DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-216
Hawaii Administrative Rules

NOV 25 2013

SUMMARY

1. §11-216-1, §11-216-2, and §11-216-3 are amended.

2. A new §11-216-4.1 is added.

3. §11-216-4.5, §11-216-5, and §11-216-6 are amended.

4. A new §11-216-7.1 and §11-216-7.2 are added.

5. §11-216-9 and §11-216-15 are amended.

6. A new §11-216-15.5 is added.

7. §11-216-17, §11-216-18, and §11-216-19 are amended.

8. Subchapter 3 and subchapter 4 are repealed.

9. A new subchapter 5, subchapter 6, subchapter 7, and subchapter 8 are added.

10. Chapter 216 is compiled.



3083

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 216

# DISABILITY AND COMMUNICATION ACCESS BOARD RULES OF PRACTICE AND PROCEDURES

## Subchapter 1 General Provisions


| | |
|---|---|
| §11-216-1 | Purpose and scope |
| §11-216-2 | Definitions |
| §11-216-3 | Disability and communication access board |
| §11-216-4 | Requirements for accessibility to public buildings, facilities, and sites – general |
| §11-216-4.1 | Governing standards |
| §11-216-4.5 | Requirements for accessibility to multifamily dwelling units required by the Fair Housing Amendments Act |
| §11-216-5 | Requirements for accessibility to public buildings, facilities, and sites - new construction |
| §11-216-6 | Requirements for accessibility to public buildings, facilities, and sites – additions and alterations |
| §11-216-7 | Coordination with other agencies |
| §11-216-7.1 | Obtaining necessary information |
| §11-216-7.2 | Public notices |
| §11-216-8 | Public information |
| §11-216-9 | Severability |
| §§11-216-10 to 11-216-14 | (Reserved) |


## Subchapter 2 Procedures for Review of Documents


| | |
|---|---|
| §11-216-15 | Filing of documents |
| §11-216-15.5 | Review fees |
| §11-216-16 | Review of documents |




3083

§11-216-17 Requests for approval of site specific alternate design
§11-216-18 Requests for interpretive opinion
§11-216-19 Written report
§11-216-20 Retention of documents by board
§§11-216-21 to 11-216-28 (Reserved)

Subchapter 3 Repealed

§11-216-29 Repealed
§11-216-30 Repealed
§11-216-31 Repealed
§§11-216-32 to 11-216-39 (Reserved)

Subchapter 4 Repealed

§11-216-40 Repealed
§11-216-41 Repealed

Subchapter 5 Interpretive Opinions

§11-216-42 Scope
§11-216-43 Form of request
§11-216-44 Filing of request
§11-216-45 Computation of time
§11-216-46 Review by facility access unit
§11-216-47 Dismissal of request
§11-216-48 Written notice of request
§11-216-49 Commencement
§11-216-50 Proceeding on request
§11-216-51 Docket
§11-216-52 Appearance before the board
§11-216-53 Consolidations
§11-216-54 Continuances or extension of time
§11-216-55 Decision
§11-216-56 Retention of documents by the board
§11-216-57 Public information
§11-216-58 Interpretive opinion in board's discretion
§§11-216-59 to 11-216-63 (Reserved)

Subchapter 6 Procedure for Site Specific Alternate Design



3083

§11-216-64 Scope
§11-216-65 Filing of documents
§11-216-66 Computation of time
§11-216-67 Consent of request for site specific alternate design
§11-216-68 Notice
§11-216-69 Commencement
§11-216-70 Docket
§11-216-71 Appearance before the board
§11-216-72 Substitution of parties
§11-216-73 Consolidations
§11-216-74 Intervention
§11-216-75 Amendment of documents and dismissal
§11-216-76 Continuances or extension of time
§11-216-77 Decision
§11-216-78 Retention of documents by the board
§11-216-79 Public information
§§11-216-80 to 11-216-84 (Reserved)

Subchapter 7 Procedure to Establish Guidelines for Design Specifications

§11-216-85 Notice of proposed guidelines for design specifications
§11-216-86 Further notice of proceeding
§11-216-87 Presiding officer
§11-216-88 Appearance before the board
§11-216-89 Submission of testimony
§11-216-90 Oral and written presentation at such proceeding
§11-216-91 Transcript of testimony
§11-216-92 Continuance of proceedings
§11-216-93 Emergency design specifications
§§11-216-94 to 11-216-98 (Reserved)

Subchapter 8 Petitions for Adoption, Amendment or Repeal of Design Specifications

§11-216-99 Scope
§11-216-100 Form of petition
§11-216-101 Filing of petition
§11-216-102 Computation of time
§11-216-103 Review by facility access unit



3083

§11-216-104 Dismissal of petition
§11-216-105 Written notice of petition
§11-216-106 Commencement
§11-216-107 Docket
§11-216-108 Appearance before the board
§11-216-109 Substitution of parties
§11-216-110 Consolidations
§11-216-111 Intervention
§11-216-112 Amendment of documents and dismissal
§11-216-113 Continuances or extension of time
§11-216-114 Decision
§11-216-115 Retention of documents by the board
§11-216-116 Public information

## SUBCHAPTER 1

## GENERAL PROVISIONS

§11-216-1 Purpose and scope. The purpose of this chapter is to establish rules of practice and procedures which shall govern procedures for the disability and communication access board in reviewing construction documents in accordance with section 103-50, HRS. These rules shall be construed to secure the just and speedy determination of every proceeding authorized by law. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-2 Definitions. As used in this chapter, unless the context requires otherwise:

"Accessible" means a site, building, facility, or portion thereof that complies with the accessibility guidelines;

"Accessible route" means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at



3083

fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts;

"ADAAG" means the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, as amended;

"Addition" means an expansion, extension, or increase in the gross floor area or height of a building or facility;

"Alteration" means a change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility;

"Applicant" means the person, agency, or officer for whom the interpretive opinion and site specific alternate design proceeding is instituted.

"Barrier removal" means the removal, rearrangement, restructuring, alteration, or addition, of any element or space of a building or facility to make it usable by persons with disabilities;

"Building" means any structure used and intended for supporting or sheltering any use or occupancy;

"Board" means the disability and communication access board;

"Circulation path" means an exterior or interior way of passage provided for pedestrian travel, including, but not limited to, walks, hallways, courtyards, elevators, platform lifts, ramps, stairways, and landings;

"Construction" means all the on-site and off-site work done to build, add, alter, or maintain structures, from land clearance through completion, including excavation, erection, utilities, streets,



3083

walkways, and the assembly and installation of components and equipment;

"Construction document" means plan, specifications, addenda, modifications or changes, and other documents for the construction of a building or facility including preliminary, prefinal, and final versions of these documents;

"Covered multifamily dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings;

"Document review" means a review of the construction documents to verify compliance with the accessibility guidelines and issuance of a written report listing items that do not conform to the accessibility guidelines;

"Element" means an architectural or mechanical component of a building, facility, space, or site;

"Facility" means all or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site;

"Facility access unit" means staff of the disability and communication access board.

"Fair Housing Amendments Act Accessibility Guidelines" means federal design guidelines used to implement the accessibility requirements of the Fair Housing Act of 1988, Title 24 Code of Federal Regulations Part 100, Subpart D;

"Interpretive opinion" means a determination as to the applicability or non-applicability with respect to a factual situation of any guideline of the disability and communication access board or of a statute which the disability and communication access board is required to administer or enforce, as determined by the disability and communication access board pursuant to section 103-50, HRS;

"Maximum extent feasible" means the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility guidelines through a planned alteration.



3083 L

In these circumstances, the alteration shall provide the maximum physical accessibility feasible;

"Party" means each person admitted as a participant, or properly seeking and entitled to be admitted as a participant in any committee proceeding;

"Person" means an individual, a private or public organization of any character, a trust or estate, a society or firm, an assembly, a partnership, a corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a State agency or any instrumentality of a county;

"Petitioner" means a party making or on whose behalf a petition or application is made for an interpretive opinion, site specific alternate design review, or design specification proceeding.

"Presiding Officer" means the person conducting an interpretive opinion, site specific alternate design review, or guideline proceeding who may be the chairperson of the board or the chairperson's representative.

"Primary function" means a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, e.g., in highway rest stops. For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function;

"Public buildings, facilities, and sites" means buildings, facilities, sites, and the infrastructure thereof that:

(1) Are designed, constructed, purchased, or leased with the use of any federal, state, or county funds;
(2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
(3) Are constructed on state or county lands or lands that will be transferred to the state or county;

"Public use" means interior or exterior rooms, spaces, or elements that are made available to the public. Public use may be provided at a building or facility that is privately or publicly owned;

"Repair and maintenance" means preventative and routine upkeep, and/or preservation or restoration of an existing element, space, building, or facility. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility;

"Resubmittal" means plans, specifications, addenda, modifications or changes, and other documentation submitted as a reply to the original document review;

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way;

"Site specific alternate design" means a relief from specific requirements of section 103-50, HRS, as determined by the disability and communication access board pursuant to section 103-50, HRS, when the site specific alternate design will ensure an alternate design that provides equal or greater access for persons with disabilities;

"Space" means a definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby;

"Structural impracticability" means those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features;



3083

"Technical infeasibility" means with respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements. [Eff 9/5/00; am and comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-3 Disability and communication access board. (a) The office of the board is at Honolulu, Hawaii. All communications applicable to this chapter shall be addressed to the chairperson of the board, Honolulu, Hawaii, unless otherwise specifically directed.

(b) For purposes of this chapter, the regular office hours of the board shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, inclusive, except holidays, unless otherwise provided by statute or executive order.

(c) All documents required to be submitted or filed herein shall be filed with the office of the board at Honolulu, Hawaii, unless specifically directed otherwise and within such time limits as prescribed by these rules or by order of the board. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-4 Requirements for accessibility to public buildings, facilities, and sites - general. (a) The construction of all public buildings, facilities, and sites by the State or county or on behalf of the State or any county subject to this chapter, shall be prepared so the buildings,



3083

facilities, and sites are readily accessible to and usable by persons with disabilities.

(b) Readily accessible to and usable by people with disabilities means compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and the Fair Housing Amendments Act Accessibility Guidelines, as adopted and amended by the disability and communication access board. [Eff 9/5/00; am and comp 9/20/03; comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-4.1 Governing standards. Subject to amendment by the board or site specific alternate design granted by the board, the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, as they existed on July 23, 2004, and the Fair Housing Amendments Act Accessibility Guidelines, Title 24 Code of Federal Regulations Part 100, Subpart D, are hereby adopted as the standards governing all plans and specifications for the construction of public buildings, facilities, and sites by the State or any county, or on behalf of the State or any county, and are made a part of this chapter. The board may also establish guidelines for design specifications not covered in the Americans with Disabilities Act Accessibility Guidelines, or the Fair Housing Amendments Act Accessibility Guidelines. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-4.5 Requirements for accessibility to multifamily dwelling units required by the Fair Housing Amendments Act. (a) These design guidelines apply to the design and construction requirements of Title 24 Code of Federal Regulations Part 100, Subpart D. Compliance with these guidelines do not relieve persons from complying with design requirements of the Americans with Disabilities Act Accessibility



3083

Guidelines (ADAAG) as adopted and amended by the disability and communication access board.

(b) All covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that:

(1) The public and common use areas are readily accessible to and usable by persons with disabilities;

(2) All doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(A) An accessible route into and through the covered dwelling unit;

(B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) Reinforcement in bathroom walls to allow later installation of grab bars around a toilet, tub, shower, and stall and shower seat, where such facilities are provided; and

(D) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. [Eff and comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-5 Requirements for accessibility to public buildings, facilities, and sites - new construction. (a) All areas of newly designed or newly constructed public buildings, facilities, and sites shall comply with this chapter.

(b) Where a public building, facility, or site contains more than one use, each portion shall comply with the applicable requirements for that use.

(c) Full compliance with the requirements of this chapter is not required when an entity can



3083

demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(d) If full compliance with this chapter would be structurally impracticable, compliance with this chapter is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-6 Requirements for accessibility to public buildings, facilities, and sites - additions and alterations. (a) Additions and alterations to existing public buildings, facilities, and sites, including qualified historic public buildings, facilities, and sites, shall comply with this chapter.

(b) Each addition to an existing public building, facility, or site shall comply with the requirements for new construction.

(c) Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements.

(d) In alterations, where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible.

(e) An alteration that decreases or has the effect of decreasing the accessibility of a public building, facility, or site below the requirements for new construction at the time of alteration is prohibited.

(f) An alteration of an existing element, space, or area of a public building, facility, or site shall not impose a requirement for accessibility greater than required for new construction. [Eff 9/5/00; comp



3083

9/20/03; am and comp ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-7 Coordination with other agencies.

(a) All departments or agencies of the state or county shall seek the advice and recommendations from the disability and communication access board on all construction documents to ensure conformance with the accessibility guidelines as required by this chapter.

(b) Each state or county department or agency shall submit the latest construction documents which have been produced to the board for review.

(c) A transmittal of the construction documents shall contain, at a minimum, project name, project number (if assigned), name of project coordinator, project consultant, and department or agency responsible for the project.

(d) When submitting construction documents, the department or agency shall identify the project phase and type. Project phase shall be noted as, but not limited to, preliminary, prefinal, or final. Project type shall be noted as, but not limited to, new construction, alteration, addition, or a barrier removal project. [Eff 9/5/00; comp 9/20/03; comp ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-7.1 Obtaining necessary information.

(a) The board may, in its discretion or upon the application of any interested person or an agency of the state or county government hold such proceedings as it may deem necessary for the purpose of obtaining information necessary or helpful in its rules, regulations, design specifications, and interpretive opinions.

(b) Procedures to be followed by the board shall, unless specifically prescribed in this chapter, be such as in the opinion of the board will best serve the purposes of such proceedings. [Eff and



3083

comp ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-7.2 Public notices. (a) When an applicant for a site specific alternate design or similar action has an application pending before the board, the board may require the applicant to pay all costs related to the processing of said application. Costs may include processing fees, proceeding costs and costs related to publishing the required public notices.

(b) When a public notice is required, and the board had determined that the applicant shall pay all fees assessed for publishing legal notices, payment shall be made directly to the newspaper publishing said notice.

(c) The public notice shall appear in a newspaper of general circulation in the county in which the activity is proposed.

(d) The public notice shall include at least the following:

(1) Name, address and phone number of the agency issuing the public notice;

(2) Name and address of each applicant;

(3) Brief description of the activities or operations at the location of the proposed site specific alternate design;

(4) A brief description of the procedures for the formulation of final determinations, including the specified comment period and other means by which interested persons may comment upon those determinations; and

(5) Address and phone of the agency premises at which interested persons may obtain further information and may inspect a copy of the application and related materials.

(e) The public notice shall be reviewed and approved by the board prior to publication and must appear in the approved form.

(f) The applicant shall obtain an affidavit specifying the date the notice appeared in the



3083

newspaper(s) and make a copy of the affidavit available to the board.

(g) The board shall make information regarding the proposed site specific alternate design, design specification or interpretive opinion available for inspection in the county in which the applicant's activities are being proposed, and may at its discretion circulate information to appropriate state and county officials. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-8 Public information. (a) Unless otherwise provided for by statute, these rules, or order of the board members, all information contained in any submittal, petition, statement, recommendation, report, map, brief memorandum or other document filed with the board shall be available for inspection by the public after a written report has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board in Honolulu during regular office hours. [Eff 9/5/00; comp 9/20/03; comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-9 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is for any reason held to be invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-10 to 11-216-14 (Reserved)

## SUBCHAPTER 2

## PROCEDURES FOR REVIEW OF DOCUMENTS

§11-216-15 Filing of documents. (a) All construction documents submitted to the board for review shall be filed with the appropriate review fee at the board office during regular office hours. Construction documents with the appropriate review fee may be sent by mail or hand-carried to the board in Honolulu, Hawaii.

(b) All construction documents shall be filed with the board unless otherwise directed by the board.

(c) The transmittal or cover letter that accompanies the construction documents submitted for review shall be signed in indelible ink by the project manager having jurisdiction over the project. The signature of the person signing the document indicates that the person has read or reviewed the construction documents; that to the best to his or her knowledge, every statement contained in the documents, and any subsequent documents to be submitted for review are true; and that no such statements are misleading.

(d) Every document filed by any person or office with the board shall state on the transmittal or cover letter the name and mailing address of the department or agency and the name of the person who is requesting a document review from the board.

(e) Construction documents received by the board shall be date-stamped by the board staff. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-15.5 Review fees. (a) The review fee for construction documents filed with the board on or after January 1, 2013 shall be four-tenths of one percent for the first $500,000 of the estimated construction cost plus two-tenths of one percent of the estimated construction costs greater than $500,000 up to and including $2,000,000 plus two one-hundredths



3083

of one percent of the estimated construction costs over $2,000,000 except as follows:

(1) The minimum review fee for construction documents subject to accessibility guidelines under section 103-50, HRS shall be $200;

(2) The disability and communication access board may limit the maximum review fee for construction documents of infrastructure projects or projects managed by private nonprofit entities to $3,000; and

(3) There shall be a $50 review fee for projects with constructions documents that do not reflect any elements subject to accessibility guidelines under section 103-50, HRS.

(b) For purposes of determining the review fee, the estimated construction cost shall be the cost for all work included in the construction documents that is covered under section 103-50, HRS. The Facility Access Unit shall reply in writing confirming receipt of the construction documents and review fee, appropriateness of the review fee, and acceptance of the construction documents for review.

(c) No additional review fee shall be charged upon resubmission of the construction documents, unless the resubmission requires substantial review for accessibility. If the original construction documents are abandoned and the construction documents submitted in lieu thereof are in fact for a new project rather than an identical project, or where a modified set of construction documents is for an essentially different concept, a new review fee shall be paid. This is regardless of the fact that the project may have the same name, be of the same general size, and be situated at the same location as the project for which the original application was made.

(d) If the applicant requests the cancellation or withdrawal of the submission and return of the construction documents and review fee, this shall be granted unless the review fee has been processed by the disability and communication access board. No portion of the review fee can be returned after the



3083

review fee has been processed by the disability and communication access board. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-16 Review of documents. The board staff shall review all construction documents filed with the board for each project subject to section 103-50, HRS, and shall prepare a written report listing items in the construction documents that do not conform to the accessibility guidelines. [Eff 9/5/00; comp 9/20/03; comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-17 Requests for approval of site specific alternate design. (a) If an applicant submits a design that departs from the minimum requirements for accessibility as specified in the accessibility guidelines, the submitted design shall provide equal or greater accessibility. As required by this chapter, an applicant shall submit in writing a request for approval of a site specific alternate design to the board for any design that the applicant claims will provide equal or greater accessibility than that provided by the accessibility guidelines. The board may approve or disapprove the request for a site specific alternate design for any design that departs from the minimum requirements for accessibility and is claimed will provide equal or greater accessibility.

(b) The board staff may provide comments to a site specific alternate design request during public hearings held by board.

(c) Any final decision made by the board concerning a site specific alternate design shall be binding upon all subsequent document reviews. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083

§11-216-18 Requests for interpretive opinion. (a) If, during document review the applicant or board staff finds that a clarification of a portion of the accessibility guidelines is necessary, the applicant or board staff shall submit in writing a request for an interpretive opinion to the board as required by this chapter.

(b) Any final decision made by the board concerning an interpretive opinion shall be binding upon all subsequent document reviews. [Eff 9/5/00; comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-19 Written report. (a) The staff shall forward the document review report with the project's construction documents to the department or agency project manager or design consultant that originated the submittal.

(b) The written report shall list the title and date of the construction plan, specification, or other documents which were analyzed for the report. The written report shall indicate all discrepancies on the construction documents that does not appear to meet the minimum requirements for accessibility.

(c) Resubmittals to the board office for review shall include construction documents that reflect all changes, amendments, and other substantiating evidence in the construction documents that indicate all discrepancies have been addressed. The staff shall prepare an updated written report upon resubmission of construction documents.

(d) Construction documents that show no discrepancies to the accessibility guidelines shall be indicated as such in the written report with a statement indicating that the documents reviewed appear to meet all accessibility requirements as noted. The state or county department or agency overseeing the project shall be responsible for compliance with the document review report.

(e) Construction documents, which indicate that accessibility guidelines do not apply, shall be

returned indicating this in the document review report.

(f) A statement from the department and project consultant shall substantiate document review reports in which technical infeasibility, structural impracticability, or historic preservation may apply. The statement shall indicate why conformance with the requirements for accessibility is technically infeasible, structurally impracticable, or historic. Both the design consultant and the department or agency director or their designees shall sign the substantiating statement.

(g) Written reports shall contain the date of review and the signature of the board staff member who reviewed the construction documents. [Eff 9/5/00; am and comp 9/20/03; am and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-20 Retention of documents by board. (a) All written documentation filed with or presented to the board regarding a specific project shall be retained in the files of the board until the board orders otherwise.

(b) Documentation shall include, but is not limited to, written reports, site survey reports, technical assistance, and other correspondence, and shall, over a period of time, reflect all significant interactions, decisions, opinions, and meetings between the board and all relevant parties concerning a specific project. [Eff 9/5/00; comp 9/20/03; comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-21 to 11-216-28 (Reserved)

SUBCHAPTER 3

Repealed. [R NOV 25 2013 ]



3083

§11-216-29 Repealed. [R NOV 25 2013 ]

§11-216-30 Repealed. [R NOV 25 2013 ]

§11-216-31 Repealed. [R NOV 25 2013 ]

§§11-216-32 to 11-216-39 (Reserved)

SUBCHAPTER 4

Repealed. [R NOV 25 2013 ]

§11-216-40 Repealed. [R 9/20/03]

§11-216-41 Repealed. [R NOV 25 2013 ]

SUBCHAPTER 5

INTERPRETIVE OPINIONS

Historical Note: Subchapter 5 is based substantially upon chapter 11-217, subchapter 5. [Eff 9/5/00; R NOV 25 2013 ]

§11-216-42 Scope. Any interested person may file a request for an interpretive opinion as to the applicability of any provision administered by the board or of any rule, order, or design specification of the board. [Eff and comp ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083

§11-216-43 Form of request. All requests for an interpretive opinion shall be in writing and shall include:

(1) The requester's name, mailing address, and telephone number;
(2) The requester's signature or the signature of the requester's authorized representative or attorney;
(3) A designation of the specific provision, rule, design guideline, or order in question, together with a statement of the controversy or uncertainty involved;
(4) A statement of the requester's interest in the subject matter, including the reason or reasons for submission of the request;
(5) A statement of the requester's position or contention; and
(6) A memorandum of authorities containing a full discussion of reasons and legal authorities in support of the requester's position or contention. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-44 Filing of request. The requester shall file the request for an interpretive opinion to the board's office. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-45 Computation of time. (a) Within sixty calendar days after the request is filed, the board shall:

(1) File a written ruling denying the request and stating the board's reason or reasons for the denial,
(2) Initiate proceedings as provided under this chapter, or
(3) Notify the petitioner of action to extend to allow time for full consideration.



3083

(b) In any event, the board shall send written notification of the board's action to the petitioner. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-46 Review by facility access unit. The facility access unit shall review every petition requesting an interpretive opinion. A petition requesting an interpretive opinion may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-47 Dismissal of request. The board may dismiss any request for an interpretive opinion which fails to comply with the requirement of §11-216-43 of these rules. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-48 Written notice of request. At the board's discretion and upon written notice to the requester, the board may provide written notification of the request for an interpretive opinion to any person or persons for review and recommendations on the request. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-49 Commencement. A proceeding may be commenced by the board in its own discretion or upon the application of any interested person when the processing of such application necessitates such a proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-50 Proceeding on request. At its discretion, the board may hold an informal proceeding or a public proceeding on the request before the board files its written ruling on the request. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-51 Docket. The presiding officer or his or her designee shall maintain a docket of all requested interpretive opinions and each request shall be assigned a number. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-52 Appearance before the board. (a) An individual may appear in their own behalf, and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any proceeding before the board.

(b) A person may be represented by or with counsel in any proceeding under these rules.

(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent the particular person or agency who is represented. The board may at any time require any person acting in a representative capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first have obtained the written consent of the presiding officer



3083

upon a verified showing that the person did not give personal consideration to the matter of proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-53 Consolidations. The presiding officer, in his or her discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous proceeding will be conducive to the proper dispatch of the board's business and to the ends of justice and will not unduly delay the proceedings. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-54 Continuances or extension of time. All interpretive opinion proceedings shall be held at the time and place set in the notice of proceeding; however, the presiding officer may at such time and place continue the proceeding from day to day or adjourn the proceeding to a later day or to a different place without notice other than the announcement thereof at the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-55 Decision. All final orders, opinions, or rulings entered by the board in an interpretive opinion proceeding shall be served upon the parties or persons participating in the proceeding by mailing a copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or to the attorney of record. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-56 Retention of documents by the board. (a) All documents filed with or presented to the board shall be retained in the files of the board until the board orders otherwise

(b) Document retention and disposition standards shall be in accordance with statewide general records retention schedule and board's record retention and disposition schedule. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-57 Public information. (a) Unless otherwise provided by statute, rules, or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum, or other document filed with the board shall be available for inspection by the public after a final decision has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board during regular office hours. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-58 Interpretive opinion in board's discretion. Nothing in this chapter shall operate to prevent the board, in its own discretion, from issuing



3083

an interpretive opinion to terminate a controversy or to remove uncertainty. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-59 to 11-216-63 (Reserved)

## SUBCHAPTER 6

## PROCEDURE FOR SITE SPECIFIC ALTERNATE DESIGN

Historical Note: Subchapter 6 is based substantially upon chapter 11-217, subchapter 2. [Eff 9/5/00; R NOV 25 2013 ]

§11-216-64 Scope. (a) Every petition requesting a site specific alternate design shall be reviewed by the facility access unit. A petition requesting the board to hold a proceeding on a site specific alternate design may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit.

(b) The board may on its own motion or by petition of any interested person, hold a review proceeding on a proposed site specific alternate design.

(c) Procedures to be followed by the board shall, unless specifically prescribed in this chapter, be such as in the opinion of the board will best serve the purposes of such proceedings.

(d) Any procedure in a site specific alternate design review proceeding may be modified or waived by stipulation of the parties and informal disposition may be made of any contested matter by stipulation, agreed settlement, consent order, or default. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-65 Filing of documents. (a) All documents related to a petition for a site specific alternate design shall be filed at the board office during regular work hours. Such papers may be sent by mail, hand-carried to the board, or as set forth in any law, rule or regulation for such filing. The date on which the papers are actually received by the board or at the proceeding shall be deemed to be the date of filing.

(b) All papers filed with the board shall be written in black ink, typewritten, or printed, shall be plainly legible; shall be on strong durable paper, no larger than 8 1/2" x 14" in size, except that tables, maps, charts and other documents may be larger, folded, if possible, to the size of the documents to which they are attached.

(c) All papers must be signed by the party signing the same or the 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 his or her knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(d) The initial document filed by any person in any proceeding shall state on the first page thereof the name and mailing address of the person or persons who the petitioner desires to be served with any documents filed in the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-66 Computation of time. (a) Within sixty calendar days after the site specific alternate design petition is filed, the board shall:

(1) File a written ruling denying the petition and stating the board's reason or reasons for the denial, or

(2) Initiate and complete site specific alternate design review proceedings as



3083

provided under this chapter within one hundred twenty calendar days from the date of the filing of a completed application. In any event, the board shall send written notification of the board's action to the petitioner. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-67 Consent of request for site specific alternate design. (a) A request by an aggrieved person or proper party or by an interested agency, or the State or county governments, requesting a site specific alternate design review shall contain concise statements of:

(1) The legal authority under which the proceeding or action is to be held or made,
(2) The site specific alternate design, disagreement, denial, grievance or such matter which is being contested by the applicant,
(3) The basic facts and issues raised, and
(4) The relief requested.

(b) The board shall prepare instructions for any petition or application, which may be required for any authorized proceedings. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-68 Notice. (a) No review on a request for a site specific alternate design shall be held until notice has been given to all parties. Unless otherwise provided by law, all parties shall be given written notice of the review at least fifteen calendar days before the proceeding.

(b) Unless otherwise provided by law, if service by written notice 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 the review proceeding may be given to the party by



3083

publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen calendar days prior to the date of the scheduled review proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-69 Commencement. A review on a matter may be commenced by the board or upon the application of any interested person when the processing of such application necessitates such a review. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-70 Docket. The presiding officer or his or her representative shall maintain a docket of all requested site specific alternate designs and each request shall be assigned a number. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-71 Appearance before the board. (a) Individuals may appear on their own behalf, or an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any review proceeding before the board.

(b) A person may be represented by or with counsel.

(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent



3083

the particular person or agency who is represented. The board may at any time require any person acting in a representative capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first shall have obtained the written consent of the presiding officer upon a verified letter indicating that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-72 Substitution of parties. Upon request and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-73 Consolidations. The presiding officer, in his or her own discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related. Rulings will be site specific, and no



3083

requests for general waivers may be considered. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-74 Intervention. (a) Any person not a party to the action may seek to become a party by filing a request to intervene. The request shall state the grounds upon which the person claims to have an interest in the proceeding. At least ten calendar days before the proceeding, the person shall file the request with the board and shall serve the request upon all parties or their attorneys.

(b) The presiding officer may permit intervention if he or she determines:

(1) That the person seeking to become a party shows that the party has an interest in a question of law or fact involved in the matter or has a property or financial interest that may not be adequately represented by existing parties; and

(2) That intervention will not unduly broaden the issues or delay the site specific alternate design review process.

(c) The presiding officer may permit intervention to the extent and upon such terms, as the presiding officer may deem proper. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-75 Amendment of documents and dismissal. If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the board as to the contents thereof, or is otherwise insufficient, the board, in its discretion, or upon the request of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing.



3083

[Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-76 Continuances or extension of time. All site specific alternate design review proceedings shall be held at the time and place as set forth in the notice of proceeding. The presiding officer may continue the proceeding from day to day or adjourn to a later date or to a different place without further notice, provided such an announcement thereof is made at the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-77 Decision. All final orders, opinions, or rulings entered by the board in a review proceeding shall be served upon the parties or persons participating in the proceeding by mailing a copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or the attorney of record. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-78 Retention of documents by the board. Document retention shall be in accordance with section 11-216-56. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-79 Public information. (a) Unless otherwise provided for by statute, these rules, or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum or other document filed with the board shall be available for inspection by the public after a final decision has been issued.



3083

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board in Honolulu during regular office hours. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-80 to 11-216-84 (Reserved)

## SUBCHAPTER 7

## PROCEDURE TO ESTABLISH GUIDELINES FOR DESIGN SPECIFICATIONS

Historical Note: Subchapter 7 is based substantially upon chapter 11-217, subchapter 3. [Eff 9/5/00; R NOV 25 2013 ]

§11-216-85 Notice of proposed guidelines for design specifications. (a) When the board proposes to issue, amend, or repeal a guideline for a design specification which is not covered in the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, or the Fair Housing Amendments Act Accessibility Guidelines, Title 24 Code of Federal Regulations Part 100, Subpart D, a notice of proposed action will be published at least once in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action at least twenty calendar days prior to the date of the proceeding. Notice shall be mailed to all persons who make a timely request for advance notice of such proceeding.

(b) A notice of the proposed issuance, amendment, or repeal of a design specification will include:

(1) A statement of the date, time, and place where the proceeding shall be held.



3083

(2) Reference to the authority under which the issuance, amendment, or repeal of a design specification is proposed.
(3) A statement of the substance of the proposed action.
(4) Docket number specifically assigned to the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-86 Further notice of proceeding. For any issuance of new guidelines where the board deems it warranted, an additional notice of the proceeding will be issued by publication thereof in a newspaper of general circulation in the State. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-87 Presiding officer. Each proceeding shall be presided over by the chair of the board or his or her designee. The proceeding shall be conducted to afford all interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to take all actions necessary to the orderly conduct of the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-88 Appearance before the board. At the commencement of the proceeding, the presiding officer shall read the notice of proceeding 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 the proceeding as the presiding officer shall prescribe. [Eff



3083

and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-89 Submission of testimony. All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice. Every witness shall, before proceeding to testify, state his or her name, address, and whom he or she represents at the proceeding, and shall give such other information respecting his or her appearance as the presiding officer may request. The presiding officer shall confine the testimony to the issues before the board. Every witness shall be subject to questioning by the presiding officer and members of the board. Cross-examination by private persons shall not be permitted except upon the approval of the presiding officer. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-90 Oral and written presentation at such proceeding. All interested persons or agencies of the State or political subdivisions of the State will be afforded an opportunity to submit data, views or arguments, which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the board within five calendar days following the close of the proceeding other comments or recommendations in support of or in opposition to the proposed action. The period for filing written comments or recommendations may be extended by the presiding officer for good cause. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-91 Transcript of testimony. Unless otherwise specifically ordered by the presiding



3083

officer, testimony given at a design specification proceeding shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data presented at the proceeding, and which are deemed to be authentic and relevant by the presiding officer, shall be accepted by the board and made a part of the record. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-92 Continuance of proceedings. All design specification proceedings shall be held at the time and place as set forth in the notice of the proceeding. The presiding officer may continue the proceeding from day to day or adjourn to a later date or to a different place without further notice, provided such an announcement is made at the original proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-93 Emergency design specifications. Notwithstanding the foregoing rules, if the board finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a design specification upon less than twenty calendar days notice of a proceeding, and states in writing its reason for such finding, it may proceed without prior notice or proceeding or upon such abbreviated notice and proceeding as it finds practicable to adopt an emergency design specification to be effective for a period not longer than one hundred twenty calendar days without renewal. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§§11-216-94 to 11-216-98 (Reserved)



3083

## SUBCHAPTER 8

## PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF DESIGN SPECIFICATIONS

Historical Note: Subchapter 8 is based substantially upon chapter 11-217, subchapter 4. [Eff 9/5/00; R NOV 25 2013 ]

§11-216-99 Scope. Any interested person may file a petition requesting the board to adopt, amend, or repeal any design specification. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-100 Form of petition. The petition requesting an adoption, amendment, or repeal of any design specification shall be in writing and shall include:

(1) The petitioner's name, mailing address, and telephone number;
(2) The petitioner's signature or the signature of the petitioner's authorized representative or attorney;
(3) A statement of the nature of the petitioner's interest;
(4) A draft or substance of the proposed design specification, or amendment, or designation of the design specification sought to be repealed.
(5) A statement of the reason or reasons in support of the proposed design specification, amendment, or repeal; and
(6) Any other information relevant to the petition. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083

§11-216-101 Filing of petition. The petitioner shall file the petition requesting the board to adopt, amend, or repeal any design specification to the board's office. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-102 Computation of time. (a) Within sixty calendar days after the petition is filed, the board shall:

(1) File a written ruling denying the petition and stating the board's reason or reasons for the denial,

(2) Initiate proceedings as provided under this chapter, or

(3) Notify the petitioner of action to extend to allow time for full consideration.

(b) In any event, the board shall send written notification of the board's action to the petitioner. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-103 Review by facility access unit. Every petition requesting the adoption, amendment, or repeal of any design specification shall be reviewed by the facility access unit. A petition requesting the adoption, amendment, or repeal of any design specification may be submitted directly to the board. Submission of a petition directly to the board does not preclude review by the facility access unit. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-104 Dismissal of petition. The board may dismiss any petition which requests the adoption, amendment, or repeal of any design specification if the petition fails to comply with the requirements of §11-216-100 of these rules. [Eff and



3083 1

comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-105 Written notice of petition. At the board's discretion and upon written notice to the petitioner, the board may provide written notification of the petition requesting the board to adopt, amend, or repeal any design specification to any person or persons for review and recommendations on the petition. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-106 Commencement. A proceeding may be commenced by the board in its own discretion or upon the application of any interested person when the processing of such application necessitates such a proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-107 Docket. The presiding officer or his or her designee shall maintain a docket of all requested actions for adoption, amendment, or repeal of any design specification and each request shall be assigned a number. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-108 Appearance before the board. (a) An individual may appear in their own behalf, and an officer or employee of any agency of the State or a political subdivision of the State may represent such agency in any proceeding before the board.

(b) A person may be represented by or with counsel in any proceeding under these rules.



3083

(c) A person shall not be represented in any proceeding except as stated in subsections (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person before the board, the personal appearance or signature shall constitute a representation to the board that under the provisions of these rules and the law, that the individual is authorized and qualified to represent the particular person or agency who is represented. The board may at any time require any person acting in a representative capacity to show proof of the authority and qualification to act in such capacity.

(e) No person who has been associated with the board as an officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time the person was associated with the board unless the person first have obtained the written consent of the presiding officer upon a verified showing that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the board.

(f) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would be precluded by this section from appearing before the board in such proceeding or matter. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-109 Substitution of parties. Upon request and for good cause shown, the presiding officer may order substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083

§11-216-110 Consolidations. The presiding officer, in his or her own discretion or upon request, may consolidate and contemporaneously consider two or more cases which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous proceeding will be conducive to the proper dispatch of the board's business and to the ends of justice and will not unduly delay the proceedings. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-111 Intervention. (a) Any person not a party to the action may seek to become a party by filing a request to intervene. The request shall state the grounds upon which the person claims to have an interest in the proceeding. At least ten calendar days before the proceeding, the person shall file the motion with the board, and shall serve the request upon all parties or their attorneys.

(b) The presiding officer may permit intervention if he or she determines:

(1) That the person seeking to become a party shows that the party has an interest in a question of law or fact involved in the matter or has a property or financial interest that may not be adequately represented by existing parties; and

(2) That intervention will not unduly broaden the issues or delay the proceedings.

(c) The presiding officer may permit intervention to the extent and upon such terms as the presiding officer may deem proper. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-112 Amendment of documents and dismissal. If any document initiating, or filed in, a proceeding is not in substantial conformity with the



13083

applicable rules or regulations of the board as to the contents thereof, or is otherwise insufficient, the board, in its discretion, or upon the request of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-113 Continuances or extension of time. All design specification proceedings shall be held at the time and place set in the notice of proceeding; however, the presiding officer may at such time and place continue the proceeding from day to day or adjourn the proceeding to a later day or to a different place without notice other than the announcement thereof at the proceeding. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-114 Decision. All final orders, opinions, or rulings entered by the board in a design specification proceeding shall be served upon the parties or persons participating in the proceeding by mailing a copy of the decision and orders and accompanying findings and conclusions within a reasonable time to each party or to the attorney of record. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)

§11-216-115 Retention of documents by the board. Document retention shall be in accordance with section 11-216-56. [Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083 LRB

§11-216-116 Public information. (a) Unless otherwise provided by statute, rule or order of the board, all information contained in any pleading, submittal, petition, application, charge, statement, recommendation, report, map, exception, brief, memorandum, or other document filed with the board shall be available for inspection by the public after a final decision has been issued.

(b) When permitted or authorized by the board, matters of public record may be inspected in the offices of the board during regular office hours.

[Eff and comp NOV 25 2013 ] (Auth: HRS §348F-6) (Imp: HRS §103-50)



3083

DEPARTMENT OF HEALTH

Amendments to and compilation of chapter 11-216, Hawaii Administrative Rules, on the Summary Page dated NOV 25 2013 were adopted on NOV 25 2013 following a public hearing held on August 29, 2013, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on July 28, 2013.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 11.14.13

Filed

APPROVED AS TO FORM:

Deputy Attorney General

'13 NOV 15 P2:26

LIEUTENANT GOVERNOR'S OFFICE



3083