the board from acting, on its own motion, on any matter disclosed in the petition. Petitioner may seek a review of the denial through the circuit court pursuant to the chapter 91, Hawaii Revised Statutes, and applicable rules of court and statutes.
- (4) If the board determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 14-23.1-3 through 14-23.1-6 and the applicable statutes. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-2, 91-3, 91-6)

§14-23.1-2 Notice of public hearing. (a) When, pursuant to a petition therefor or upon its own motion,

the board proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published in accordance with existing rules or policies pertaining to public notices and the notices shall also be mailed to all persons or agencies that have made timely written requests for advance notice of the board's rulemaking proceedings. All notices shall be published at least thirty days before the date set for public hearing.

(b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time, and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed;
- (3) A statement of the substance of the proposed rule. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-3, 92-41)

§14-23.1-3 Conduct of hearing. (a) The public hearing for the adoption, amendment, or repeal of rules shall be heard before the board and presided over by the chairperson of the board or, in the chairperson's absence, by another member designated by the board. The hearing shall be conducted in a way as to afford interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each hearing shall be held at the time and place set in the notice of hearing but may, at that time and place, be continued by the presiding officer from day to day or to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with

respect to the matters specified in the notice of hearing in the order the presiding officer shall prescribe.

(d) All witnesses shall, before proceeding to testify, state their name, address, and whom they represent at the hearing, and shall give information respecting their appearances as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the board or by any other representative of the board; cross-examination by persons or agencies shall be permitted.

(e) All interested persons or agencies will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and four copies are requested when submitting written comments, recommendations, or replies.

(f) Unless otherwise specifically ordered by the board, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, five copies of the exhibits shall be submitted.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-3, 92-41)

§14-23.1-4 Board action. The board will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action should be taken within sixty days after the final public hearing, or the expiration of any extension period for submission of written comments or recommendations. [Eff OCT 24 2003] (Auth: HRS

§91-2) (Imp: HRS §91-3)

§14-23.1-5 Emergency rulemaking. Notwithstanding the foregoing rules, if the board finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than twenty days notice of hearing, and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon abbreviated notice and hearing as it finds practicable to adopt an emergency rule. The board shall make an emergency rule known to persons who will be affected by it by publication in accordance with existing rules or policies pertaining to public notices. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §91-3)

§14-23.1-6 Filing of rules. The board, upon adopting, amending or repealing a rule and approval by the governor, shall file certified copies thereof with the lieutenant governor, the legislative auditor and the legislative reference bureau in accordance with the requirements of sections 91-4, 91-4.1 and 91-4.2, Hawaii Revised Statutes. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-4.1, 91-4.2)

§14-23.1-7 Taking effect of rules. Each rule adopted, amended or repealed shall become effective ten days after filing with the lieutenant governor. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule with the lieutenant governor. An emergency rule shall become effective upon filing with the lieutenant governor for a period not exceeding one hundred twenty days without renewal unless extended in compliance with the provisions of subdivisions (1) and (2) of section 91-4(b), Hawaii Revised Statutes. [Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4)

§14-23.1-8 Publication of rules. The board shall, as soon as practicable, compile, index, print, or otherwise make available all rules adopted by the board and remaining in effect. [Eff OCT 24 2003]
(Auth: HRS §91-2) (Imp: HRS §91-5)

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 2.1

RULES OF PRACTICE AND PROCEDURE
STATE MERIT APPEALS BOARD

CHAPTER 24.1

RULES APPLICABLE TO DECLARATORY RULINGS

- §14-24.1-1 Petitions for declaratory rulings
- §14-24.1-2 Request for hearing
- §14-24.1-3 Applicability of order
- §14-24.1-4 Declaratory ruling on board's
own motion
- §14-24.1-5 Refusal to issue declaratory order

Historical Note: Chapter 24.1 of Title 14 is based substantially upon Part IV of the State Commission Rules of Practice and Procedure. [Eff 6/26/78; R July 9, 1981]

§14-24.1-1 Petitions for declaratory rulings.

(a) On petition of an interested person or agency, the board may issue a declaratory order as to the applicability of any rule or order of the board.

(b) The petition shall be prepared in a manner prescribed by the board and the original and five copies thereof shall be filed with the board. The petition shall conform to the requirements of section 14-22.1-5, and shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a designation of the specific rule or order in question, together with a statement of the controversy or uncertainty involved; a statement of the petitioner's interest in the subject matter, including

the reasons for submission of the petition; a statement of the petitioner's position or contention; and a memorandum of authorities, containing a full discussion of reasons and legal authorities, in support of the position or contention.

(c) Within sixty days after the submission of a petition for declaratory ruling, the board shall either deny the petition in writing, stating the reasons for the denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 14-24.1-2. If the matter is set for hearing, the board shall render its findings and decision within sixty days after the close of that hearing.

(d) The board may, without notice or hearing, dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this part or for other reasons as determined by the board. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-8) (Imp: §91-8)

§14-24.1-2 Request for hearing. The board will usually act on a petition for a declaratory ruling without conducting a hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail the reasons why the matters alleged in the petition together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing facts. The board may, in its discretion, order a hearing. In the event a hearing is granted by the board, section 91-9, Hawaii Revised Statutes, shall govern the proceedings. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-8) (Imp: HRS §91-8)

§14-24.1-3 Applicability of order. An order disposing of a petition shall be applicable only to the factual situation described in the petition or set

forth in the order. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-8) (Imp: HRS §91-8)

§14-24.1-4 Declaratory ruling on board's own motion. Notwithstanding the other provisions of this chapter, the board may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-8) (Imp: HRS §91-8)

§14-24.1-5 Refusal to issue declaratory ruling. The board may, for good cause, refuse to issue a declaratory ruling with specific reasons for that determination. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
- (3) The issuance of the declaratory ruling may affect the interests of the board in a litigation that is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the board. [Eff OCT 24 2003] (Auth: HRS §§91-2, 91-8) (Imp: HRS §91-8)

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 2.1

RULES OF PRACTICE AND PROCEDURE
STATE MERIT APPEALS BOARD

CHAPTER 25.1

RULES APPLICABLE TO APPEALS

- §14-25.1-1 Standing to appeal
- §14-25.1-2 Filing of appeal
- §14-25.1-3 Notice
- §14-25.1-4 Appeal hearing

Historical Note: Chapter 25.1 of Title 14 is based substantially upon Part V of the State civil service commission rules of practice and procedure. [Eff 6/26/78; R July 9, 1981]

§14-25.1-1 Standing to appeal. (a) Only persons who have exhausted the internal complaint procedures identified in section 14-21.1-3(d) and whose appeal is not barred by other provisions of section 14-21.1-3 shall have standing to file an appeal with the merit appeals board.

(b) The merit appeals board shall decide appeals from actions taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, as follows to:

- (1) Recruitment and examination for civil service positions. Any person suffering legal wrong by that action or aggrieved by that action may file an appeal. An employee serving an initial probationary appointment who alleges wrongful termination for failure to

- successfully complete the initial probation period may also file an examination appeal;
- (2) Classification and reclassification of a civil service position. A civil service employee occupying the position as of the effective date of the classification action, and any subsequent civil service employee in the position up to the date of the notice of final action, who has suffered a legal wrong by that action may file a classification or reclassification appeal;
 - (3) Initial pricing of a new class. A civil service incumbent of a position in a new class as of the effective date of the initial pricing action may file an appeal if the employee has suffered a legal wrong by that action; and
 - (4) Other employment actions taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes, if the employee suffers a legal wrong by the action. These actions include:
 - (A) disciplinary actions, such as dismissals, demotions, and suspensions;
 - (B) adverse actions for failure to meet performance requirements, such as dismissals, demotions, or reduction in pay; and
 - (C) other employment actions if the employee suffers a legal wrong by the action.
- (c) Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board. [Eff OCT 24 2003]
(Auth: HRS §91-2) (Imp: HRS §§76-14, 76-42, 76-47)

§14-25.1-2 Filing of appeal. (a) Any person who has exhausted all internal complaint procedures and who has standing to appeal shall appeal to the board in the following manner:

- (1) An appeal by an applicant on a recruitment, examination, or suitability for employment matter, or by an initial probationary employee, who has been determined to have

failed initial probation, shall be filed with the merit appeals board within twenty days from the date on the notification from the director or appointing authority.

- (2) An appeal by an employee on matters relating to the classification and reclassification of a particular position shall be filed with the merit appeals board within thirty days after the date of the notice of final action by the director or appointing authority.
- (3) An appeal by an employee on matters relating to the initial pricing of classes shall be filed with the merit appeals board within thirty days after the date of the notice of final action by the director.
- (4) An appeal by an employee on an employment action as provided by section 14-25.1-1(b)(4), shall be filed with the merit appeals board within thirty days after notice of final action by the director or appointing authority.

(b) Any appeal must be filed in the manner prescribed by the board and in compliance with the requirements specified in section 14-22.1-5.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§76-14, 76-42, 76-47)

§14-25.1-3 Notice. All parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing. If service by registered or certified mail is not made because of the refusal to accept service or the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in accordance with existing rules or policies pertaining to public notices. The last published notice shall appear at least fifteen days before the date of the hearing. The notice shall conform with section 14-21.1-9.

[Eff OCT 24 2003] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5)

§14-25.1-4 Appeal hearing. (a) An appeal shall be conducted as a contested case under chapter 91, Hawaii Revised Statutes. The board shall order the matter set for hearing. In any appeal, all parties shall be afforded an opportunity for hearing after reasonable notice. Opportunities shall be afforded all parties to present evidence and argument on all issues involved. Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any appeal by stipulation, agreed settlement, consent order, or default; provided that waiver of any procedure includes procedural requirements of section 91-11, Hawaii Revised Statutes.

(b) Hearings shall be held at the time and place set forth in the notice of hearing, but may, at that time and place, be continued from day to day or to a later day or to a different place without notice other than the announcement thereof by the presiding officer or hearing officer at the hearing.

(c) The chairperson or hearing officer may grant a continuance before the convening of a hearing, provided:

- (1) the party requesting the continuance must submit a written request for the continuance, stating the specific reasons for the request;
- (2) the written request must be received by the board no later than ten days after the hearing notice is issued and not less than ten days before the scheduled hearing date;
- (3) the moving party must simultaneously serve a copy of the continuance request on any other party/parties;
- (4) an opposing party must submit its objections to the board and any other party/parties within five days of the request for continuance and not less than five days before the scheduled hearing date;
- (5) if the chairperson or hearing officer grants the continuance, written notice of the continuance and the reasons thereto shall be provided to the parties;
- (6) nothing herein shall prevent the chairperson or the hearing officer from granting a continuance where all parties are agreeable

to the continuance. If an opposing party fails to properly submit its objections, the party shall be deemed agreeable to the continuance; and

- (7) when a continuance is granted under this paragraph, notice of the new hearing date shall be as prescribed by §14-25.1-3 of these Rules.

(d) An application for subpoena requiring the attendance of witnesses or the production of documentary evidence from any place within the State at any designated place or hearing shall be made in writing to the board, and shall:

- (1) specify the name of the witness or the specific documents or data desired, and the relevancy to the issues involved;
- (2) be made no later than ten days after the hearing notice is issued and not less than ten days before the hearing, or ten days before the date the attendance or production is desired, as applicable; and
- (3) be accompanied by a prepared subpoena.

If application is made at a later time, the board may, in its discretion, issue subpoenas or continue the hearing or any part thereof or both.

Once approved by the chairperson or the hearing officer, the party requesting the subpoena shall be responsible for serving the subpoena upon the person identified in the subpoena.

Enforcement of the subpoenas issued and served shall be by written application of any board member to the circuit court.

Witnesses who are subpoenaed shall be paid the same fees and mileage as are paid witnesses in the circuit court of the State. Witness fees and mileage shall be paid by the party at whose request the witness appears.

Any fees associated with subpoenas shall be paid by the party at whose request the subpoena is issued.

Fees shall be paid when a party is summoned or a deposition is taken.

A motion to revoke or quash a subpoena shall be filed with the board no later than five days after service of the subpoena. The chairperson or hearing officer shall have the discretion to revoke or quash a

subpoena.

(e) Motions, including but not limited to motions to dismiss a case and motions to limit the scope of hearing, shall be filed with the board and served on all other parties no later than ten days after the hearing notice is issued and not less than ten days before the hearing unless the chairperson or hearing officer directs otherwise. These motions shall be made to the board, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based. Answering affidavits and memoranda, if any, shall be filed with the board and served upon all other parties no later than five days after the motion is filed and not less than five days before the time of hearing, unless the chairperson or hearing officer directs otherwise.

(f) Appeals shall be heard before the board or a hearing officer or panel of subject matter experts duly appointed by the board.

(g) The chairperson shall preside over appeals heard by the board itself. In the absence of the chairperson, another member, designated by the board, shall preside.

(h) If an appellant fails to appear in person at the scheduled time and place for the hearing, the appeal shall be dismissed with prejudice.

(i) The presiding officer at a proceeding shall have authority to control the course of the hearing; to hold conferences on which the parties have had notice, for the settlement or simplification of issues; to administer oaths and affirmations; to grant application for and issue subpoenas; to take or cause depositions to be taken; to rule upon offers of proof and receive relevant evidence; to limit lines of questioning or testimony that are irrelevant, immaterial, or repetitious; to rule upon all objections, procedural requests and motions that do not involve final determination of proceedings; to dispose of any other matter that normally and properly arises in the course of the proceeding; and to take all other actions authorized by chapters 76 and 91, Hawaii Revised Statutes, rules of the board or by any other statute that are deemed necessary to the orderly and just conduct of the hearing.

(j) No hearing officer, subject matter expert or board member shall be assigned to serve in any proceeding if that person would enjoy personal enrichment in any matter or business involved in the proceeding; is related within the first degree by blood or marriage to any party to the proceeding; or has participated in an investigation preceding the institution of the proceeding or in a determination that it should be instituted or in the development of the evidence to be introduced therein.

(k) The record of the hearing shall be compiled in conformance with section 91-9(e), Hawaii Revised Statutes. The board will make provisions for recording the testimony, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. A copy of the record of a hearing or any part thereof may be obtained as provided under section 14-21.1-12.

(l) At the commencement of the hearing, the presiding officer or hearing officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. The procedure, unless specifically prescribed in these rules or by the chapter 91, Hawaii Revised Statutes, or by any other applicable statute, shall be outlined as in the opinion of the presiding officer or hearing officer will best serve the purposes of the hearing without prejudice to any party.

(m) Witnesses shall be placed under oath or affirmation before testifying.

(n) All parties shall be given reasonable opportunity to offer testimony with respect to the matters relevant to the proceeding. All witnesses shall, before proceeding to testify, state their name, address, and whom they represent at the hearing and shall give information respecting their appearances relevant to the proceeding as the presiding officer or hearing officer may request. The presiding officer or hearing officer shall confine the testimony to the matters for which the hearing has been called, but the presiding officer or hearing officer need not apply the technical rules of evidence except as required by statute. Each witness shall be subject to questioning by members of the board and by any representative of the board. Each party shall have the right to submit

rebuttal evidence and rebuttal arguments.

(o) The board or hearing officer shall take notice of judicially recognizable facts and may take notice of generally recognizable technical or scientific facts within the board's or hearing officer's specialized knowledge when parties are given notice before the hearing of the material and afforded the opportunity to contest the facts so noticed.

(p) At the hearing, the presiding officer or hearing officer may require the production of further evidence upon any issue.

(q) Whenever the board determines that mediation may result in a satisfactory resolution of an appeal, may narrow the issues on appeal, or otherwise expedite a decision, the board may require the parties to submit the issues to mediation in accordance with the provisions of section 76-47(d), Hawaii Revised Statutes. In addition, the board may discuss the issues with the parties and informally mediate any or all of the issues involved.

(r) After all the evidence has been presented, the board or hearing officer shall give the parties opportunity to summarize. Within reasonable time after final arguments have been completed and all requested memoranda submitted, the board or hearing officer shall bring the matter to a close.

(s) The board or hearing officer may permit parties to file proposed findings and conclusions, together with the reasons therefor at the close of the hearing or within the time as is extended at the discretion of the board or hearing officer. The proposal shall be in writing and shall be limited to references to the record and to the authorities relied upon and shall not contain new information not already reflected in the record. Copies thereof shall be furnished to all parties.

(t) In appeals filed under section 14-25.1-1(b)(4)(A), involving the suspension, discharge, or demotion of a civil service employee, the employer shall have the burden of proof.

In all other appeals, the charging party, in asserting an improper action or a violation of the statutes or rules, shall have the burden of proving that statutory and regulatory requirements or proper procedures were not followed by the director or

appointing authority.

(u) In its action on appeals filed under sections 14-25.1-1(b)(1),(2),(3) and (4)(C), the board shall generally confine itself to the issue of whether legal requirements were met, rules were properly applied, and appropriate procedures were followed, pursuant to chapter 91. In the event the board finds that these requirements were not met or appropriate procedures were not followed, the board shall remand the case to the director or the appointing authority and require that the process and action be redone in accordance with applicable requirements and procedures.

(v) In its actions on appeals filed under section 14-25.1-1(b)(2), the board shall not consider, in its deliberation, the classes in other jurisdictions or the classification of positions in other jurisdictions.

(w) In its action on appeals by a civil service employee from adverse actions taken by the appointing authority based on failure to meet performance requirements, the board shall determine whether the conditions listed in section 76-41(b), Hawaii Revised Statutes, were met when determining whether or not the action is with or without merit.

(x) In its action on an appeal by a civil service employee who has been suspended, discharged, or demoted, both the appealing employee and the appointing authority shall have the right to be heard publicly, present evidence, and be represented by counsel who shall have the right to examine and cross-examine witnesses. At the hearing, technical rules of evidence shall not apply and the evidence shall be taken stenographically or recorded by machine.

- (1) If reasons for an action by the director or appointing authority are not substantiated in any material respect, the board shall order that the employee be reinstated in the employee's position, without loss of pay.
- (2) If the reasons are substantiated or are only partially substantiated, the board shall sustain the action of the director or appointing authority; provided that the board may modify the action of the director or appointing authority if it finds the circumstances of the case so require and may order the disposition of the case it may deem

just provided that the disposition is consistent with laws, rules, and policies.

(y) In conducting its business and rendering its decision, the board shall serve as an appellate body and shall not impinge on the authority of the director in matters of policy, methodology, and administration. All decisions and orders of the board shall be made in accordance with personnel laws, rules, policies, and practices, and accompanied by a technical explanation of the decision or order. Every decision and order adverse to a party to the proceeding, rendered by the board, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding presented. The findings and decisions of the board shall be final on all appeals, unless an appeal is taken pursuant to section 91-14, Hawaii Revised Statutes.

(z) The board shall, as soon as practicable and unless otherwise stipulated by the parties, not later than sixty days after the close of the hearing, notify the parties to the proceeding of the decision and order. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and any accompanying findings and conclusions to each party or to the party's attorney of record.

(aa) Unauthorized ex parte communications are defined as private communications or arguments with members of the board or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of the case, except that the following classes of ex parte communications shall not be prohibited:

- (1) Those which relate solely to matters which a board member or hearing officer is authorized by the board to dispose of on an ex parte basis.
- (2) Requests for information with respect to the status of a proceeding.
- (3) Those which all parties to the proceeding agree or which the board has formally ruled may be made on an ex parte basis.
- (4) Those with representatives of any news media

on matters intended to inform the general public.

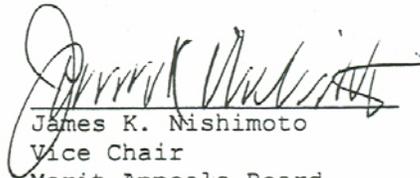
(bb) The following additional requirements shall apply to the board and its functions relating to receiving and processing initial pricing appeals filed under 14-25.1-1(b)(3):

- (1) After the hearing, the board shall review the facts presented, deliberate, and render a decision which shall be in conformance with the policies, standards and guidelines governing initial pricing promulgated by the director.
- (2) In its deliberations, the board shall be limited to consideration of classes in the same bargaining unit. The board shall consider only State classes, unless the basis for the appeal alleges violation of the provisions of section 76-1(5), Hawaii Revised Statutes.
- (3) Decisions on initial pricing appeals shall be limited to the appropriate pay grade of the class and cannot require a change in bargaining unit for full implementation.
- (4) All decisions of the board resulting in a higher pay grade assignment shall be retroactive to the date of the initial pricing action of the director.
- (5) If the evidence submitted indicates significant changes have occurred in the work of the position, the board shall remand the case to the director for classification review.
- (6) The person filing the appeal has the burden of proof.
- (7) Substantial weight shall be given to the technical determination of the director in pricing the new class. [Eff OCT 24 2003]
(Auth: HRS §91-2) (Imp: HRS §§76-14, 76-42, 76-47, 91-9, 91-9.5, 91-10, 91-11)

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Subtitle 2.1 of Title 14, Hawaii Administrative Rules, consisting of chapters 14-21.1, 14-22.1, 14-23.1, 14-24.1, and 14-25.1 on the Summary Page dated September 5, 2003, was adopted on September 5, 2003 following a public hearing held on September 5, 2003, after public notice was given in the Honolulu Star-Bulletin, The Maui News, The Garden Island, the West Hawaii Today, and the Hawaii Tribune-Herald on August 6, 2003.

The adoption of subtitle 2.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.


James K. Nishimoto
Vice Chair
Merit Appeals Board


Kathleen N. A. Watanabe
Director
Department of Human
Resources Development

APPROVED:


Linda Lingle
Governor
State of Hawaii

Dated: OCT 14 2003

APPROVED AS TO FORM:


Deputy Attorney General

OCT 14 2003

Filed