

DEPARTMENT OF TRANSPORTATION

Amendment and Compilation of Chapter 19-122.5
Hawaii Administrative Rules
October 10, 2002

SUMMARY

1. §§19-122.5-1 to 19-122.5-2 are amended.
2. §19-122.5-3 is repealed.
3. §19-122.5-4 is amended.
4. §19-122.5-6 is amended.
5. §19-122.5-14 is repealed.
6. A new §19-122.5-14 is added.
7. Chapter 122.5 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

CHAPTER 122.5

SUSPENSION, REVOCATION, OR CANCELLATION OF
COMMERCIAL DRIVER'S LICENSES AND PERMITS

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- §19-122.5-2 Purpose
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SUBCHAPTER 1
GENERAL PROVISIONS

§19-122.5-1

§19-122.5-1 Scope. This chapter applies to every commercial driver's license or permit holder. [Eff 11/29/93; am and comp NOV 30 2002] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-122.5-2 Purpose. The purpose of this chapter is to:

- (1) Implement the requirements of section 286-240, HRS relating to disqualification of driving privileges of the holder of a commercial driver's license or permit; and
- (2) Establish hearing practices and procedures for aggrieved persons. [Eff 11/29/93; am and comp NOV 30 2002] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-122.5-3 REPEALED [Eff 11/29/93; R

]

SUBCHAPTER 2

SUSPENSION, REVOCATION, AND CANCELLATION PROCEDURES

§19-122.5-4 Notice of disqualification. (a) A notice of the disqualification shall be sent by mail or personally delivered to the commercial driver's license or permit holder.

(b) For the purposes of this chapter, a notice will be deemed to have been received three days after the notice was mailed to the commercial driver's license or permit holder's last known address in the holder's record file. The notice and the date of mailing will be entered in the holder's file when the examiner mails the notice. A sample notice of disqualification letter, located at the end of this chapter, is made a part of this chapter and designated as Exhibit A. [Eff 11/29/93; am and comp NOV 30 2002] (Auth: HRS §§286-18, 286-241.5, 286-246). (Imp: HRS §§286-18, 286-241.5, 286-246)

§19-122.5-5 Surrender of commercial driver's license or permit. Upon receipt of a notice of disqualification, the commercial driver's license or permit holder shall surrender within three days (not counting Saturday, Sunday, or holidays), the commercial driver's license or permit to the location noted in the notice. The examiner or its

designee shall record the surrender in the electronic record and provide the holder with written documentation of receipt of the surrendered license. Receipt of the surrendered license shall be as noted in Exhibit A located at the end of this chapter. [Eff 11/29/93; comp NOV 30 2002] (Auth: HRS §286-241.4) (Imp: HRS §286-241.4)

§19-122.5-6 Duration of disqualification. The duration of disqualification shall be in accordance with sections 286-240 and 286-242, HRS. [Eff 11/29/93; am and comp NOV 30 2002] (Auth: HRS §§286-240, 286-242) (Imp: HRS §§286-240, 286-242)

SUBCHAPTER 3 HEARING PROCEDURES

§19-122.5-7 Petition for hearing. (a) Any commercial driver's license or permit holder aggrieved by any notice of disqualification may request a hearing by filing a petition for hearing with the examiner of drivers within ten days after being notified of the suspension, revocation, cancellation, or out-of-service order. A form for a petition for hearing, located at the end of this chapter, is made a part of this chapter and designated as Exhibit B. A disqualifying action by the examiner of drivers on the commercial driver's license or permit shall not be stayed pending the outcome of a hearing.

(b) The examiner of drivers may reject any petition which is not properly completed or contains altered information. [Eff 11/29/93; comp NOV 30 2002] (Auth: HRS §§286-17, 286-241.5) (Imp: HRS §§286-17, 286-241.5)

§19-122.5-8 Notice of hearing. The examiner of drivers shall notify the petitioner of the date of hearing within fourteen days upon receipt of the petition for a hearing. All petitions shall be time stamped upon receipt. The notice of hearing to notify the petitioner, located at the end of this chapter, is made a part of this chapter and designated as Exhibit C. [Eff 11/29/93; comp NOV 30 2002] (Auth: HRS §286-241.5) (Imp: HRS §286-241.5)

§19-122.5-9 Hearing officer(s). (a) The hearing officer(s) shall be appointed by the examiner of drivers.

(b) The hearing officer(s) shall serve without compensation but shall be reimbursed for reasonable incidental expenses subject to written approval by the director.

(c) The hearing officer(s) shall hear all properly submitted petitions. [Eff 11/29/93; comp
NOV 30 2002 (Auth: HRS §§286-17, 286-241.5)
(Imp: HRS §§286-17, 286-241.5)

§19-122.5-10 Duties of the hearing officer(s).

(a) The hearing officer(s) shall review all evidence, all verbal and written arguments, investigative reports, and other pertinent information and testimony gathered, relevant to the suspension, revocation, cancellation, or out-of-service order as properly submitted by the office of the examiner of drivers and the petitioner.

(b) The hearing officer(s) shall make a written report on its findings, conclusions, and order on the petitioner's petition. A sample form for reporting conclusions, located at the end of this chapter, is made a part of this chapter and designated as Exhibit D. [Eff 11/29/93; comp
NOV 30 2002] (Auth: HRS §§286-17, 286-241.5)
(Imp: HRS §§286-17, 286-241.5)

§19-122.5-11 Disposition of petition. Within fourteen days after a hearing, the hearing officer(s) shall submit its findings, conclusions, and order on the petition to the examiner of drivers. The disposition shall be prepared on the findings, conclusions of law, decision and order form located at the end of this chapter, which is made a part of this chapter and designated as Exhibit E. [Eff 11/29/93; comp
NOV 30 2002] (Auth: HRS §286-18) (Imp: HRS §286-18)

§19-122.5-12 Appeal to circuit court. Any order and decision made by the hearing officer(s) may be appealed to the circuit court. [Eff 11/29/93; comp
NOV 30 2002] (Auth: HRS §286-241.6) (Imp: HRS §286-241.6)

SUBCHAPTER 4
SEVERABILITY AND REPEAL

§19-122.5-13 Severability. If any portion of this chapter is held invalid for any reason, the invalidity shall not affect the validity of the remainder of the chapter. [Eff 11/29/93; comp **NOV 30 2002**] (Auth: HRS §§286-241.4, 286-246) (Imp: HRS §286-241.4)

§19-122.5-14 Repeal. All rules and regulations relating to and governing the suspension, revocation, or cancellation of commercial driver's licenses and permits in effect prior to the effective date of this chapter are repealed. [Eff and comp **NOV 30 2002**] (Auth: HRS §§286-241.4, 286-246) (Imp: HRS §286-241.4)

Amendments to and compilation of Chapter 122.5, Title 19, Hawaii Administrative Rules, on the Summary Page dated October 10, 2002 were adopted on October 10, 2002 following public hearings held on September 24 and 26, 2002, after public notice was given in the Honolulu Star-Bulletin, The Maui News, The Garden Island News, The Hawaii Tribune-Herald and The West Hawaii Today on August 11, 2002.

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



BRIAN K. MINAAI
Director of Transportation



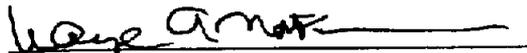
BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: 11-19-02

NOV 20 2002

Filed

APPROVED AS TO FORM:



Deputy Attorney General

02 NOV 20 09:41

LIEUTENANT GOVERNOR'S
OFFICE

COUNTY OF _____

EXAMINER OF DRIVERS

NOTICE OF DISQUALIFICATION

Dear

You are hereby notified that effective _____, 20__, your commercial driver's _____ license _____ permit is disqualified. Section 286-241.4, Hawaii Revised Statutes, gives the County Examiner of Drivers authority to suspend, revoke or cancel a commercial driver's license or permit and requires the holder to surrender the commercial driver's license or permit at a location designated by the Examiner of Drivers.

Your commercial driver's license or permit must be turned in at:

This action is being taken for the following reason(s):

Your commercial driver's license or permit has been ___ suspended ___ revoked ___ cancelled permanently, or for a period of _____, to end on _____.

If you disagree with this action, you have a right to a hearing before the Hearing Officer(s). A written request for such a hearing must be filed with the Examiner of Drivers within ten calendar days from the date of this notice. You are presumed to have received it five days after the date on the notice. Further, appeals from the decision of the Hearing

EXHIBIT A

Officer(s) may be made to the circuit court as provided in Chapter 91, Hawaii Revised Statutes.

Failure to surrender your commercial driver's license or permit within three days of receipt of the Notice of Disqualification may result in fines and other penalties.

Examiner of Drivers or Agent

Date

License or permit was surrendered by driver ____.

Examiner of Drivers or Agent

Date

COUNTY OF _____

Case # _____

Dear

NOTICE OF HEARING ON _____

Pursuant to your request for a hearing dated _____, please be informed that the hearing will be held on the following date, time and place:

Date: _____

Time: _____

Place: _____

This hearing shall be conducted in accordance to Chapter 19-122.5, Hawaii Administrative Rules and Chapter 91, Hawaii Revised Statutes. You may retain counsel if so desired, and will be afforded the opportunity to present evidence and arguments on all issues involved.

For the Examiner of Drivers

By: _____

Date: _____

EXHIBIT C

COUNTY OF _____

EXAMINER OF DRIVERS

CASE# _____

IN THE MATTER OF THE ACCUSATION)
AGAINST)

CDL # _____)

FINDINGS, CONCLUSIONS OF LAW, DECISION AND ORDER

The above entitled matter having been heard before the Hearing Officer(s) of the County of _____ Examiner of Drivers, State of Hawaii, on the _____ day of _____, 20__ and the Hearing Officer(s) having heard and considered all relevant evidence on the petition, finds that:

1. The above named person has a valid commercial driver's license or permit and is afforded all privileges associated with driving a commercial motor vehicle.
2. The above named person was represented by _____ at the hearing.
3. The above named person was charged with the following (specify the nature and date(s) of the offense(s):

EXHIBIT D

4. The above named person entered an answer of:
 ___ Admission ___ Denial ___ No Contest
5. The evidence presented before the Hearing Officer(s) ___ did or ___ did not substantiate the charge(s) as specified in the above.

CONCLUSION OF LAW

1. That this Officer(s) has jurisdiction over the licensee or permittee and the subject matter herein pursuant to Chapter 286, Hawaii Revised Statutes and Chapter 19-122.5, Hawaii Administrative Rules governing the suspension, revocation and cancellation of commercial driver's licenses and permits.

2. The above named person ___ did or ___ did not violate provisions of the Hawaii Revised Statutes or the Hawaii Administrative Rules.

COUNTY OF _____

EXAMINER OF DRIVERS

DECISION AND ORDER

It is the decision of this Hearing Officer(s) that the licensee or permittee, _____, has _____ has not violated Chapter _____ of the Hawaii Revised Statutes and/or Chapter 19-122.5 of the Hawaii Administrative Rules governing the licensing of commercial drivers.

It is therefore ORDERED:

- () That the _____ Licensee _____ Permit Holder is assessed a penalty of _____ days _____ months _____ years _____ suspension, _____ revocation, _____ cancellation to end on _____, 20__.
- () That the _____ Licensee _____ Permit Holder was found not committed of the violation(s) charged.

Dated at Honolulu, Hawaii this _____ day of _____, 20__.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file at the Department of Finance.

HEARING OFFICER(S)
EXAMINER OF DRIVERS
869 Punchbowl Street
Honolulu, Hawaii 96813

For the Director

For the Director

A certified copy of the foregoing Findings and
Conclusions of Law, Decision and Order received:

By _____ Title _____ Date _____

I hereby certify that the foregoing Order was served:

Signed: _____ Title _____ Date _____