

Rules Amending Title 13  
Hawaii Administrative Rules

(Date), 2003

1. Chapter 221 of Title 13, Hawaii Administrative Rules, entitled "Unencumbered Public Lands," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 10

LAND DIVISION

CHAPTER 221

UNENCUMBERED PUBLIC LANDS

Subchapter 1 General Provisions

§13-222-1 Purpose  
§13-222-2 Definitions  
§13-222-3 Penalties  
§13-222-4 Closing of Areas  
§13-222-5 Permits  
§13-222-6 to 13-221-8 (Reserved)

Subchapter 2 Public Use of the Premises

§13-221-9 Abandoned and unattended property  
§13-221-10 Aircraft  
§13-221-11 Animals  
§13-221-12 Archaeological and historical features  
§13-221-13 Audio devices  
§13-221-14 Boating  
§13-221-15 Camping

§13-221-16 Disorderly conduct  
§13-221-17 Explosives  
§13-221-18 False report  
§13-221-19 Firearms, traps and other weapons  
§13-221-20 Fires  
§13-221-21 Fishing  
§13-221-22 Gambling  
§13-221-23 Geological features  
§13-221-24 Intoxication; drug incapacitation  
§13-221-25 Lost and found articles  
§13-221-26 Motor vehicles  
§13-221-27 Portable engines and motors  
§13-221-28 Public property  
§13-221-29 Report of injury or damage  
§13-221-30 Sanitation  
§13-221-31 Repealed  
§13-221-32 Swimming and bathing  
§13-221-33 Tampering with vehicle or vessel  
§13-221-34 Wildlife  
§13-221-35 Repealed  
§13-221-36 Memorialization  
§13-221-37 to 13-221-44 (Reserved)

### Subchapter 3 Commercial Activities

§13-221-45 Advertisements  
§13-221-46 Business operations  
§13-221-47 Commercial photography  
§13-221-48 Repealed  
§13-221-49 Commercial activities  
§13-221-50 Commercial activity permits  
§13-221-51 Commercial activity permit applications  
§13-221-52 Commercial activity permit criteria  
§13-221-53 Commercial activity permit provisions  
§13-221-54 Commercial activity permit fees  
§13-221-55 Commercial activity permit cancellation,  
revocation, or termination

### SUBCHAPTER 1

### GENERAL PROVISIONS

§13-221-1 Purpose. The purpose of this chapter is to control public activities on unencumbered public lands. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-2 Definitions. As used in this chapter: "Abandoned property" means any and all property, including, but not limited to, personal property, items, materials, equipment, fixtures, motor vehicles, or watercraft, left unattended for a continuous period of more than twenty-four hours without the permission of the board or its authorized representative.

"Animals" mean all animals wild and domestic.

"Authorized representative" means any person authorized by the board of land and natural resources to act for the board.

"Board" means the board of land and natural resources.

"Camper" means any person engaged in a camping activity.

"Camping" means the possession of a backpack, tents, blankets, tarpaulins, or other obvious [comping] camping paraphernalia any time after one hour after sundown until sunrise on unencumbered state lands.

"Chairperson" means the chairperson of the board of land and natural resources.

"Commercial activity" means the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, except as allowed by chapter 13-7, shall be considered commercial activity.

Commercial activities include, but are not limited to, activities whose base of operations are outside the boundaries of the unencumbered state lands, or provide transportation to or from the unencumbered state lands.

"Compensation" includes, but is not limited to, monetary fees, barter, or services in-kind.

"Department" means the department of land and natural resources.

"Motor vehicle" means every vehicle which is self-propelled or propelled by electric power but not operated on rails, including, but not limited to, automobiles, trucks, go-carts, motorcycles, motor scooters, mopeds, and dune buggies whether the vehicle is licensed or unlicensed.

"Premises" means the unencumbered lands to which these rules apply.

"Unencumbered public lands" mean any lands defined as public lands by section 171-2, HRS, and which have not been:

- (1) Set aside for any purpose, by statute, executive order or otherwise, to a governmental agency, or
- (2) Encumbered by lease, license, permit, easement or otherwise issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous non-forest reserve, wildlife, or park areas [(hereinafter called the "premises")]. [Eff 2/6/88; am 12/9/02; am and comp ] (Auth: HRS §171-6) (Imp: HRS §§171-1, 171-6)

§13-221-3 Penalties. Any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day per violation and shall be liable for administrative costs and damages incurred by the department. [Eff 2/6/88; am and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-4 Closing of areas. The board or its authorized representative may establish a reasonable schedule of visiting hours for all or portions of the premises and close or restrict the public use of all or any portion thereof, when necessary for the prudent management of the premises or for the protection of the area or for the safety and welfare of persons or property, by the posting or appropriate signs indicating the extent and scope of closure. All persons shall observe and abide by the officially

posted signs designating closed areas and visiting hours. [Eff 2/6/88; am and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-5 Permits. The board or its authorized representative may issue permits governing the use of public facilities or areas within the premises. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

## SUBCHAPTER 2

### PUBLIC USE OF THE PREMISES

§13-221-9 Abandoned and unattended property.

(a) No person shall abandon motor vehicles or other property within the premises. All such property may be confiscated or impounded by the board or its authorized representative. In the event vehicles or other property left unattended should interfere with the safe or orderly management of the premises, it may be impounded by the board or its authorized representative at any time.

(b) All impounded vehicles which appear to be operable shall be towed to a place of storage. Towing, storage, and other reasonable fees shall be assessed pursuant to section 290-11, HRS. All impounded or confiscated property, other than vehicles which appear to be operable, may be disposed of or moved to a place of storage. If moved, the owner shall be assessed moving, storage, or other reasonable fees. Additionally, the owner of the property shall bear the responsibility for the risk of any loss or damage to their property.

(c) Abandoned vehicles which appear to be operable shall be sold at public auction pursuant to section 290-11, HRS. All other impounded or confiscated property may be disposed of or sold at public auction pursuant to law. [Eff 2/6/88; am and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6, 290-11, 199-7, Act 184, SLH 1986)

§13-221-10 Aircraft. No person shall launch or land aircraft, as defined in section 261-1, HRS, including airplanes, airships, balloons, gliders, hang gliders, helicopters, parachutes, dirigibles, and other similar means of conveyance, within the premises except with the written permission of the board or its authorized representative. Landings without a permit may be permitted in case of an emergency. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-11 Animals. (a) No person shall enter the premises with dogs, cats, and other animals unless they are crated, caged, or on a leash, or otherwise under physical restrictive control at all times. This section shall not apply to seeing-eye dogs accompanying their masters.

(b) No person shall engage in horseback riding on the beaches except with the written permission of the board or its authorized representative.

(c) [When so posted, all] All domestic animal droppings shall be removed and [deposited at authorized and designated sites] disposed of appropriately. [Eff 2/6/88; am and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-12 Archaeological and historical features. No person shall appropriate, damage, remove, excavate, disfigure, deface, or destroy objects of antiquity, prehistoric ruins, and monuments within the premises; provided, the board or its authorized representative may permit qualified persons or institutions to examine ruins, excavate archaeological sites, and gather objects of antiquity. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §§171-6E-7)

§13-221-13 Audio devices. (a) No person shall operate or use any audio devices including, but not

limited to radios, tape recorders, television sets, musical instruments, compact disc players, and noise producing devices such as electric generating plants or other equipment driven by motors or engines, in a manner and at times which creates excessive noise except with the written permission of the board or its authorized representative.

(b) No person shall operate or use public address systems, whether fixed, portable, or vehicle mounted, on land, water, or roadways within the premises except when the use or operation is in connection with public gatherings or special events for which permits have been issued by the board or its authorized representative.

(c) No person shall install aerials or other special radio, telephone, television, or other communication equipment within the premises unless done with the written permission of the board or its authorized representative. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-14 Boating. No person shall operate, leave unattended, beach, park, or moor vessels, as defined in section [267-3] 200-23, HRS, including but not limited to boats, motorboats, houseboats, rowboats, powerboats, jet skis, sailboats, fishing boats, towboats, scows, flatboats, cruisers, motor vessels, ships, barges, tugs, floating cabanas, party boats, charter boats, catamarans, ferryboats, canoes, rafts, kayaks, or any similar buoyant devices permitting or capable of free flotation, on the premises without a written authorization of the board or its authorized representative except in cases of emergency. [Eff 2/6/88; am and comp  
] (Auth: HRS §171-6)  
(Imp: HRS §171-6, 267-3)

§13-221-15 Camping. No person shall camp or use recreational trailers or other camper units on the premises, except with the prior written authorization of the board or its authorized representative. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-16 Disorderly conduct. No person shall engage in disorderly conduct as defined in the State Penal Code, section 711-1101, HRS, within the premises. [Eff 2/6/88; comp \_\_\_\_\_] (Auth: HRS §171-6) (Imp: HRS §171-6, 711-1101)

§13-221-17 Explosives. No person shall use or possess fireworks, firecrackers, and other explosive devices within the premises except with the written permission of the board or its authorized representative and subject to federal, state and county laws and rules. [Eff 2/6/88; comp \_\_\_\_\_] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-18 False report. No person shall give a false or fictitious report or information to any authorized representative investigating an accident or any violation of law or administrative rules. [Eff 2/6/88; comp \_\_\_\_\_] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-19 Firearms, traps, and other weapons. The use or possession by any person of air guns, pellet guns, firearms, traps, other weapons, or other implements designed to discharge missiles shall be subject to all federal, state, and county laws and rules. Firearms and other weapons shall be unloaded when transported through nonhunting areas. [Eff 2/6/88; comp \_\_\_\_\_] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-20 Fires. (a) Fires are permitted only:  
(1) In locations, including backcountry, wilderness and remote sections of the premises when a written permit has been secured from the board or its authorized representative;



- (2) On portions of the premises that may be designated by the board or its authorized representative for fires. No permit shall be required for fires in the designated areas which shall be posted; or
  - (3) In stoves or lanterns using gasoline, kerosene, propane, butane, wood, charcoal, briquette, gas, alcohol or other fuels.
  - (b) No person shall permit a fire to spread to and burn, scorch or damage surrounding trees, shrubs, grasses, or other flammable or combustible matter.
  - (c) When no longer needed, the fire shall be completely extinguished. No person shall leave a fire unattended.
  - (d) No person shall discard lighted cigarettes, pipe heels, matches, live coals, or other burning material within the premises. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)
- 6)

§13-221-21 Fishing. Unless specifically restricted by this Chapter, or by any law or rules, a person may fish or take mollusks and crustaceans within the premises subject to all federal, state, and county laws and rules. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-22 Gambling. No person shall gamble in any form or operate gambling devices within the premises. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-23 Geological features. No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substance on the premises. No person shall excavate or quarry any stone, or lay, set, or cause any blast or explosion, or assist in these acts within the premises, except as provided by law or with the written permission of the board or its authorized representative. [Eff 2/6/88; comp

] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-24 Intoxication; drug incapacitation. No person shall use or possess narcotics, alcohol, or drugs within the premises without the written permission of the board or its authorized representative. No person shall enter or remain within the premises when manifestly under the influence of alcohol, narcotics, or drugs. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-25 Lost and found articles. Any person finding lost articles shall deposit them at the nearest police station, leaving the person's name and address. [Eff 2/6/88; comp  
(Imp: HRS §171-6) ] (Auth: HRS §171-6)

§13-221-26 Motor vehicles. (a) No person shall drive a motor vehicle on the premises except on roads, trails, or tracks designated or provided for vehicular use or with the written permission of the board or its authorized representative.

(b) No person shall park or leave unattended a motor vehicle which blocks or prohibits entry onto any road, trail, track, or beach access on the premises. [Eff 2/6/88; am and comp  
(Imp: HRS §171-6) ] (Auth: HRS §171-6)

§13-221-27 Portable engines and motors. No person shall operate or use within the premises a portable motor driven electric generating plant, pump, or any other equipment driven by a portable engine or motor without the written permission from the board or its authorized representative. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-28 Public property. (a) No person shall destroy, deface, or remove any natural feature or natural resource within the premises without the

written permission of the board or its authorized representative.

(b) No person shall intentionally or recklessly destroy, injure, deface, remove, disturb, or possess, in any manner, any public building, sign, equipment, monument, marker, or other structure within the premises.

(c) A person may gather or collect, for personal use, reasonable quantities of natural products of renewable nature, including but not limited to, seashells, fruits, berries, seeds, and marine deposits of natural origin. No person shall gather or collect these products for the purpose of sale. The quantities may be restricted by the board or its authorized representative.

(d) No person shall destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in chapter 4-68, [Hawaii Administrative Rules,] within the premises, except with the written permission of the board or its authorized representative.

(e) A person may gather or collect small quantities of pebbles or small rocks by hand for personal use, except in prohibited areas which shall be posted. The quantities of these items, however, may be restricted by the board or its authorized representative. No person shall collect these objects for the purpose of sale. [Eff 2/6/88; am and comp

] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-29 Report of injury or damage. All incidents resulting in injury or death to persons or damage to property shall be reported by the person or persons involved as soon as possible to the board or its authorized representative. This report shall not relieve persons from the responsibility of making any other accident reports which may be required under federal, state, or county laws and rules. [Eff 2/6/88; comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-30 Sanitation and litter. (a) [All persons shall dispose of garbage, papers, trash, refuse, waste materials, and rubbish of any kind only at places designated for their disposal or removed from the area. No person shall remove refuse or garbage from refuse containers and remove or relocate these containers except authorized persons.] No person shall drain, dump, or otherwise dispose of garbage, papers, trash, refuse, waste materials, and rubbish of any kind except in places or receptacles provided for this use. If no such places or receptacles are provided, all garbage, papers, trash, refuse, waste materials and rubbish of any kind shall be removed from the area. No person shall remove refuse or garbage from refuse containers. Removal or relocation of these containers shall not be allowed except by authorized persons.

[(b)] No person shall drain or dump garbage, trash, rubbish, refuse, or waste except in places or receptacles provided for this use.]

[(c)](b) No person shall pollute or contaminate in any manner any watershed, water supplies, or water used for drinking purposes.

[(d)](c) No person shall dispose of fish or animal entrails or other parts of fish and animals into salt waters within two hundred feet of the shore or on boat docks or swimming areas or into fresh waters or in areas of public concentration.

[(e)](d) No person shall deposit any body waste in or on any portion of any comfort station or other public structure except into customary and proper places in plumbing fixtures provided for that purpose. No person shall place any bottle, can, cloth, rag, meal, wood, stone or any foreign substance in any of the plumbing fixtures in a station or structure. All comfort stations shall be used in a clean, sanitary and orderly manner.

[(f)](e) No person shall urinate or defecate other than at the place and toilet facility provided.

[(g)](f) No person shall bring, carry or transport garbage, trash, rubbish, refuse, or waste from a place outside the premises onto the premises or deposit or dump the same in refuse containers or other receptacles on the premises. [Eff 2/6/88; am and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-31 REPEALED [R 12/9/02]

§13-221-32 Swimming and bathing.

(a) A person may swim or bathe on the premises except in waters and at times where these activities are prohibited in the interest of public health or safety. These waters shall be designated by the posting of appropriate signs.

(b) No person shall use flotation devices within designated swimming areas when prohibited by the board or its authorized representative by the posting of appropriate signs. [Eff 2/6/88; comp ]  
(Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-33 Tampering with vehicle or vessel. No person shall tamper or attempt to tamper with any vehicle, vessel, or other equipment, or enter or go upon, move, or manipulate any of the parts or components of any vehicle, vessel, or other equipment, or start or set the same in motion, except when it is under one's lawful possession or control. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-34 Wildlife. No person shall molest, disturb, injure, trap, take, catch, possess, poison, or kill any wild bird or mammal, or disturb their habitat within the premises, except when otherwise authorized by all applicable federal, state and county laws and rules. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

[§13-221-35 Commercial activities. No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative.] [Eff 12/9/02; R ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-36 Memorialization. No person shall install any monument, memorial, tablet, or other commemorative installation in areas within the premises without written permission of the board or its authorized representative. [Eff HRS §171-6) (Imp: HRS §171-6) ] (Auth: HRS §171-6)

Historical note: §13-221-36 is based substantially on §13-221-48. [Eff 2/6/88; R ]

§§13-221-37 to 13-221-44 (Reserved)

### SUBCHAPTER 3

#### COMMERCIAL [AND PRIVATE OPERATIONS] ACTIVITIES

§13-221-45 Advertisements. No person shall display, post, or distribute notices or advertisements except with the prior written permission of the board or its authorized representative. Permission may be granted only if the notice or the advertisement relates to services, goods, or facilities, available within the premises and the notices and advertisements are found by the board or its authorized representative to be desirable and necessary for the convenience and guidance of the public. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-46 Business operations. No person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the board or its authorized representative. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-47 Commercial photography. Before any motion picture may be filmed or any television production or sound tract be made, which involves the use of professional casts, settings, or crews, by any person other than bonafide newsreel or television news personnel, a person shall obtain a written permit from the board or its authorized representative. [Eff 2/6/88; comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

[§13-221-48 Memorialization. No person shall install any monument, memorial, tablet, or other commemorative installation in areas within the premises without written permission of the board or its authorized representative.] [Eff 2/6/88; R ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-49 Commercial activities. No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative. [Eff and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

Historical note: §13-221-49 is based substantially on §13-221-35. [Eff 12/9/02; R ]

§13-221-50 Commercial activity permits. (a) Commercial activity within the premises is subject to the following hierarchy of priorities:

- (1) Protection and stewardship of natural and cultural resources is the highest priority;
- (2) Access for non-commercial general public activity in a manner that does not damage these resources is the second priority; and
- (3) Access for commercial activity in a manner that does not damage these resources or compromise the general public's activity is the third priority.

(b) Notwithstanding this subchapter, holders of film permits issued by the hawaii film office pursuant

to section 201-14, HRS, shall not be required to obtain a commercial activity permit.

(c) Notwithstanding this subchapter, individuals or entities requesting the right to enter onto the premises for the purposes of scientific, engineering or archaeological studies, surveys or testing or for the purposes of land maintenance or construction on State or abutting lands shall not be required to obtain a commercial activity permit but shall be required to obtain a permit pursuant to section 171-55, HRS.

(d) Commercial activity permits do not grant any right or interest to occupy or possess the premises or the right to exclude others from the premises. Individuals or entities desiring exclusive use of the premises shall be required to obtain a permit pursuant to section 171-55, HRS. [Eff and comp ]  
(Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-51 Commercial activity permit applications. (a) Requests for commercial activity permits shall be made on application forms established by the department.

(b) Permit application forms shall be available at the district branches of the division during office hours. Completed applications shall be filed at the district branches. Applicants desiring multiple sites shall file one application for each site.

(c) Applications shall include specific site location information designated by tax map key number (or a specific area fronting a tax map key) and the name of the area where the commercial activity will take place and such other description as may be necessary to identify the location, including but not limited to, a map.

(d) Applicants shall submit a completed application form at least three weeks but not more than two months prior to the requested date of activity.

(e) Permits shall be issued on a first-come first-served basis; provided that for the purpose of promoting competition or diversity of activities or when otherwise in the best interests of the State, the department may limit the size, intensity, or frequency



of the activity to less than that requested by the applicant;

(f) At the discretion of the department, multiple commercial activities may be approved under one permit to be held by the sponsor of the activities.

(g) Any application submitted to the department pursuant to this chapter shall be reviewed for completeness by the department in a timely manner. If the application is found to be incomplete, the applicant shall be notified in writing stating the reasons for the determination of incompleteness.

(h) If, after seven calendar days from the department's acceptance of a completed application, the department fails to render a decision on an application, the commercial activity permit application shall be deemed granted by the department.

(i) The seven calendar day time period shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance. [Eff and comp ] (Auth: HRS §171-6) (Imp: §§171-6, 91-13.5)

§13-221-52 Commercial activity permit criteria.

(a) A commercial activity permit may be granted for commercial activities consistent with the hierarchy of priorities as provided in section 13-221-50 provided such activities are otherwise consistent with purposes of the department.

(b) Applicants, at a minimum, shall meet the following criteria to qualify for a permit:

- (1) Be a duly organized business in good standing in the state or an individual over the age of eighteen;
- (2) Hold a current Hawaii State General Excise Tax license;
- (3) Hold a current Hawaii State tax clearance certificate; and
- (4) If relevant to the commercial activity as determined by the department, utilize staff currently certified by the American Red Cross or American Heart Association in Cardio-Pulmonary Resuscitation techniques, American

Red Cross Water Safety Training and Standard First Aid or other nationally recognized certification agency and any other certifications all as may be determined and required by the department.

(c) Commercial activity permit applications may be denied when the department determines that:

- (1) The proposed activity would be detrimental to the integrity and condition of the surrounding area;
- (2) The proposed activity would be detrimental to the safety of the users of the public lands;
- (3) The size or intensity of the activity would exceed limits of acceptability given access, site or facilities;
- (4) The size or intensity of the proposed activity would diminish the availability of the public lands for use by the general public to an unacceptable level;
- (5) The requested area is already subject to an issued permit(s) and issuing additional permits in the area would compromise the natural or cultural resources, the access to or availability of public lands or the enjoyment or safety of the general public;
- (6) The proposed activity will have a significant negative impact on neighbors;
- (7) Legitimate and verified complaints have been received regarding overuse and impairment of the condition or public enjoyment of the public lands requested;
- (8) The public lands requested will be in use by a government agency;
- (9) The applicant, its principals, subsidiaries, or affiliates has a prior record of noncompliance with permit conditions or violations of this chapter or other laws and rules administered by the board;
- (10) An emergency has been declared by an authorized representative or other proper authority;
- (11) Natural or civil disturbances occur or threaten to occur, including, but not limited

- to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes;
- (12) The requested time or duration for the permit would exceed the limits as may be established for this activity;
  - (13) The proposed commercial activity is not allowed on the premises under any laws or the terms of an agreement with a private person or another government agency concerning the use of the premises, access, or portion thereof;
  - (14) The chairperson determines that the activity or event is not in the best interest of the resource or the public, or
  - (15) Any other basis for denial exists that is provided for in these rules.

(d) The department shall issue a denial of an application in writing setting forth the reason for the denial. The applicant may appeal the denial in writing to the chairperson within fifteen calendar days from receipt of the denial. The chairperson's decision shall be final. [Eff and comp ] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-53 General commercial activity permit provisions. All commercial activity permits shall be subject to the following provisions:

- (1) Permits shall not be transferable or assignable, unless explicitly authorized in writing on the face of the permit;
- (2) Permits shall be site and use specific.
- (3) Persons or organizations to whom permits are issued are bound by the permit conditions stipulated on or attached to the permit;
- (4) The term of the permit shall be no longer than one year; provided that the department may limit the requested permit term at its discretion for the purpose of promoting competition or diversity of activities or when otherwise in the best interests of the State;
- (5) Permittee shall comply with all applicable laws, rules, and regulations of the federal,

state, municipal and county governments. Issuance of a permit is not a grant of any other approvals that may be required of the permittee or for the permitted activity, nor does a permit exempt the permittee or the permitted activity from any applicable laws, rules, ordinances and regulations of any federal, state, municipal, or county governments.

- (6) Permittee shall at all times have comprehensive general liability insurance in minimum amounts that may be set by the board from time to time, listing the state as an additional insured;
- (7) Permittee shall indemnify the state and hold the state harmless from and against any and all liability arising out of the permittee's use of the public land;
- (8) Permittee shall have the permit at the site and produce it upon request;
- (9) Depending upon the type and intensity of the commercial activity, a refundable security deposit that may be set by the board from time to time shall be required. The security deposit shall be refunded if the area used by the permittee has been cleaned and restored to an acceptable condition upon expiration of the permit or if the permit is canceled prior to use. The department may retain the security deposit for cleaning and site restoration purposes. Retention of the security deposit shall not preclude the department from pursuing other legal remedies to address cleaning and site restoration if required.
- (10) The use of the premises shall not be in support of any policy that discriminates against anyone based upon race, creed, color, sex, national origin, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus);
- (11) Permittee shall not cause or permit the escape, disposal or release of any hazardous

materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or the highest standards prevailing in the industry for storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of permittee's business, and then only after written notice is given to the state of the identity of such materials and upon the state's consent, which may be withheld at the state's sole discretion. "Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous materials, hazardous substance, or oil as defined in or pursuant to the Resource Conservation Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state or local environmental law, regulation, ordinance, rule or by-law, whether existing as of the effective date these rules, previously enforced, or subsequently enacted;

- (12) Any other restrictions or conditions may be imposed by the department to protect the integrity, condition, and safety of, or access for the general public to the premises or to further the purposes of the department; provided restrictions and conditions may include, but are not limited to, the size of the area available for the activity, location of the activity, the type of activity, seasonal and weather restrictions, intensity of the activity or the requirement to hire licensed security services deemed necessary by the department for safety and welfare;
- (13) This permit does not grant exclusive use of an area by the permittee or its guests or customers. Permittee shall not displace the public or block off, rope off or otherwise restrict public use of or access to the

- premises. Public access shall not be obstructed or interfered with in any way.
- (14) The issuance of a permit shall not constitute a vested property interest, but is a privilege granted for the use of the premises for a specified activity and time period.
- (15) Failure to use the permit at the designated time and place, not due to an act of interference by the department, shall not result in a refund or credit against paid fees.
- (16) Permits are not automatically renewable. Granting of a permit does not entitle the permit holder to re-issuance of the permit.
- (17) Permittee shall be responsible for the cleanup and hauling away, and any costs associated therewith, of any trash resulting from the permittee's activity. [Eff and comp  
] (Auth: HRS §171-6) (Imp: §171-6)

§13-221-54 Commercial activity permit fees. (a) Applicants for a commercial activity permit may be charged an application fee at the time of filing the application to defray the cost of processing, issuing, and administering commercial activity permits. A schedule of fees shall be set from time to time by the department. The application fee shall be paid when the application is filed.

(b) All payments of fees and charges shall be in cash, cashiers check, certified check, postal money order, bank money order or other methods approved by the department. [Eff and comp  
] (Auth: HRS §171-6) (Imp: HRS §171-6)

§13-221-55 Commercial activity permit cancellation, revocation, or termination. (a) The department may cancel this permit on thirty calendar days written notice.

(b) The department may cancel, revoke, or terminate a permit without notice and hearing when:

- (1) An emergency is declared by the department or other proper authority;
- (2) A permittee violates permit conditions or provisions of this chapter;
- (3) The permitted activity damages or threatens damage to the integrity or condition of the premises or the surrounding environment;
- (4) Non-use of the permit; or
- (5) The permitted activity poses a threat to the health, safety or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the premises or surrounding lands.

(c) Except for good cause shown, as determined by the chairperson, no refund will be given of any amounts paid when a permit is canceled, revoked, terminated or voluntarily surrendered." [Eff and comp

] (Auth: HRS §171-6) (Imp: HRS §171-6)

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

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-221, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on     (date)    , 2003, and filed with the Office of the Lieutenant Governor.

---

PETER T. YOUNG  
Chairperson of Board of Land  
and Natural Resources

APPROVED FOR PUBLIC HEARING

---

Deputy Attorney General