

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 44

**STATE FIRE COUNCIL
RULES OF PRACTICE AND PROCEDURES**

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-44-1 Procedure. This chapter governs the practice and procedure before the state fire council of the State of Hawaii under Chapter 132, Revised Statutes. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-2 Definitions. As used in this chapter:

"Appellant" means a person appealing from an adverse finding or decision of the council.

"Chairperson" means the chairperson of the council.

"Council" means the state fire council.

"Board" means county fire appeals board or fire appeal board established by county ordinance to which the owner or occupant may appeal from any order made by the county fire chief.

"Fire chief" means the fire chief of the county.

"Hearing officer" means the chairperson or a hearing officer designated by the state fire council to preside over the hearing of an appeal governed by this chapter.

"Office" means the office of the council in Honolulu, Hawaii.

"Order" means a written order served by the fire chief or the chief's representative upon the owner, occupant, or other person responsible for a building or its premises setting forth the nature of an alleged violation or condition, the law, ordinance, rule, or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule.

"Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than governmental agencies. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

SUBCHAPTER 2

PUBLIC RECORDS AND INFORMATION

§12-44-11 Public inspection. All public records shall be available for inspection at the office during regular business hours. The attorney general shall determine which records may be withheld from public inspection when those records pertain to the preparation of the prosecution or defense of any action or proceeding in which the council is or may be made a party, or when the records do not relate to a matter in violation of law and are deemed necessary for the protection of the character, reputation, or business of any person. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-12 Information. Requests for information within the jurisdiction of the council, except confidential information, shall be made in person during regular business hours, or shall be made in writing and handled with due regard for the proper dispatch of other public duties. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-13 Cost of public records. Copies Of public records shall be made available free of charge upon request to state and county agencies, organizations representing public employees, federal agencies, and other states. For all other persons, the price for a copy shall be twenty five cents a sheet for each extract. [Eff. JON 6 1986 1] (Auth: HRS §132-16) (Imp: HRS §132-16)

SUBCHAPTER 3

ADOPTION, AMENDMENT, OR REPEAL OF RULES

§12-44-21 Petition. Any person may petition the council for the adoption, amendment, or repeal of any of its rules. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-22 Form and content of petition. The petitioner shall submit three copies to the office. The petition need not be in any special form but shall contain the following information:

- (1) The petitioner's name and address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft or the substance of the proposed rule amendment, or repeal and a designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner. Any petition which does not conform to the requirements of this section may be rejected by the council. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-23 Consideration of petition. Within thirty days after the receipt of the petition, the council shall either deny the petition, stating in writing its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-24 Notice of proposed rulemaking. The procedures established in section 91-3, HRS, shall apply. [Eff. 6/6/86] (Auth: HRS §91-3) (Imp: HRS §91-3)

§12-44-25 Conduct of hearing. (a) The public hearing shall be presided over by the council chairperson or a designated representative, in the chairperson's absence. The hearing shall give persons a reasonable opportunity to be heard on matters relevant to the issues involved. The presiding officer may administer oaths or affirmations and take all other actions necessary to the orderly conduct of the hearing and the attainment of a clear and orderly record.

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

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) Before testifying, every witness shall state the witness's name, address, and whom the witness represents at the hearing, and shall give such other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the council or by any other representative of the council, but cross-examination by private persons shall not be permitted unless the presiding officer expressly permits it.

(e) All interested persons and governmental agencies shall be afforded an opportunity to submit data, views, or arguments which are relevant to the matters specified in the notice of hearing. In addition, or in lieu thereof, persons or agencies may also file with the council a written protest or other comments or recommendations in support of or in opposition to the proposed rule. Written protest, comments, or recommendations or replies thereto shall not be accepted unless an original and five copies are filed. The presiding officer may extend for good cause the period for filing written protest, comments, or recommendations beyond the hearing date.

(f) Unless otherwise specifically ordered by the council, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, six copies of the exhibits shall be submitted. [Eff. 6/6/86] (Auth: HRS §91-3) (Imp: HRS §91-3)

§12-44-26 Action. At the close of the final public hearing, the council shall announce the date when its decision shall be made. The council shall consider all relevant comments and material of record before taking final action in its rulemaking proceeding. [Eff. 6/6/86] (Auth: HRS §91-3) (Imp: HRS §91-3)

SUBCHAPTER 4

DECLARATORY RULING

§12-44-31 Petition. Any person may petition the council for a

declaratory order as to the applicability of any statute administered by the council or of any of its rules or orders. [Eff. 6/6/86]
(Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-32 Form and content of petition. The petitioner shall submit three copies of the petition to the office. it need not be in any special form but shall contain the following information:

- (1) The petitioner's name and address, including zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest, including the reasons for the submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts;
- (5) A statement of the interpretation given the statutory provision, rule, or order by the petitioner;
- (6) A memorandum containing the reasons, including any legal authorities, in support of the petitioner's interpretation; and
- (7) The petitioner's signature.

Any petition which does not conform to the requirements of this section may be rejected by the council. The rejection shall be in writing and shall state the reasons therefor. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-33 Refusal to issue declaratory order. The council for good cause may refuse to issue a declaratory order. Without limiting the generality of the foregoing, the council may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may adversely affect the interest of the State, the council, or any of the officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- (4) The petition requests a ruling on a statute not administered by the council or the matter is not otherwise within the jurisdiction of the council.

Where any question of law is involved, the council may refer the matter to the attorney general. The council may also obtain the assistance of other agencies, where necessary or desirable. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-34 Consideration and disposition of petition. The council, within a reasonable time after the submission of a petition, shall either deny the petition, stating the reasons therefor or issue a declaratory ruling. Upon disposition of the petition, the chairperson shall promptly notify the petitioner of the council's ruling. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

SUBCHAPTER 5

APPEALS FROM DECISIONS OF THE STATE FIRE COUNCIL

§12-44-41 Scope. This subchapter shall govern all appeals from the findings or decisions of the council relating to any of its rules or the law it administers. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-42 Filing of appeal. Any person may appeal from an adverse decision of the council by filing a written statement of appeal on a form prescribed by the council. The statement of appeal shall be filed in the office of the council not later than sixty days from the date of the adverse decision by the council. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-43 Statement of appeal. (a) The statement of appeal shall include the following information:

- (1) The identity and description of the appellant. if the appeal is made by an employee organization on behalf of a member, the organization shall state that it has the right to represent the members and shall submit proof of such right at the hearing of the appeal; and
- (2) The grounds for appeal, the specific issues involved, the contentions of the appellant, and a description of the evidence that the appellant intends to introduce in support of those contentions.

(b) An incomplete statement of appeal may be returned to the appellant with an explanation for the return. if returned, the appellant shall have five working days in which to correct and refile the statement. Any statement refiled within the five working day period may be rejected if the statement is still incomplete and the incompleteness is material and substantial.

(c) Any statement of appeal which is returned and not corrected and refiled within the period prescribed in subsection, (b) shall be rejected. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-44 Contested case hearing before the council or hearing officer. When an appeal is perfected in accordance with this subchapter, the appellant shall be afforded a contested case hearing before the council or a hearing officer appointed by the council. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-45 Time and place of hearing and notice. If the appeal is to be heard by the council, it shall set the time and place of hearing and the chairperson or designated representative shall give written notice thereof to the appellant. Unless otherwise directed by the council, when the hearing of an appeal is assigned to a hearing officer, the hearing officer shall set the time and place of hearing and give written notice thereof to the appellant. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-46 Docket. The chairperson or designated representative shall maintain a docket of all appeals and each appeal shall be assigned a number. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-47 Computation of time; extension of time. (a) in computing any period of time prescribed or allowed by this subchapter, order of the council or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run shall not to be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, or a day or a part of a day on or for which the governor has granted administrative leave in the State, in which event the period runs until the next regular work day for the council or the circuit courts, which is neither a Saturday, Sunday, nor a holiday. intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less.

(b) Except for the time for the filing of exceptions covered by section 12-44-59(b), whenever a person or agency is required or allowed to act within a time specified by this subchapter, the state fire council may

- (1) With or without motion or notice extend the period if request therefor is made before the expiration of the specified period; or
- (2) Upon motion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-48 Documents. (a) if any document filed in a proceeding governed by this subchapter is not in substantial conformity with the applicable rules of the council, or is otherwise insufficient, the council, on its own motion or on the motion of any party, may strike the document or require its amendment. If amended the document shall be effective as of the date of the original filing.

(b) All documents filed with or presented to the council may be retained in the files of the council. The council may permit the withdrawal of original documents upon submission of photostatic copies or originals. [Eff. 6/6/86] Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-49 Deposition; application for. (a) Upon the written application of a party to a proceeding governed by this subchapter and for good cause shown, the council or the hearing officer, at any time after the filing of the statement of appeal, may order the taking of testimony of a witness by oral examination.

(b) The application shall be made to the council or the hearing officer and shall state the reasons why the deposition should be taken, the time and place for taking the deposition, the name and post office address of the witness, and the subject matter concerning which the witness is expected to testify. If good cause is shown, an order for the taking of the deposition containing the appropriate instructions shall be made and served upon the parties. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-50 Depositions; persons before whom taken, oath, examination and cross-examination, record of examination, filing of disposition. (a) The deposition shall be taken before an officer authorized to administer oaths.

(b) The officer before whom the testimony is to be taken shall put the witness on oath. The adverse party shall have the right to cross-examine the witness. The questions propounded to the witness and the answers thereto shall be taken stenographically and transcribed.

(c) All objections made at the time of the examination shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objection. The officer taking the deposition shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness and shall forward the deposition with two copies thereof in a sealed envelope, endorsed with the title of the proceeding, to the council's office. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-51 Use of depositions. (a) A deposition ordered and taken in accordance with section 12-44-49 may be used in a proceeding if the presiding officer finds that the evidence is otherwise admissible and;

- (1) The witness is dead;
- (2) The witness is out of the State, unless it appears that the absence of the witness is procured by the party offering the deposition;
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or
- (5) Upon application and notice, that those exceptional circumstances exist as to make it desirable to allow the deposition to be made in the interest of justice and with due regard to the importance of presenting the testimony orally before the council or hearing officer.

(b) if any part of the deposition is put in evidence by a party, any other party may require the production of the remainder or any other portions of the deposition. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-52 Presiding officer; powers and duties. (a) The chairperson, or any other member of the council designated by the chairperson, or a hearing officer designated by the council shall preside at all hearings on appeals governed by this subchapter.

(b) When the presiding officer is a hearing officer, the hearing officer shall have the following powers and duties:

- (1) Determine the time and place of hearing and, in the hearing officer's discretion or at the request of a party, continue or postpone any hearing;
- (2) Regulate the course and conduct of the hearing;
- (3) Administer oaths and affirmations;
- (4) Examine witnesses;
- (5) Issue subpoenas;
- (6) Rule on offers of proof and receive evidence;
- (7) Hold conferences, before or during the hearing, for the settlement or simplification of issues;
- (8) Rule on motions and dispose of procedural requests or similar matters;
- (9) Recommend a decision to the council;
- (10) Dispose of any matter that normally and properly arises before or in the course of the hearing; and
- (11) Take any other action authorized by this subchapter or by

law that the hearing officer may deem necessary for the orderly and just conduct of the hearing.

(c) When the appeal is heard by the council, the presiding officer shall have all of the powers and duties in subsection (b) except recommending a decision. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-53 Reassignment of appeal. If for any reason the hearing officer designated for the hearing of an appeal is unable to complete the hearing, the council may assign the appeal to another hearing officer without abatement of the proceedings. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-54 Conduct of hearing. (a) The presiding officer shall convene the hearing and summarize the statement of appeal.

(b) Before presenting the case, the appellant shall have the opportunity to make an opening statement. The deputy attorney general assigned to the council shall also have the opportunity to make an opening statement then or after the appellant has presented the appellant's case. opening statements may be waived by either party.

(c) Witnesses shall testify in the following order:

(1) Witnesses for the appellant;

(2) Witnesses called by the deputy attorney general;

(3) Witnesses for the appellant in rebuttal;

(4) Witnesses called by the deputy attorney general in rebuttal;

(5) Additional witnesses as the presiding officer may deem necessary.

(d) Each witness shall be examined in the following order:

(1) Direct examination by the party calling the witnesses;

(2) Cross examination by the other party;

(3) Redirect examination by the party calling the witness;

(4) Recross examination by the other party;

(5) Examination by the presiding officer or any member of the council.

(e) After the presentation of evidence is concluded, unless the appeal is submitted by either party or both parties without argument, the appellant shall make a closing argument followed by argument by the deputy attorney general. The appellant may then present rebuttal argument which shall be limited to countering any matter or argument presented by the deputy attorney general. Reasonable time limits may be imposed by the presiding officer for argument. Argument may be waived by either party.

(f) The presiding officer, within such time limits as the presiding officer may impose, may permit the parties to submit

written memoranda in support of their respective positions and proposed findings of fact. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-55 Recommended decision. When an appeal is heard by a hearing officer, the hearing officer, within sixty days after the close of the reception of evidence or the filing of any memoranda or proposed findings permitted by the hearing officer, shall make and file with the council a recommended decision which shall include recommended findings of fact and conclusions of law. If any party has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling on each proposed finding so presented. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-56 Proposed decision. Upon receipt of the recommended decision, the council may accept it as its proposed decision, or may remand it to the hearing officer for any clarification or correction, or may modify it and issue its own draft of a proposed decision. A copy of the proposed decision shall be served upon each party. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-57 Filing of exceptions; extension of time; finality of proposed decision. (a) Within fifteen days after the mailing of a copy of the council's proposed decision, any party may file with the council exceptions to any part thereof and request review by the council. Each exception shall specify the portion of the record and authorities relied on to sustain each point. Eight copies of the exceptions and request for review shall be filed with the council. In addition, a copy of the exceptions and request for review shall be served upon each of the parties who was served with a copy of the proposed decision.

(b) Any party may apply for an extension of time within which to file exceptions to the proposed decision by filing two copies of a written application setting forth the reasons for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the council, or any member of the council, may extend the time for filing exceptions for an additional period not to exceed fifteen days.

(c) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the council on its own motion orders further proceedings to be held. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-58 Argument on exceptions. Upon the filing of

exceptions by a party adversely affected by the proposed decision, the council shall grant that party an opportunity to present arguments to the council. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-59 Final decision. (a) Where exceptions have been filed to the council's proposed decision, the council shall render its final decision within sixty days after hearing the exceptions. in rendering its final decision, the council shall consider the whole record or such portions thereof as may be cited by the parties, and shall resolve all questons of fact by what it deems to be the greater weight of the evidence thereon. The final decision shall contain findings of fact and conclusions of law upon which the decision is based.

(b) Where the council has heard and examined all of the evidence, the council, within sixty days after the reception of the evidence, or filing of any memoranda or proposed findings permitted to be filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has been permitted to file proposed findings of fact, the final decision shall incorporate a ruling on each proposed finding so presented. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

SUBCHAPTER 6

OTHER CONTESTED CASE HEARINGS

12-44-71 Applicability of subchapter 6. Except as otherwise provided in this subchapter, this subchapter shall apply to all other contested case hearings. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-72 Notice of hearing. Notice of hearing shall be given by the chairperson or by the hearing officer, if the latter hears the case, conforming to the requirements of sections 91-9 and 91-9.5, HRS. [Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44-73 Conduct of hearing. (a) The presiding officer of the hearing shall convene the hearing, briefly state the nature of the case, and make a determination as to which party has the burden of proof. The determination shall be made in accordance with section 91-10, HRS. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion.

(b) The party having the burden of proof shall proceed first in the presentation of opening statements,, witnesses, and argument.
(Eff. 6/6/86] (Auth: HRS §132-16) (Imp: HRS §132-16)