

**HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 42
VESSEL AND HARBOR CONTROLS**

**SUBCHAPTER 2
SMALL CRAFT AND SMALLER COMMERCIAL VESSELS**

§19-42-23 Conditions for use of harbor property and facilities. Before any property or facility at a state commercial harbor is utilized by any vessel, its owner shall execute a use permit appropriately conforming to the description provided below, obtain the approval of the department which shall be evidenced by an indorsement on the use permit to that effect, and follow such other procedures and requirements as may be established by the department to facilitate effective management of the permits; provided, that the department may waive the requirements of this section in the case of trivial and infrequent uses of state property or facilities, or as the circumstances may warrant.

A use permit may contain the following terms, covenants, and conditions:

- (1) The owner's certification of all information contained in the application and submitted as being true;
- (2) The owner's covenant to abide by the current tariff and the incorporation by reference of the rules into the agreement;
- (3) The owner's authorization for the State to assign and reassign berths and spaces for the owner's vessel;
- (4) A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants, and conditions thereof;
- (5) The owner's authorization to the State to board the owner's vessel to effect reasonable inspection and audit the owner's records;
- (6) The owner's covenant to pay all applicable fees and charges, and the owner's authorization of the State to assess collection and service charges for the delinquent payment thereof;
- (7) The owner's covenant to indemnify the State and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the use permit;
- (8) A provision that the term of the use permit shall terminate upon expiration of the stated period, thereby requiring a renewal of the permit to continue to use the harbor and its facilities;
- (9) A provision that the use permit with its attendant privileges is revocable and the owner's covenant to pay, upon the owner's failure to promptly remove the owner's vessel from the harbor upon revocation, cancellation, or termination of the mooring permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages;
- (10) The owner's authorization to the State to reasonably effect the removal of the owner's vessel;
- (11) The owner's covenant to pay all costs and attorney's fees, including cost of

collection of delinquent fees and charges in the event the State is forced to institute a suit against the owner and is successful in such a suit;

(12) A provision stating that, except as provided, neither the agreement nor the privileges attendant thereto are assignable or in any way transferable, in whole or in part;

(13) An open provision to enable the State and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage, and performance and compliance bonds in such amounts as may be warranted under the circumstances; and

(14) A provision that in the event charges that accrue in favor of the department are not paid, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies provided by law or otherwise. [Eff 5/20/82; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)