

DEPARTMENT OF TRANSPORTATION

Amendments to Chapter 19-133.5
Hawaii Administrative Rules

April 7, 1992

SUMMARY

1. §19-133.5-4 is amended.
2. §19-133.5-5 is amended.
3. §19-133.5-6 is amended.
4. §19-133.5-7 is amended.
5. §19-133.5-8 is amended.
6. §19-133.5-9 is amended.
7. §19-133.5-10 is amended.
8. §19-133.5-11 is amended.
9. Exhibit A is repealed; Notice of Violation - Safety Inspector Certificate dated April 7, 1992 is adopted.
10. Exhibit B is repealed; Notice of violation - Inspection Station Permit dated April 7, 1992 is adopted.
11. Exhibit C is repealed; Notice of Suspension/Revocation dated April 7, 1992 is adopted.
12. Exhibit D is repealed; Petition for Hearing dated April 7, 1992 is adopted.
13. Exhibit E is repealed; Notice of Hearing dated April 7, 1992 is adopted.
14. Exhibit F is repealed.
15. Exhibit G is repealed.

HAWAII ADMINISTRATIVE RULES

TITLE 19
DEPARTMENT OF TRANSPORTATION

SUBTITLE 5
MOTOR VEHICLE SAFETY OFFICE

CHAPTER 133.5
SUSPENSION OR REVOCATION OF AN OFFICIAL
INSPECTION STATION OR INSPECTOR'S CERTIFICATION

Subchapter 1 General Provisions

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- §19-133.5-6 Length of suspension or revocation

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- §19-133.5-13 Severability
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SUBCHAPTER 1
GENERAL PROVISIONS

§19-133.5-1 Scope. This chapter shall apply to every official inspection station and every person who conducts official vehicle safety inspections. [Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-2 Purpose. The purpose of this chapter is to establish:

- (1) Minimum criteria relating to suspension or revocation of an official inspection station permit or a certified vehicle inspector's certification;
- (2) Minimum period of suspension or revocation for various infractions; and
- (3) Hearing practices and procedures for aggrieved persons. [Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-3 Definitions. As used in this chapter:

"Certificate of inspection" or "safety inspection certificate" means a completed inspection checklist of vehicle components or testing of sun screening devices which was used to conduct the inspection required by chapter 19-133.2, and signed by the certified vehicle inspector who performed the inspection.

"Certified vehicle inspector" or "inspector" means a person who possesses a current, valid inspector certificate and/or a certificate to test sun screening devices issued by the DOT.

"County agency" means the county department contracted by the department as having the responsibility for administering, enforcing, and supervising the official vehicle safety inspection program in that county.

"Department" means the state department of transportation (DOT).

"Director" means the state director of transportation.

"Inspection equipment" means the equipment required by every inspection station to conduct official vehicle safety inspections in accordance with chapter 19-133.2, Hawaii Administrative Rules.

"Major infraction" means but is not necessarily limited to the following discrepancies:

- (1) Defective inspection equipment;
- (2) Failure to notify DOT of change in inspection station address;
- (3) Failure to notify DOT of change in ownership or management of the inspection station;
- (4) Failure to properly equip or to maintain required inspection equipment to conduct vehicle inspections;
- (5) Permitting unauthorized person(s) to inspect, issue or affix inspection stickers to a vehicle;
- (6) No certified vehicle inspector employed;
- (7) Failure to retain inspection station's copy of the safety inspection certificate for a period of one year after date of inspection; or
- (8) Presigning inspector's signature on unused certificate of inspection.

"Minor infraction" means but is not necessarily limited to the following discrepancies:

- (1) Failure to notify DOT of inspector's change in employment status;
- (2) Failure to properly complete the certificate of inspection;
- (3) Failure to display inspection station permit or inspector certificate in a conspicuous place at the location where the inspections are conducted;
- (4) Failure to maintain a safe and clean environment in the inspection area;
- (5) Failure to submit monthly inspection report by the deadline date;
- (6) Failure to store inspection stickers in a locked and secure location; and
- (7) Failure to properly mark the floor location where headlamp aiming is to be performed.

"Official inspection station" or "inspection station" means a person, partnership, or corporation that is authorized and issued a permit by the DOT to conduct official vehicle inspections and/or to test sun screening devices.

"Official vehicle safety inspection" or "inspection" means that safety inspection or vehicle equipment and components including testing of minimum light transmittance of sun screening devices as required by chapter 19-133.2.

"Safety inspection stickers" or "inspection stickers" means a two-part sticker which is affixed upon the right most nearly vertical portion of the rear bumper indicating the month and year of expiration of the current

certificate of inspection or the sun screening device inspection sticker affixed to the glazing material in accordance with chapter 19-133.2-34(b)(8).

"Serious infraction" means but is not necessarily limited to the following discrepancies:

- (1) Unauthorized transfer of inspection stickers from one inspection station to another inspection station;
- (2) No valid inspection station comprehensive public liability insurance coverage;
- (3) Expired comprehensive public liability insurance coverage;
- (4) Failure to remove and properly dispose of expired inspection stickers after removal;
- (5) Failure to inspect the vehicle as required by chapter 19-133.2; and
- (6) Unauthorized issuance of inspection stickers.
[Eff JUL 31 1989] (Auth: HRS §§286-17, 28)
(Imp: HRS §286-28)

SUBCHAPTER 2
SUSPENSION AND REVOCATION PROCEDURES

~~§19-133.5-4 Notice of violation. Discretionary warning notices will be sent by certified mail or hand delivered to the responsible operator of an inspection station or to the certified vehicle inspector for committing minor infractions pursuant to chapter 19-133.2. Repeated infractions shall be cause for suspension and or revocation of official certification. All letters and notices in these rules will be deemed to be received three days after they are mailed. Notice of violation letters are located at the end of this chapter designated as Exhibits A and B. [Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

~~§19-133.5-5 Surrender of safety inspection stickers and authorization to continue performing inspections.
(a) Suspension notices will be sent by certified mail or hand delivered to the responsible operator of an inspection station or the certified vehicle inspector for committing a major infraction pursuant to chapter 19-133.2 or following a second warning notice of a minor infraction.
(b) Revocation notices will be sent by certified mail or hand delivered to the responsible operator of an~~

inspection station or the certified vehicle inspector for committing a serious infraction or following a second suspension notice.

(c) Upon receipt of a suspension or revocation notice, the responsible operator of an inspection station or the certified vehicle inspector shall promptly surrender all unused inspection stickers and certificates of inspection in inventory, and the inspection station permit along with the inspector's certificate to the agency issuing the notice. The issuing agency shall record all surrendered items in writing and provide the station operator with a copy of the record.

(d) In cases where only the certified vehicle inspector is suspended, the inspector's certificate shall be the only item to be surrendered.

(e) After the suspension or revocation is lifted, items surrendered shall be returned to the inspection station operator or certified vehicle inspector, whichever the case may be and authorization to perform inspection shall be restored. The notice of suspension or revocation is located at the end of this chapter designated as Exhibit C.

(f) Unused certificate of inspection with presigned inspector's signature shall be confiscated upon discovery by the DOT representative conducting the station inspection. Confiscated materials shall be used as evidence and destroyed upon final disposition of the alleged violation. [Eff. JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

~~§19-133.5-6 Length of suspension or revocation. The length of suspension or revocation shall be but not limited to the following schedule:~~

- ~~(1) Two minor infractions during a six month period will be cause for a thirty day suspension;~~
- ~~(2) One major infraction during a six month period will be cause for a thirty day suspension;~~
- ~~(3) Three minor infractions during a six month period will be cause for a sixty day suspension;~~
- ~~(4) Two major infractions during a twelve month period will be cause for a ninety day suspension;~~
- ~~(5) Four minor infractions during a six month period will be cause for a ninety day suspension;~~
- ~~(6) Three major infractions during a two year period will be cause for a one hundred eighty day suspension;~~
- ~~(7) One serious infraction will be cause for a one year suspension;~~

- ~~(8) Two serious infractions will be cause for a five year suspension;~~
 - ~~(9) Three serious infractions will be cause for permanent revocation; and~~
 - ~~(10) Indefinite length of suspension may be imposed and lifted when compliance to a specific requirement has been met or when there is no outright infraction involved.~~
- ~~[Eff JUL 31 1989] (Auth: HRS §§286-17, 28)
(Imp: HRS §286-28)~~

SUBCHAPTER 3
HEARING PROCEDURES

~~§19-133.5-7 Petition for hearing. (a) Any operator of an inspection station or certified vehicle inspector aggrieved by any suspension or revocation order can request a hearing by filing a petition for hearing to the director within ten days after the suspension or revocation is invoked. The petition for hearing is located at the end of this chapter designated as Exhibit D.~~

~~(b) The director may reject any petition which is not properly completed or contains altered information.
[Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

~~§19-133.5-8 Notice of hearing. The director shall notify the petitioner of the intent to hold a hearing within fourteen days after receiving the petition for hearing from the aggrieved. The notice of hearing to notify the aggrieved is located at the end of this chapter designated as Exhibit E. [Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

~~§19-133.5-9 Hearing board. (a) The director shall appoint a hearing board consisting of no less than three members whose terms shall be staggered so as to prevent all members from terminating at the same time.~~

~~(b) Members of the board shall serve without compensation except for incidental expenses as deemed necessary.~~

~~(c) The board shall hear all petitions submitted by aggrieved station operators or inspectors.
[Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

~~§19-133.5-10 Duties of the hearing board. (a) The hearing board shall be called to order, as required, by the director.~~

~~(b) The hearing board shall review all evidence, including verbal and written arguments, investigative reports, and other pertinent information and testimony gathered relevant to the suspension or revocation.~~

~~(c) The hearing board shall make written reports on their findings and conclusions to which an order affirming, denying, modifying, or reversing the action taken against the aggrieved shall be issued.~~

~~[Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

~~§19-133.5-11 Disposition of petition. Within fourteen days after a hearing, the hearing board shall either affirm, deny, modify or reverse the order to suspend or revoke the certification of the inspection station or inspector. The disposition shall be prepared on the findings, conclusions of law, decision and order form located at the end of this chapter designated as Exhibit F. [Eff JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)~~

§19-133.5-12 Appeal to circuit court. Any order issued pursuant to the authority granted by chapter 91, HRS, and these rules of procedures shall be subject to appeal to the circuit court. [Eff JUL 31 1989] (Auth: HRS §91-14) (Imp: HRS §91-14)

SUBCHAPTER 4 SEVERABILITY AND EFFECTIVE DATE

§19-133.5-13 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 JUL 31 1989] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-14 Effective date. This chapter shall take effect ten days after it is filed with the lieutenant governor. [Eff JUL 31 1989] (Auth: HRS §§286-17, 18) (Imp: HRS §286-28)

DEPARTMENT OF TRANSPORTATION

Chapter 19-133.5, Hawaii Administrative Rules, on the Summary Page dated June 22, 1989, was adopted on June 22, 1989, following public hearings held on April 17, 18, 19, 20, 24, and 15, 1989, after public notice was given in the Honolulu Advertiser on March 23, 1989, the Hawaii Tribune-Herald and Maui News on March 28, 1989, the Garden Island News on March 29, 1989, and the Molokai News on April 1, 1989.

The adoption of chapter 19-133.5 shall take effect ten days after filing with the Office of the Lieutenant Governor.


EDWARD Y. HIRATA
Director of Transportation

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


JOHN WAIHEE
Governor
State of Hawaii

Dated: JUL 21 1989

REC'D. BY

1989 JUL 21 AM 9 56

GOVERNOR'S OFFICE

Filed

§19-133.5-4 Notice of violation. The Department may issue discretionary warning notices by certified mail or hand delivered to the responsible operator of an inspection station or to the certified vehicle inspector for committing any minor infractions pursuant to this chapter. Repeated minor infractions shall be cause for suspension or revocation of a permit or certification. All letters and notices provided for in these rules shall be deemed to have been received three days after they are mailed. The forms for a Notice of Violation letter are located at the end of this chapter and are designated as Notice of Violation - Safety Inspector Certificate dated April 7, 1992 and Notice of Violation - Inspection Station Permit dated April 7, 1992. [Eff 7/31/89; am MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-5 Notice of suspension or revocation; surrender of safety inspection stickers and authorization to continue performing inspections.

(a) Suspension notices shall be sent by certified mail or hand delivered to the responsible operator of an inspection station or the certified vehicle inspector for committing a major infraction pursuant to chapter 19-133.2 or following a second warning notice of a minor infraction.

(b) Revocation notices shall be sent by certified mail or hand delivered to the responsible operator of an inspection station or the certified vehicle inspector for committing a serious infraction or following a second suspension notice.

(c) A form of the notice of suspension or revocation is located at the end of this chapter and designated as Notice of Suspension/Revocation dated April 7, 1992.

(d) Upon receipt of a suspension or revocation order by certified mail or hand delivery, the responsible operator of an inspection station or the certified vehicle inspector shall promptly surrender all unused inspection stickers and certificates of inspection in inventory, and the inspection station permit and/or the inspector's certificate to the agency that issued the notice of suspension or revocation. The agency shall record all surrendered items in writing and provide the station operator or inspector with a copy of the record.

(e) In cases where only the certified vehicle inspector is suspended, the inspector's certificate shall be the only item to be surrendered.

(f) After the suspension is lifted, items surrendered shall be returned to the inspection station operator or certified vehicle inspector, whichever the case may be and authorization to perform inspection shall be restored.

(g) Unused certificates of inspection with an inspector's signature shall be confiscated upon discovery by the DOT representative conducting the station inspection. Confiscated materials shall be used as evidence and destroyed upon final disposition of the alleged violation. [Eff 7/31/92; am MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-6 Length of suspension or revocation.
The length of suspension or revocation shall be based on, but not limited to, the following schedule:

- (1) Two minor infractions during a six month period will be cause for a thirty day suspension;
- (2) One major infraction will be cause for a thirty day suspension;
- (3) Three minor infractions during a six month period will be cause for a sixty day suspension;
- (4) Two major infractions during a twelve month period will be cause for a ninety day suspension;
- (5) Four minor infractions during a six month period will be cause for a ninety day suspension;
- (6) Three major infractions during a two year period will be cause for a one hundred eighty day suspension;
- (7) One serious infraction will be cause for one year suspension; and
- (8) Two or more serious infractions will be cause for revocation.

An indefinite suspension may be imposed for failure to comply with a specific requirement. The suspension shall be lifted if the Department determines that the specific requirement has been satisfied and complied with. [Eff 7/31/89; am MAR 31 1994]
(Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-7 Petition for hearing. (a) Any operator of an inspection station or certified vehicle inspector can request a hearing by filing a petition for hearing to the director within ten days after the receipt of the notice of suspension or revocation. The form for the petition for hearing is located at the end of this chapter and designated as Petition for Hearing dated April 7, 1992.

(b) The director may reject any petition which is not properly completed. [Eff 7/31/89; am MAR 31 1994]
(Auth: HRS §§286-27, 28) (Imp: HRS §286-28)

§19-133.5-8 Notice of hearing. The director shall notify the petitioner of the intent to hold a hearing within fourteen days after receiving the petition for hearing from the petitioner. The form of the notice of hearing to notify the petitioner is located at the end of this chapter and designated as Notice of Hearing dated April 7, 1992. [Eff 7/31/89; am MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-9

§19-133.5-9 Hearings officers. (a) The director shall appoint a hearings officer for each county.

(b) The hearings officers shall serve without compensation except for incidental expenses as deemed necessary.

(c) The hearings officers shall hear all petitions submitted by station operators or inspectors from their respective counties. [Eff 7/31/89; am MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-10 Duties of the hearings officer.

(a) The appointed hearings officer shall conduct hearings within their respective counties as required by the director.

(b) The hearings officer shall review all evidence, including verbal and written arguments, investigative reports, and other pertinent information and testimony gathered relevant to the suspension or revocation.

(c) The hearings officer shall make a written report of the hearings officer's findings and conclusions upon which an order affirming, denying, modifying, or reversing the action proposed to be taken against the petitioner shall be issued. [Eff 7/31/89; am MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp: HRS §286-28)

§19-133.5-11

§19-133.5-11 Disposition of petition. The hearings officer shall either affirm, deny, modify or reverse the proposed suspension or revocation of the certification of the inspector or permit of the inspection station by preparing findings of fact and conclusions of law, upon which a decision and order may be issued by the director. [Eff 7/31/89; am
MAR 31 1994] (Auth: HRS §§286-17, 28) (Imp:
HRS§91-14)

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE SAFETY OFFICE

Docket No. MVSO - _____

Dear

Re: In the matter of [Inspection Station/Safety Inspector]

Pursuant to your Petition for Hearing dated _____,
and filed at the Department of Transportation on _____,
please be informed that a contested hearing will be held on the
following date, time and place:

Date: _____

Time: _____

Place: _____

This hearing shall be conducted in accordance to Chapters 19-1 and 19-133.5, Hawaii Administrative Rules, and Chapter 91, Hawaii Revised Statutes. You will be afforded the opportunity to present evidence and arguments on all issues involved to a hearings officer who will make a written report of findings and conclusions upon which the Director of Transportation may affirm, deny, modify, or reverse the action proposed to be taken against you. You may retain counsel if so desired.

For the Director of Transportation

By: _____

Date: _____

Notice of Hearing
(April 7, 1992)

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE SAFETY OFFICE

PETITION FOR HEARING

TO: DIRECTOR OF TRANSPORTATION
DEPARTMENT OF TRANSPORTATION
869 Punchbowl Street
Honolulu, Hawaii 96813-5036

1. I _____,
(Name)

of _____
(Address)

whose telephone number is _____, and whose
place of employment is _____,

do hereby petition for a hearing on the following
infraction(s) (designate each infraction you intend to
contest):

2. My position is that I feel that my:

Official Motor Vehicle Inspection Station Permit

Certified Safety Inspector Certificate
should not be suspended or revoked because (state specific

reasons): _____

(Petitioners Signature)

Petition for Hearing
(April 7, 1992)

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE SAFETY OFFICE

NOTICE OF SUSPENSION OR REVOCATION

Dear

In accordance with Section 286-28, Hawaii Revised Statutes, you are hereby notified that your:

Official Motor Vehicle
 Inspection Station Permit

Certified Vehicle Inspector
 Certificate

will be suspended for a period of _____
 revoked.

The infraction(s) is (are) based upon inspection(s) held on _____ in which the following was observed or determined:

This suspension revocation will take effect on _____ unless you petition for a hearing before the Director of Transportation. The enclosed Petition for Hearing must be filed with the Director within ten calendar days after receipt of this notice. Further appeals may be made to the Circuit Court as provided in Chapter 91, Hawaii Revised Statutes.

D.O.T. Representative or Agent

Date

APPROVED:

Notice of Suspension/Revocation
(April 7, 1992)

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE SAFETY OFFICE

NOTICE OF VIOLATION

Dear

Section 286-8, Hawaii Revised Statutes, provides that the Department of Transportation shall supervise and cause inspections to be made of official inspection stations and shall suspend or revoke and require the surrender of the permit issued to a station which is not properly manned or equipped or not properly conducting inspections.

This letter is to serve as an official notice of violation to your station under section 19-133.5-4, Hawaii Administrative Rules and a warning that repeated infractions of Chapter 19-133.2, Hawaii Administrative Rules are cause for suspension or revocation of your inspection station permit.

Based upon an inspection of your station on _____, you committed the following minor infraction(s) under section 19-133.5-3, Hawaii Administrative Rules:

If you desire, you may submit a written response to this notice of violation within 10 days after receipt of this notice.

D.O.T. Representative or Agent

Date: _____

Notice of Violation - Inspection Station Permit
(April 7, 1992)

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE SAFETY OFFICE

NOTICE OF VIOLATION

Dear

Section 286-28, Hawaii Revised Statutes, provides that the Department of Transportation shall supervise and cause inspections to be made of the practices of all safety inspectors and shall suspend or revoke and require the surrender of any certificate of inspection issued to a safety inspector or refuse to renew the certificate of any safety inspector who it finds is not properly conducting inspections.

This letter is to serve as an official notice of violation to you under section 19-133.5-4, Hawaii Administrative Rules and a warning that repeated infractions of Chapter 19-133.2, Hawaii Administrative Rules, are cause for suspension or revocation of your inspector's certificate.

Based upon an inspection of your practices on _____, you committed the following minor infraction(s) under section 19-133.5-3, Hawaii Administrative Rules:

If you desire, you may submit a written response to this notice of violation within 10 days after receipt of this notice.

D.O.T. Representative or Agent

Date: _____

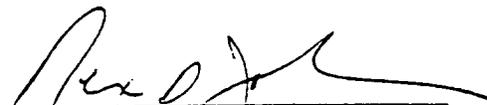
Notice of Violation - Safety Inspector Certificate
(April 7, 1992)

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DEPARTMENT OF TRANSPORTATION

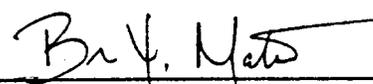
Amendments to Chapter 19-133.5, Hawaii Administrative Rules, on the Summary page dated April 7, 1992, were adopted on October 8, 1993, following public hearings held on September 15, 17, 20, 21, and 23, 1993, after public notice was given in the Honolulu Advertiser on August 8, 1993, and in the Maui News, the Garden Island News, and the Hawaii Tribune-Herald on August 6, 1993, and the Molokai News on August 11, 1993.

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



REX D. JOHNSON
Director
Department of Transportation

APPROVED AS TO FORM:



Deputy Attorney General



JOHN WAIHEE
Governor
State of Hawaii

Dated: MAR 18 1994

MAR 21 1994

Filed

MAR 21 4 04 PM '94

LIEUTENANT GOVERNOR'S
OFFICE