



**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
3242 WAAPA ROAD
LIHUE, HAWAII 96766**

**RESTATEMENT OF EO 21-07
HARBOR MASTER NOTICE
KAUAI DISTRICT
HMN-K 01-22R
Revised October 8, 2021**

With the issuance of the *Emergency Proclamation Related to the State's COVID-19 Delta Response*, hereinafter referred to as "Emergency Proclamation", on October 1, 2021, the following Harbor Master Notice revises the following:

- Oahu: Harbor Master Notice (HMN 01-22), Access to State Property;
- Maui: Harbor Master Notice (HMN-M 01.22), Access to State Property;
- Kauai: Harbor Master Notice (HMN-K 01-22), Access to State Property; and,
- Hawaii: Harbor Master Notice (HMN-H 01-22), Access to State Property.

RESTATEMENT – SUMMARY

Executive Order (EO) 21-07 was issued to ensure the safety of State employees where transmission of COVID-19 is possible when persons, who are conducting government business, come into contact with State employees. The October 1, 2021, *Emergency Proclamation, Exhibit E, Rules Relating to Access to State Property*, hereinafter referred to as "Exhibit E", clarifies EO 21-07 by adding the following:

I. HARBOR MASTER NOTICE APPLICABLE/NOT APPLICABLE TO:

A. Does not apply to the United States government

*"This proclamation does not apply to the United States government or to employees and its contractors conducting official government business."*¹

B. Applicable to "Facility" that is Occupied by State Employees

The Emergency Proclamation is applicable to "Facility" or "Facilities" (for example, buildings) that is **occupied by State employees**. The Emergency Proclamation provides the following:

¹ Emergency Proclamation; page 4 of 21.

*“All persons entering, working or providing services in any State Facility utilized by employees of the executive branch of the State, including contractors, volunteers, and members of the public shall comply with the requirements set forth in Exhibit E.”² *(emphasis underscored.)*

Exhibit E defines a facility as follows:

“Facility” or “Facilities” mean any facility, building, or other property controlled and used by the State to conduct government business, or any other State property that is the site of a State government project.”

C. Where Exhibit E and EO 21-07 Are Not Applicable

The Emergency Proclamation applies to contractors and visitors entering a facility occupied by State employees. The following are examples of a “Facility” or “Facilities” where Exhibit E and EO 21-07 **are not applicable**:

1. Shippers operating in cargo yards, whether common use or space allocated for the conducting of container/cargo operations (*Note: EO 21-07 is applicable to a person or persons representing the shippers who will be required to show proof of vaccination, or proof of testing consistent with protocols as provided in Exhibit E when the State employee conducts face to face inspections or other government business*);
2. Maritime operations involving tugs, barge movements, water taxis, vessel repairs or ship building, commercial fishing operators, vessel agents, crew members, observers, or similar (*Note: EO 21-07 is applicable to a person or persons representing the shippers who will be required to show proof of vaccination, or proof of testing consistent with protocols as provided in Exhibit E when the State employee conducts face to face inspections or other government business*);
3. Employees of shippers and maritime operations who are not in contact with State employees where essential operations would be severely impacted due to the unintended consequences that resulted in a shortage of and delays in confirming an appointment for mandated COVID-19 testing;
4. Properties under a lease or month to month permit issued by the State (*Note: EO 21-07 is applicable to a person or persons representing the shippers who will be required to show proof of vaccination, or proof of testing consistent with protocols as provided in Exhibit E when the State employee conducts face to face inspections or other government business*);
5. Transporters of cargo or materials (truckers) accessing and departing cargo yards whether common use or space allocated for the conducting of container/cargo operations (e.g. container movements, less than container loads, auto pick up or

² Emergency Proclamation; page 7 of 21, 1st paragraph.

delivery into State cargo yards, etc.). *However, shippers operating cargo facilities and maritime operators are to encourage truckers, visitors, and vendors to adhere to the Statewide Face Covering Requirement addressed in Exhibit A; and/or,*

6. Vendors providing services or other work to shippers operating cargo facilities and maritime operators including cargo operators, vessel repairs; or, ship building, maritime support personnel including tugs, water-taxi, crane operators in support of tug or who operate maritime operations.

II. WHERE EXHIBIT E AND EO 21-07 ARE APPLICABLE

A. CONTRACTORS

1. EFFECTIVE DATE: September 13, 2021
2. *Contractors* who enter, work, or provide services in any State Facility occupied by State employees shall identify all employees accessing State Facilities and attest that each employee is: (1) fully vaccinated³ for COVID-19; (2) partially vaccinated for COVID-19 (including receipt of one dose of a two-dose course of vaccination); or (3) not vaccinated for COVID-19.⁴
3. For Contractor's employees who are partially vaccinated or not vaccinated, Contractor will ensure and be able to provide weekly verification that any unvaccinated or partially vaccinated employee who accesses a State Facility is subject to regular COVID-19 testing that shall occur once per week (*See Footnote 4*).
4. WHO IS A "CONTRACTOR" OR "CONTRACTOR'S EMPLOYEE"?

"Contractor" or "Contractor's Employee" (See Footnote 3) means any:

- a. *Contractor, volunteer, or vendor providing goods, equipment, construction, consulting, or any other materials or services to the State whether paid or unpaid;*
- b. *Concessionaire, permittee, or commercial operator in any State facility;*
or
- c. *Anyone employed by the contractor or providing service for or on behalf of the contractor who enters, works, or provides services in any State facility under any type of subcontract or other agreement.*

³ Exhibit E; Section 2, Definitions.

⁴ Exhibit E, Section 3, Contractor Access to State Facilities.

B. VISITORS

1. EFFECTIVE DATE: September 13, 2021
2. Visitors entering, working, or providing service in any State facility occupied by State employees shall provide verification that they are fully vaccinated for COVID-19, or, if not fully vaccinated, show their negative test result by: (1) showing official documentation evidencing their negative test result of a COVID-19 test; or (2) the use of various publicly available health status applications such as the State of Hawaii Smart Health Card, Common Pass applications, CLEAR Health Pass, Azova, IBM Digital Health Pass, and other similar products available to the public.⁵
3. WHO IS A VISITOR?
 - a. “*Visitor*” means individuals entering any State Facility who is not a State employee, volunteer, vendor, contractor, or employee of a contractor (See *Footnote 3*).
 - b. Exclusions: *Shall not include* (See *Footnote 3*): visitors on outdoor State government properties; persons under the age of twelve (12); individuals entering any state Harbor for the purpose of traveling out of or into a Harbor located within the State; or individuals making deliveries to a State Facility and who leave within ten (10) minutes of entry.

III. IMPLEMENTATION REQUIREMENTS – AS APPLICABLE

Effective September 13, 2021, any Contractors, Contractor’s employees, and Visitors entering, working, or providing services in any State Facility shall be required to comply with the following:

A. CONTRACTORS SHALL:

1. Identify all of its employees accessing State facilities occupied by State employees *and attest* that each employee is: (1) fully vaccinated for COVID-19; (2) partially vaccinated for COVID-19 (including receipt of one dose of a two-dose course of vaccination); or (3) not vaccinated for COVID-19 (See *Footnotes 3 and 4*).
2. For those of Contractor’s employees who are partially vaccinated or not vaccinated, Contractor will ensure and be able to provide weekly verification that any unvaccinated or partially vaccinated employee is subject to regular COVID-19 testing that shall occur once per week (See *Footnote 4*).
3. Contractors shall ensure that any unvaccinated or partially vaccinated employee does not enter, work, or provide services in any State Facility unless the employee obtains

⁵ Exhibit E, Section 4, Visitor Access to State Facilities.

a negative test result of a COVID-19 test as a condition to being allowed to enter or remain in any State Facility.

B. VISITORS SHALL:

1. Provide verification that they are fully vaccinated for COVID-19, or, if not fully vaccinated, provide proof of their negative test result (see *Footnote 5*) by showing:
 - a. Official documentation evidencing their vaccination status or negative test result of a COVID-19 test; or
 - b. Proof of testing status using the various publicly available health status applications such as the State of Hawaii Smart Health Card, Common Pass applications, CLEAR Health Pass, Azova, IBM Digital Health Pass, and other similar products available to the public.

C. OTHER REQUIREMENTS:

If not otherwise required by State or county orders, all Contractors, Contractor's employees, and Visitors, whether fully vaccinated, unvaccinated, or partially vaccinated, shall wear a mask the entire time they are present in any State Facility and physically distance themselves from others.

D. EXEMPTIONS:

Notwithstanding the provisions set forth herein, all persons subject to this Order also shall comply with any county orders, rules, or directives that are more restrictive, *unless an express exemption is granted by the Governor or Director of Emergency Management.*

To the best of the DOT's knowledge, Contractors or Visitors seeking exemptions requests should visit <https://dod.hawaii.gov/>.

E. ENFORCEMENT

1. Any Contractor, Contractor's employee, or Visitor shall not be allowed to remain on or in any State Facility occupied by State employees unless they are following the Emergency Proclamation, Exhibit E, EO 21-07, and this Notice. Any unvaccinated or partially vaccinated Contractor, Contractor's employee, or Visitor not in compliance or found to have submitted falsified information pursuant to the Emergency Proclamation, Exhibit E, and EO 21-07 shall be precluded from entry to any State Facility occupied by State employees until they are in full compliance.
2. Any violation of EO 21-07 by a Contractor or Contractor's employee may also be subject to contractual remedies or other remedies as allowed under the law.

IV. HOW DO I COMPLY WITH THE EMERGENCY PROCLAMATION, EXHIBIT E, AND EO 21-07 (ACCESS TO STATE PROPERTY) HARBOR MASTER NOTICE?

A. The Department of Transportation cannot provide advice to a Contractor or Visitor how they will comply with the Emergency Proclamation, Exhibit E, and EO 21-07 (Access to State Property) or to this HARBOR MASTER Notice other than what is stated in said documents. However, the Emergency Proclamation, Exhibit E, and EO 21-07, places *the burden on the Contractor* to ensure its employees are following the requirements of the Emergency Proclamation, Exhibit E, and EO 21-07. The Emergency Proclamation, Exhibit E, and EO 21-07 also places the responsibility on a Visitor to demonstrate that they are in compliance with the requirements of said documents.

B. The *Contractor* on behalf of itself and its employees shall:

1. Attest to the vaccination status of each employee accessing a State Facility; and
2. Ensure the employee obtains a negative test result of a COVID- 19 test as a condition to being allowed to enter or remain in any State facility.

C. *WHAT HAS THE DEPARTMENT OF TRANSPORTATION IMPLEMENTED REGARDING ITS ATTESTATION AND TESTING PROGRAM?*

The Department of Transportation cannot provide advice to a Contractor or Visitor how they will comply with the Emergency Proclamation, Exhibit E, EO 21-07 (Access to State Property), or to this HARBOR MASTER Notice other than what is stated in said documents. The Department of Transportation shares its own application of an Attestation and Weekly Testing forms to the Contractor or Visitor as a sample only.

1. **ATTESTATION.** The Department of Transportation complied with the Governor’s August 5th, 2021 Emergency Proclamation by requiring all State and county employees to attest to vaccination status by completing *ATTACHMENT A, COVID-19 Vaccination Status Attestation Form*. All forms were distributed through Department of Transportation email and or to print paper copies sent to offices and distribution to employees without email. Employees submitted their forms to their respective departmental-Divisional human resource Master to collect and record statistics of those:
 - a. Vaccinated.
 - b. Chose testing in lieu of vaccination (and weekly monitoring and results).
 - c. Seeking a medical or religious exemption.
 - d. Those placed on leave without pay subject to further employment action to ensure compliance.

2. WEEKLY TESTING

The Department of Transportation complied with the Governor's August 5th, 2021 Emergency Proclamation by requiring all State and county employees to attest to their weekly testing by completing *ATTACHMENT B, COVID-19 Weekly Testing Attestation*.

V. HOW WILL THE DEPARTMENT OF TRANSPORTATION ENFORCE THE EMERGENCY PROCLAMATION, EXHIBIT E, AND EO 21-07 (ACCESS TO STATE PROPERTY) HARBOR MASTER ORDER?

A. CONTRACTORS

The Emergency Proclamation, Exhibit E, and EO 21-07 (Access to State Property) will be enforced by the HARBOR MASTER, Project Engineer, or designated state employee. These State employees will conduct random audits of contractor compliance. Contractors or their employees (*See Footnote 3*), found not in compliance will be required to immediately leave the State Facility. Contractor's employees will not be allowed on the State Facility until the Contractor shows proof of compliance with the Emergency Proclamation, Exhibit E, and EO 21-07 or *proof of an exemption*.

Thereafter, the HARBOR MASTER, Project Engineer, or designated state employee will work with the Contracts office and the Deputy Director to determine if a contractual remedy will be imposed for the non-compliance.

B. VISITORS

1. The Emergency Proclamation, Exhibit E, and EO 21-07 (Access to State Property) will be enforced by the HARBOR MASTERS, Project Engineer, or designated state employee conducting audits of compliance by Visitors entering or who are already on State Facilities. Visitors without proof of vaccinations or weekly testing will not be allowed to enter or remain on or in a State Facility.
2. Visitors (*See Footnote 3*) not excluded from the Emergency Proclamation, Exhibit E, and EO 21-07, who are found within a State Facility and not in compliance will be required to immediately leave the State Facility. They will not be allowed to return and access the State Facility until they demonstrate that they are in compliance with the Emergency Proclamation, Exhibit E, and EO 21-07.



Robert Crowell
Harbor Master

Oct 8, 2021

Date