

UNIVERSITY OF HAWAII

Repeal of Chapter 20-1 and
Adoption of Chapter 20-1.1
Hawaii Administrative Rules

(November 16, 2017)

SUMMARY

1. Chapter 20-1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.

2. Chapter 20-1.1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 1

UNIVERSITY OF HAWAII

BOARD OF REGENTS

CHAPTER 1

RULES OF PRACTICE AND PROCEDURE

REPEALED

§§20-1-1 to 20-1-23 Repealed. [R MAR 18 2018]

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 1

UNIVERSITY OF HAWAII

BOARD OF REGENTS

CHAPTER 1.1

RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Rules of General Applicability

- §20-1.1-1 Statement of policy
- §20-1.1-2 Definitions
- §20-1.1-3 The board; office; president; secretary
- §20-1.1-4 Office hours
- §20-1.1-5 Meetings
- §20-1.1-6 Government records, inspection, cost of
copies
- §20-1.1-7 Severability

Subchapter 2 Proceedings Before the Board

- §20-1.1-8 Meetings, generally
- §20-1.1-9 Appearances before the board
- §20-1.1-10 Presiding officer; duties and powers

§20-1.1-11 Filing of documents
§20-1.1-12 Computation of time
§20-1.1-13 Voting
§20-1.1-14 Counsel for the board

Subchapter 3 Rules Applicable to Rulemaking
Hearings

§20-1.1-15 Rulemaking hearings, generally
§20-1.1-16 Initiation of rulemaking hearing
§20-1.1-17 Contents of petition
§20-1.1-18 Disposition of petition
§20-1.1-19 Conduct of rulemaking hearing
§20-1.1-20 Board action
§20-1.1-21 Compilation of rules

Subchapter 4 Declaratory Rulings

§20-1.1-22 Petition for declaratory rulings
§20-1.1-23 Form and contents of petition
§20-1.1-24 Request for hearing
§20-1.1-25 Board action on petition
§20-1.1-26 Declaratory ruling on board's own
motion or upon request

§20-1.1-2

Historical Note: This chapter is based substantially upon chapter 20-1 [Eff 6/22/81; comp 8/13/88; am 8/3/92; R **MAR 10 2010**]

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§20-1.1-1 **Statement of policy.** This chapter shall govern the practice and procedure before the board of regents of the University of Hawaii. It is the intention that this chapter shall, in part, effectuate and carry out the purposes and policies of chapters 91 and 92, HRS, and shall be construed and interpreted in the manner most favorable to secure the just, speedy, and inexpensive determination of every proceeding authorized by law. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-103, 304A-104, 304A-105)

§20-1.1-2 **Definitions.** (a) As used in this chapter, unless the context specifically requires otherwise:

"Board" means the board of regents of the University of Hawaii.

"Committee" means all committees of the board.

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

"Petitioner" refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the board may give under statutory or other authority delegated to it.

"President" means the president of the University of Hawaii.

"Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the board. The term does not include matters concerning only the operation and management of internal affairs of the university not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, nor to intra-agency memoranda.

"Rulemaking hearings" means all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS.

"Secretary" means the executive administrator and secretary of the board.

"Standing committees" means the board's standing committees, as established in the board's bylaws, as amended.

"University" means the University of Hawaii system and its campuses and facilities falling under the jurisdiction of the board.

(b) Unless otherwise specifically stated, the terms used in rules adopted by the board pursuant to powers granted by statute shall have the meaning defined by that statute.

(c) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine and neuter gender. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-103, 304A-105)

§20-1.1-3 **The board; office; president; secretary.** (a) The office of the board is in the

§20-1.1-5

office of the secretary of the board, situated in Honolulu, Hawaii. All communications to the board shall be addressed to the "Board of Regents, University of Hawaii, State of Hawaii, 2444 Dole Street, Bachman 209, Honolulu, Hawaii 96822", unless otherwise specifically directed.

(b) The president, as executive officer of the board, shall carry out the policies adopted by the board.

(c) The secretary shall keep minutes of all meetings of the board, including standing and other committee meetings, prepare the agenda for these meetings, keep and maintain official records of the board and shall undertake any duties and responsibilities properly assigned to the secretary by the board through the chairperson. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-4 **Office hours.** The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except holidays and unless otherwise provided by statute or executive order. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-5 **Meetings.** (a) The board shall hold meetings not less frequently than as required by law and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The board may meet in executive sessions, from which the public may be excluded as provided by chapter 92, HRS.

(b) A majority of the members to which the board is entitled shall constitute a quorum at any board meeting. A majority of the members of a committee of

the board shall constitute a quorum at any committee meeting.

(c) The current (or most recent) edition of *Robert's Rules of Order* shall guide the conduct of the board and its standing committee meetings except where in conflict with this chapter. No action of the board or its standing committees shall be invalid or ineffective by reason of noncompliance with *Robert's Rules of Order*. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-6 Government records; inspection; cost of copies. (a) The term "government records" as used in this part is defined as in section 92F-3, HRS.

(b) All government records of the board shall be available for inspection and duplication during established office hours, subject to the limitations prescribed in chapter 92F, HRS.

(c) Copies of government records of the board, except as limited by chapter 92F, HRS, shall be available to any person who requests them. The costs and fees therefor are governed by section 92-21, HRS.

(d) Requests for information within the jurisdiction of the university, for permission to inspect government records, or for copies of government records will be handled with due regard for the dispatch of other public duties, subject to chapter 92F, HRS. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 92F-11, 92F-12, 304A-104, 304A-105) (Imp: HRS §§91-2, 92-21, 92F-11, 92F-12, 304A-104, 304A-105)

§20-1.1-7 Severability. If any provision of this chapter, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the

§20-1.1-9

provisions of this chapter are severable. [Eff
] (Auth: HRS §§91-2, 304A-104, 304A-105) MAR 18 2018
105) (Imp: HRS §§91-2, 304A-104, 304A-105)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§20-1.1-8 **Meetings, generally.** (a) The
meetings of the board and its standing committees
shall comply with chapter 92, HRS. [Eff
] (Auth: HRS §§91-2, 304A-104, 304A-105) MAR 18 2018
105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-9 **Appearances before the board.** (a)
Any person shall be afforded an opportunity to present
oral testimony or written submittals on any agenda
item at the meetings of the board or its standing or
other committees.

(b) In order to ensure an orderly and efficient
meeting, any person who wants to appear before the
board or its standing or other committees to present
testimony is requested to notify the secretary of the
board at least twenty-four hours prior to the meeting
of the board or its standing or other committee and,
if possible, submit a written copy of the testimony to
the secretary prior to the meeting.

(c) A person may be represented before the board
by or with counsel qualified to practice before the
supreme court of Hawaii, or other duly qualified
representative. The board may at any time require any
person appearing before the board in a representative
capacity to show the person's authority and
qualification to act in such capacity. [Eff
] (Auth: HRS §§91-2, 92-3, 304A-104, 304A-105) MAR 18 2018

304A-105) (Imp: HRS §§91-2, 92-3, 304A-104, 304A-105)

§20-1.1-10 Presiding officer; duties and powers.

(a) The board or the presiding officer of a meeting shall have the authority to:

- (1) Limit or terminate any testimony which the board or the presiding officer determines to be repetitious or made solely for purposes of delay;
- (2) Rearrange the order of the items on the agenda for the purpose of providing for the most efficient and convenient presentation of testimony;
- (3) Limit the amount of time for testimony per individual in order to allow persons to have an equal amount of time to testify, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (4) Remove any person who wilfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting.

This section shall not limit, however, the powers of the board or the presiding officer under section 20-1.1-5(c).

(b) Unless it would be contrary to statutory requirements to do so, any section in this chapter may be suspended or waived by the board or by the presiding officer to prevent undue hardship in any particular instance. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 92-3, 304A-104, 304A-105) (Imp: HRS §§91-2, 92-3, 304A-104, 304A-105)

§20-1.1-11 Filing of documents. (a) All documents required to be filed with the board shall be filed with the secretary. The documents may be sent

by mail, e-mail, facsimile, or hand-delivered to the board's office in Honolulu, Hawaii, within the time limit, if any, for the filing. The date on which the documents are actually received by the board via mail or hand-delivery, as evidenced by the date and time stamp affixed to the document by the board office, shall be deemed to be the date of filing. If by facsimile or email, a printout of the electronic time-stamped document shall be conclusive evidence of the electronic date of receipt.

(b) Documents required to be filed with the board shall be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of the person's knowledge, information, and belief every statement contained in the instrument is true and no statements are misleading; and that the document is not interposed for delay.

(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed.

(d) If any document filed does not conform with the applicable rules of the board as to the contents thereof, or is otherwise insufficient, the board, on its own motion, or on motion of any interested person, may strike or dismiss the document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

(e) All documents filed with or presented to the board may be retained in the files of the board. However, the board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff

] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

MAR 18 2018

§20-1.1-12 **Computation of time.** In computing any period of time prescribed by this chapter or order of the board, the provisions of section 1-29, HRS, shall apply. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-13 **Voting.** (a) The concurrence of a majority of all the members to which the board or its standing committees are entitled shall be required to make valid any action of the board or standing committee, respectively; provided that:

- (1) Two-thirds vote of all members to which the board or a standing committee is entitled shall be required to change the agenda of the meeting after public notice of the agenda has been given as required by law, provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons;
- (2) Two-thirds vote of all members to which the board is entitled shall be required to amend the board's bylaws;
- (3) An affirmative vote of two-thirds of the members present shall be required to hold an executive meeting closed to the public; provided that the affirmative vote constitutes a majority of the members to which the board is entitled; and
- (4) A majority vote of the members present may pass a procedural motion.

(b) Dissenting votes and abstentions shall be recorded in the minutes. An abstention shall not be considered a positive or negative vote. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 92-4, 92-7, 92-9, 304A-104, 304A-105)

§20-1.1-17

§20-1.1-14 **Counsel for the board.** The university general counsel shall be designated as legal counsel for the board. The university general counsel or the university general counsel's representative, in the capacity as legal counsel for the board, may be present at all meetings and hearings governed by this chapter. [Eff **MAR 18 2018**]
(Auth: HRS §§91-2, 304A-104, 304A-105, 304A-1005)
(Imp: HRS §§91-2, 304A-104, 304A-105, 304A-1005)

SUBCHAPTER 3

RULES APPLICABLE TO RULEMAKING HEARINGS

§20-1.1-15 **Rulemaking hearings, generally.** The board's rulemaking hearings shall comply with the applicable provisions of chapters 91 and 92, HRS. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 304A-104, 304A-105)

§20-1.1-16 **Initiation of rulemaking hearing.**
(a) The board may at any time initiate proceedings to adopt, amend, or repeal any rule of the university.
(b) Any interested person, organization, or agency may petition the board for the adoption, amendment, or repeal of any rule of the university, as defined in this chapter. [Eff **MAR 18 2018**]
(Auth: HRS §§91-2, 91-6, 304A-104, 305A-105) (Imp: HRS §§91-2, 91-3, 91-6, 304A-104, 304A-105)

§20-1.1-17 **Contents of petition.** Petitions for rulemaking shall conform to the requirements of section 20-1.1-11. Each petition for rulemaking shall:

- (1) Set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired;
- (2) State concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the adoption, amendment, or repeal of the rule; and
- (3) Include any facts, views, arguments, and data deemed relevant by petitioner.

The board may also require the petitioner to serve other persons, organizations, or agencies known to be interested in the proposed rulemaking. No request for the adoption, amendment, or repeal of a rule which does not conform to the requirements in this section will be considered by the board. [Eff **MAR 18 2018**
] (Auth: HRS §§91-2, 91-6, 304A-104, 305A-105) (Imp: HRS §§91-2, 91-3, 91-6, 304A-104, 304A-105)

§20-1.1-18 **Disposition of petition.** The board shall, within thirty days following the filing of a petition, either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceeding will be held directly on any petition, but if the board determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in section 91-3, HRS, and this subchapter. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition does not concern a rule, the board shall deny the petition and the petitioner will be so notified together with the grounds for the denial. This section shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff **MAR 18 2018**] (Auth: HRS §§91-2,

§20-1.1-19

91-6, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-3,
91-6, 304A-104, 304A-105)

§20-1.1-19 **Conduct of rulemaking hearing.** (a) Public hearing. Unless otherwise specifically directed by the board, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed adoption, amendment or repeal of a rule. However, the board may hold such hearings on a neighbor island if a written request for such a hearing is received by the board within the time specified in the public notice.

When a matter affects only a county other than the city and county of Honolulu, then the hearing shall be held in that county.

(b) Presiding officer. Unless otherwise specifically directed by the board, each rulemaking hearing shall be presided over by the chairperson of the board or by the chairperson's designated representative. The presiding officer shall have authority to take all actions necessary for the orderly conduct of the hearing.

(c) Continuance of rulemaking hearing. Each hearing shall be held at the date, time, and place set in the notice of hearing, but, thereafter, may 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 at the time the hearing is continued.

(d) Order of hearing. 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. Evidence shall then be received with respect to the matters specified in the notice of hearing in the order prescribed by the presiding officer.

(e) Conduct of hearing. All interested persons, organizations, or agencies shall be given reasonable opportunity to offer testimony which may consist of data, views, or arguments with respect to the matters

specified in the notice of hearing. Every witness shall, before proceeding to testify, state the witness' name, address, and whom the witness represents, if any, at the hearing, and shall give other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by the presiding officer or any other representative of the board, but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.

(f) Submission of evidence. All interested persons, organizations, or agencies may also file with the board within the time period specified in the notice of proposed rulemaking a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Unless the presiding officer finds that the furnishing of copies is impracticable, written protests, comments, or recommendations or replies thereto will not be accepted unless an original and fourteen copies are filed. The period of filing may be extended by the presiding officer for good cause.

(g) Transcript of the testimony. Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements and 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, an original and fourteen copies of the supporting written statements and data shall be submitted. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-3, 304A-104, 304A-105)

§20-1.1-22

§20-1.1-20 **Board action.** At the close of the final public hearing, the board, if present at the hearing, may make its decision or the presiding officer shall announce the date when the board's decision shall be made. The board shall consider all relevant comments and materials of record before taking final action in a rulemaking proceeding. [Eff MAR 18 2018] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-3, 304A-104, 304A-105)

§20-1.1-21 **Compilation of rules.** The board shall keep a compilation of all rules adopted by the board which are in effect. The compilation shall be supplemented, revised, and made available to the public as provided by this chapter and chapters 91 and 92, HRS. [Eff MAR 18 2018] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-4, 91-5, 304A-104, 304A-105)

SUBCHAPTER 4

DECLARATORY RULINGS

§20-1.1-22 **Petition for declaratory rulings.** Any interested person may petition the board for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the board. [Eff MAR 18 2018] (Auth: HRS §§91-2, 91-8, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-7, 91-8, 304A-104, 304A-105)

§20-1.1-23 **Form and contents of petition.** (a)
Petitions for the issuance of a declaratory order shall:

- (1) State clearly and concisely the controversy or uncertainty;
- (2) Cite the statutory authority involved;
- (3) Include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest; and
- (4) Conform to the requirements of section 20-1.1-11.

(b) The board, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner. [Eff **MAR 18 2018**
] (Auth: HRS §§91-2, 91-8, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-7, 91-8, 304A-104, 304A-105)

§20-1.1-24 **Request for hearing.** Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the board may at its discretion order such proceeding set for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling shall set forth in detail in a request together with supporting affidavits or other written evidence the reasons why the matters alleged in the petition will not permit the fair and expeditious disposition of the petition. In addition, to the extent that the request for hearing is dependent upon factual assertions, the petitioner shall accompany the request with an affidavit establishing the facts. If a hearing is ordered by the board, sections 91-9 through 91-13, HRS, shall govern the proceedings. [Eff **MAR 18 2018**
] (Auth: HRS §§91-2, 91-8, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-7, 91-8, 304A-104, 304A-105)

§20-1.1-26

§20-1.1-25 **Board action on petition.** (a) Dismissal. The board may, without notice of hearing, dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this subchapter.

(b) Ruling. Upon determination of the applicability or nonapplicability of the statutory provision or rule or order cited in the petition to the factual circumstances presented in the petition, the board shall issue a declaratory order in response to the petition.


(c) The petitioner shall be notified in writing of the disposition of the petition. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 91-8, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-7, 91-8, 304A-104, 304A-105)

§20-1.1-26 **Declaratory ruling on board's own motion or upon request.** Notwithstanding the other provisions of this subchapter, the board may, on its own motion or upon request, but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. [Eff **MAR 18 2018**] (Auth: HRS §§91-2, 304A-104, 304A-105) (Imp: HRS §§91-2, 91-7, 91-8, 304A-104, 304A-105)

UNIVERSITY OF HAWAII


The repeal of chapter 20-1 and the adoption of chapter 20-1.1, Hawaii Administrative Rules, on the Summary Page dated November 16, 2017, were adopted on November 16, 2017, following a public hearing held on October 19, 2017, after public notice was given in the Honolulu Star-Advertiser on September 18, 2017.

The repeal of chapter 20-1 and the adoption of chapter 20-1.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.



JAN NAOE SULLIVAN
Chairperson, Board of Regents
University of Hawaii

APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Dated: 03-08-2018

Filed

1.1-18

'18 MAR -9 A 7:44

LIEUTENANT GOVERNOR'S OFFICE

3263

APPROVED AS TO FORM:

University of Hawaii



Carrie K. S. Okinaga, Esq.
Vice President for Legal Affairs and
University General Counsel

Department of the Attorney General



Diane Erickson
Deputy Attorney General