

DEPARTMENT OF BUDGET AND FINANCE

Adoption of Chapter 6-68
Hawaii Administrative Rules

April 25, 1997

SUMMARY

Chapter 6-68, Hawaii Administrative Rules, entitled "Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers," is adopted.



TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 68

INVESTIGATION AND ENFORCEMENT OF LAWS GOVERNING
PUBLIC UTILITIES, MOTOR CARRIERS, AND WATER CARRIERS

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SUBCHAPTER 1

GENERAL PROVISIONS

§6-68-1 Applicability; construction. (a) This chapter governs violations of the regulatory law and prescribes procedures for investigating alleged violations or suspected violations of the regulatory law and for issuing citations to and imposing sanctions on any person violating, allegedly

violating, or suspected of violating the regulatory laws.

(b) This chapter shall be liberally construed to provide adequate and continuous public utility, motor carrier, and water carrier services in the State.

[Eff **MAY 19 1997**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§269-6, 269-7, 269-7.5, 269-10, 269-12, 269-13, 269-15, 269-20, 269-28, 271-8, 271-9, 271-12, 271-13, 271-16, 271-19, 271-27, 271-31, 271-34, 271G-7, 271G-10, 271G-12, 271G-15, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-2 Proceedings, generally. The commission may commence:

- (1) Investigative proceedings against any person violating, allegedly violating, or suspected of violating any regulatory law; and
- (2) Enforcement proceedings against any person violating any regulatory law.

[Eff **MAY 19 1997**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§269-6, 269-7, 269-7.5, 269-10, 269-12, 269-13, 269-15, 269-20, 269-28, 271-8, 271-9, 271-12, 271-13, 271-16, 271-19, 271-27, 271-31, 271-34, 271G-7, 271G-10, 271G-12, 271G-15, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-3 Application of additional sources. This chapter shall be read in context with any applicable:

- (1) Federal law and regulation; and
- (2) State law, commission order, and rule, including chapters 269, 271, and 271G, HRS, and chapter 6-61. [Eff **MAY 19 1997**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§269-6, 269-7, 269-7.5, 269-10, 269-12,

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269-13, 269-15, 269-20, 269-28, 271-8,
271-9, 271-12, 271-13, 271-16, 271-19,
271-27, 271-31, 271-34, 271G-7, 271G-10,
271G-12, 271G-15, 271G-16, 271G-17, 271G-19,
271G-23)

§6-68-4 General definitions. As used in this chapter, unless the context clearly requires otherwise:

"Chairperson" means the commissioner designated by the governor to be the chairperson of the commission.

"Citation" means a form used for citing persons allegedly violating or suspected of violating any applicable regulatory law.

"Commission" means the public utilities commission of the State, or the commission's duly authorized representative, which may include the commission's hearings officer.

"Enforcement officer" means the same as in §§269-1 and 271-4, HRS.

"Hearings officer" means a person appointed as such pursuant to §269-6, HRS.

"HRS" means the Hawaii Revised Statutes.

"License" means the revocable permission to engage as a public utility, motor carrier, or water carrier, issued by the commission to a person pursuant to chapter 269, 271, or 271G, HRS, or any rule promulgated pursuant to any of these chapters. It includes any certificate, permit, or other document issued by the commission as proof of that permission. It includes a conditional or temporary permission and any certificate, permit, or other document issued by the commission as proof of the temporary permission.

"Licensee" means the person in whose name the commission issues a license.

"Motor carrier" means the same as in §271-4, HRS.

"Person" includes any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee,

receiver, assignee, or personal representative thereof.

"Public utility" means the same as in §269-1, HRS.

"Regulatory law" includes:

- (1) Chapters 269, 271, and 271G, HRS, providing for the regulation by the commission of public utilities, motor carriers, and water carriers, and any other person subject to the commission's jurisdiction;
- (2) Rules promulgated pursuant to any of these chapters;
- (3) Commission orders; and
- (4) Terms, conditions, or limitations set forth in the licensee's license.

"Respondent" includes:

- (1) Any person cited by the commission or its enforcement officer;
- (2) Any person against whom the commission institutes an investigation; or
- (3) Any person against whom a complaint is made.

"Restore" or "restoration" means permission to resume business as a public utility, motor carrier, or water carrier, granted by the commission to a person whose license has been suspended.

"Rule" means the Hawaii Administrative Rules.

"State" means the State of Hawaii.

"Water carrier" means the same as in §271G-5, HRS. [Eff MAY 19 1997] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§269-1, 269-6, 269-7, 269-7.5, 269-10, 269-12, 269-13, 269-15, 269-20, 269-28, 271-4, 271-8, 271-9, 271-12, 271-13, 271-16, 271-19, 271-27, 271-31, 271-34, 271-38, 271G-5, 271G-7, 271G-10, 271G-12, 271G-15, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-5 Separation of functions. (a) The enforcement officer and any employee or agent of the commission who investigates, prepares, or presents a

particular case may not, in the case or a factually related case:

- (1) Participate in the case as a hearings officer; or
- (2) Participate or advise in the initial decision or review of the initial decision by the commission, except as a witness or representative in public proceedings.
- (b) The hearings officer or commission members who sit on an enforcement case shall not directly supervise or be supervised by the investigating official.
[Eff **MAY 10 1007**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §269-6)

§6-68-6 Computation of time. Unless ordered or directed otherwise by the commission, in computing any period of time specified under this chapter:

- (1) The term "day" means a calendar day;
- (2) The term "receipt," "receive," or "received" means the actual receipt of the citation, payment, written request for civil citation hearing, or other document or thing at issue;
- (3) The day of the act, event, or default shall not be included in the computation period; and
- (4) The last day of the period so computed shall be included unless it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next business day which is not a Saturday, Sunday, or holiday. As used in this paragraph:
 - (A) The term "holiday" means any day designated as such by §§8-1 and 8-2, HRS; and
 - (B) The term "end of the next business day" refers to the closing of the

commission's Honolulu office for the day, normally at 4:30 p.m.
[Eff **MAY 19 1997**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§1-29, 8-1, 8-2, 269-6, 271-9, 271-27, 271-31, 271G-7, 271G-19, 271G-23)

§6-68-7 Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the invalidity does 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 **MAY 19 1997**] (Auth: HRS §§91-2, 269-6, 269-15, 271-9, 271-27, 271G-7, 271G-19) (Imp: HRS §§269-6, 269-7, 269-7.5, 269-10, 269-12, 269-13, 269-15, 269-20, 269-28, 271-8, 271-9, 271-12, 271-13, 271-16, 271-19, 271-27, 271-31, 271-34, 271G-7, 271G-10, 271G-12, 271G-15, 271G-16, 271G-17, 271G-19, 271G-23)

§§6-68-8 to 11 (Reserved)

SUBCHAPTER 2

COMPLAINT AND INVESTIGATION

§6-68-12 Application of this subchapter non-exclusive. Nothing in this subchapter shall be construed as limiting or precluding the commission from using its civil or criminal enforcement authority, or both, against any person violating,

§6-68-12

allegedly violating, or suspected of violating any regulatory law. [Eff MAY 19 1997] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§269-6, 269-7, 269-8, 269-10, 269-12, 269-13, 269-15, 269-29, 271-9, 271-10, 271-27, 271-31, 271G-7, 271G-8, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-13 Complaint. (a) Unless ordered or directed otherwise by the commission, any complaint (informal or formal) against a public utility, water carrier, motor carrier, or other person subject to the commission's jurisdiction alleging a violation of any regulatory law shall be processed in accordance with chapter 6-61.

(b) Whenever the commission is of the opinion that the complaint does not state reasonable grounds for investigation and action on the commission's part, the commission may dismiss the complaint.

[Eff MAY 19 1997] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§269-6, 269-7, 269-8, 269-10, 269-12, 269-13, 269-15, 269-29, 271-9, 271-10, 271-27, 271-31, 271G-7, 271G-8, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-14 Commission investigation. (a) The commission may at any time investigate alleged or suspected violations of the regulatory law.

(b) The commission may issue to the respondent an order or notice instituting an investigation that may take the form of an order to show cause. The order to show cause shall require the respondent to appear before the commission on the date and at the time and place specified in the order.

(c) An order to show cause must conform to the notice and service requirements of §§91-9 and 91-9.5, HRS. The order shall be served upon the person concerned or other respondent, and the complainant,

not less than two weeks before the date designated for the hearing.

(d) The order to show cause may include an order of abatement that requires the respondent to cease and desist from any present or future violations of the regulatory law or commission orders.

- (1) The abatement order may be entered on the commission's initiative or by agreement between the commission and respondent, with or without a finding of a specific violation; and
- (2) Failure to comply with a commission abatement order is a violation of the regulatory law separate from any underlying violation. [Eff MAY 19 1997] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§91-9, 91-9.5, §§269-6, 269-7, 269-8, 269-10, 269-12, 269-13, 269-15, 269-29, 271-9, 271-10, 271-27, 271-31, 271G-7, 271G-8, 271G-16, 271G-17, 271G-19, 271G-23)

§6-68-15 Commission investigation - default. If the respondent fails to appear on the date and at the time and place designated in the order to show cause, the commission may assume that the facts alleged in the order are true, and, if the facts establish liability, the commission:

- (1) Will issue a final decision and order; and
- (2) May impose the maximum amount of penalties and assessments allowed under the regulatory law. [Eff MAY 19 1997] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§269-6, 269-7, 269-8, 269-10, 269-12, 269-13, 269-15, 269-29, 271-9, 271-10, 271-27, 271-31, 271G-7, 271G-8, 271G-16, 271G-17, 271G-19, 271G-23)

§§6-68-16 to 20 (Reserved)

SUBCHAPTER 3

CIVIL ENFORCEMENT - CITATION AND PENALTY

§6-68-21 Civil citation. (a) The commission or its enforcement officer may issue a civil citation to any person:

- (1) Acting in the capacity of or engaging in the business of a public utility, motor carrier, or water carrier within the State, without having a license or other authority previously obtained from the commission, authorizing it to engage or conduct business as a public utility, motor carrier, or water carrier in the State; or
- (2) Violating, allegedly violating, or suspected of violating any regulatory law.

(b) Service of a citation shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(c) The citation may contain an:

- (1) Order of abatement; and
- (2) Assessment of civil penalties, pursuant to §6-68-22.

(d) The citation may require the person cited to appear before the commission on the date and at the time and place specified in the citation and to state whether the person contests or admits to the alleged or suspected violation.

- (1) If the person cited appears before the commission on the appearance date and contests the citation, the commission shall schedule a chapter 91, HRS, hearing on the citation.
- (2) If the person cited appears before the commission on the appearance date and does not contest the citation, the commission shall dispose of the citation as authorized by law, which may include the assessment of

a civil penalty, pursuant to §6-68-22, and the citation is deemed a final order of the commission. If a civil penalty is assessed, the person cited will be issued a bill for collection requiring payment within fifteen days from the appearance date. If payment is not received by the commission within the fifteen day period, the person cited will be issued a second bill for collection requiring payment within fifteen days from the date of the second bill for collection. A respondent who fails to make payment of the civil penalty to the commission within fifteen days from the date of the second bill for collection is in default, pursuant to §6-68-23(c).

The respondent's appearance before the commission on the date and at the time and place specified in the citation to state whether the respondent contests or admits to the alleged or suspected violation, is a preliminary appearance and is not a chapter 91, HRS, hearing. This preliminary appearance before the commission may be conducted by the commission or by a hearings officer appointed by the chairperson.

(e) Failure to appear before the commission on the specified preliminary appearance date constitutes a default, pursuant to §6-68-23(a); provided that for good cause shown, a respondent may, at least five days before the appearance date specified in the citation, seek in writing the commission's approval to continue the appearance date set forth in the citation. If the respondent's request for continuance is approved, the respondent shall appear before the commission on the new appearance date specified by the commission. If the respondent's request for continuance is denied, the respondent shall appear before the commission on the appearance date specified in the citation; the respondent's failure to appear before the commission on the specified appearance date constitutes a default, pursuant to §6-68-23(a).

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