

**COMPLIANCE
OF STATE
AGENCIES WITH
THE HAWAII
ADMINISTRATIVE
PROCEDURE ACT**

RICHARD F. KAHLE, JR.
Assistant Researcher

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LEGISLATIVE REFERENCE BUREAU

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FOREWORD

This study of state agency compliance with the Hawaii Administrative Procedure Act has been made in response to Senate Resolution 16, which was adopted during the Regular Session of 1969.

The Resolution expressed concern that "some governmental agencies have in some instances failed to promulgate or adopt any rule or neglected to fully comply with the intent and purpose of the Hawaii Administrative Procedure Act." This report reveals the patterns of compliance with the Administrative Procedure Act by the state agencies and presents insights into the reasons for the lack of conformity where it exists. Some of the reasons for nonconformity are similar to those found by the Bureau report on county compliance with the Administrative Procedure Act that was published last year. This report attempts to present solutions to the problems that exist for state agencies as well as county agencies.

To a great extent, this report could not have been completed without the cooperation and assistance of state officials. It is hoped that this report, in addition to meeting its major objectives of providing information to the Legislature, will aid state agencies in carrying out their responsibilities under the Administrative Procedure Act.

Henry N. Kitamura
Director

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SUMMARY

This study of state agency compliance with the Administrative Procedure Act shows that more than one-half of the agencies are in full compliance with the Act and have made rules for all activities requiring them. However, thirteen of the sixteen departments involved are either not in full compliance with the Act or have not adopted rules for all activities. Since certain agencies have discretionary powers in passing rules for some of the activities supervised by them, it is difficult to determine whether rules should be promulgated in these areas. Instances were noted where agencies having discretionary power had deemed rules unnecessary or had established rules without following the requirements of the Administrative Procedure Act.

As with the 1968 Bureau study on county compliance, areas of confusion existed at the state level concerning which agencies fell within the definition of agency under the Act and what activities fell within the definition of rule. Solutions to these problems are suggested at the end of this study along with a method for continued investigation and enforcement of agency compliance under the Administrative Procedure Act.

Chapter I

INTRODUCTION

History of the Administrative Procedure Act

The need for an administrative procedure act, which has been passed in most states in one form or another, came about through the multiplicity of state agencies and the need to control these agencies. Many of the agencies established written rules of procedure, to be followed by the public, but these rules were not readily available to anyone¹ nor, in some situations, were the rules in printed form. Moreover, interpretations of statutes were made by these agencies but, in many instances, these interpretations were not available to the public in an accessible form.² Furthermore, many authorities felt that a uniform procedure was needed in administrative hearings conducted by the various state agencies.³ Out of this need for uniformity and easy accessibility of administrative rules, state administrative procedure acts were enacted.

The Hawaii Administrative Procedure Act (hereinafter called the APA) was first enacted in 1961 by the Hawaii State Legislature after consideration for three years.⁴ In its deliberations, the Legislature considered the then existing sections which regulated the rule-making powers of state and county agencies,⁵ the Federal Administrative Procedure Act and the Model State Administrative Procedure Act. In its final form, the bill, which was enacted as the APA, was primarily based on "the first tentative draft of the revision of the Model State Administrative Procedure Act which was drawn up at the meeting of the National Conference of Commissioners on August 17-22, 1959..."⁶

The purposes of the Model Administrative Procedure Act, as set forth in the 1946 Handbook of the National Conference of Commissioners on Uniform State Laws, are to:

- (1) Require each agency to adopt essential procedural rules and, so far as practicable, require all rule-making, both procedural and substantive, to be accompanied by notice of hearing to interested persons;
- (2) Assure proper publicity for administrative rules that affect the public;
- (3) Provide for advance determination of (or "declaratory judgments" on) the validity of administrative rules, and provide for "declaratory rulings," affording advance determination of the application of administrative rules to particular cases;

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- (4) Assure fundamental fairness in administrative hearings, particularly in regard to rules of evidence, the taking of official notice in quasi-judicial proceedings, and the exclusion of factual material not properly presented and made a part of the record;
- (5) Provide decision making officers and agency heads with personal familiarity with the evidence in quasi-judicial cases;
- (6) Assure proper scope of judicial review of administrative orders to guarantee correction of administrative errors.

These principles have been incorporated in the APA.⁷

During the course of this study, two problem areas were encountered. The first problem involves the broad definitions of agency and rule, as stated in the APA, and the second with the rule-making authority of the agencies that fall within the purview of the APA.

Definition of Agency

As defined in section 91-1(1) of the APA, "agency" means:

... each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

The definition of agency is all inclusive and encompasses all state and county officials or administrative bodies authorized by law⁸ to make rules, except those in the legislative and judicial branches. This broad definition has created problems of compliance by certain agencies that, perhaps, were not contemplated when the APA was enacted. A case in point is the application of the APA to those agencies that are authorized by law to administer interstate compacts. These agencies include state officers and commissions in the following areas: Interstate Parole and Probation;⁹ Interstate Compact on Juveniles;¹⁰ Multistate Tax Commission;¹¹ Western Interstate Commission for Higher Education;¹² and the Compact on Mental Health.¹³ Since these officers and commissions are authorized by law to promulgate rules and regulations, they would clearly fall within the definition of an agency. As an agency, all procedural requirements of the APA must be complied with in the adoption of rules and regulations. These procedural requirements, however, if applied to the adoption of rules under the interstate compacts would defeat the intent of such compacts in that there would be no uniformity of rules among the participating states, for each state would then be required to comply with the provisions of the APA in their jurisdiction. All

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the interstate compacts heretofore mentioned are required for purposes of uniformity to have their rules approved by the interstate officers and commissions as a whole instead of by each state officer or commission individually.

Presently, none of the rules and regulations on interstate compacts has been adopted in accordance with the provisions of the APA, nor have they been filed with the Lieutenant Governor's office. The five interstate agencies discussed above were not included in the compliance portion of this report.

Definition of Rule

Another broadly defined term under the APA is the word "rule". Section 91-1(4) defines "rule" as:

... each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

As noted in the 1968 Bureau study on county compliance, the relevant elements of the definition of rule are:¹⁴

1. statement
2. of general or particular applicability
3. and future effect
4. that implements, interprets, or prescribes law or policy.

In addition, there are exceptions to the definition. A statement is not a rule if it:

1. concerns only the internal management of the agency
2. and does not affect private rights
3. or procedures available to the public.

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Any agency statement, then, which contains the elements mentioned above must comply with the requirements of the APA, unless the statement deals only with the internal management of the agency. During the course of our study, however, we found that a literal application of the term would create administrative problems in certain areas which, we believe, were never intended or anticipated by the legislature. For example, each job description of a position in the state government, as now published by the State Department of Personnel Services, could be considered a rule and thus be subject to the procedural requirements of the APA. Each job description can be classified as an agency statement of general or particular applicability with future effect that implements or interprets the personnel laws of the State. It is difficult to conceive that the legislature meant to have the APA apply to all such job descriptions. With over 12,000 positions under the civil service system, a tremendous administrative problem would be created if the job description of each position is required to be promulgated under the APA procedural requirements.

The State Department of Personnel Services has informed this office that the procedural requirements of the APA have not been followed in setting up the job descriptions of state civil service positions.

Rule-Making Authority

An analysis of the statutes involved in this study reveals that the manner of delegating authority for rule making to agencies varies. Some statutes mandate the agency to pass rules and regulations, while others provide for agency discretion in passing the rules and regulations. Agencies with discretionary authority are granted the rule making power in the following manner:

1. Statutes which state that the rules and regulations may be passed.
2. Statutes which state that the rules and regulations shall be passed as deemed necessary.
3. Statutes which state that an agency is given the power to promulgate rules and regulations to carry out the chapter or section.

Where an agency has the discretionary power to promulgate rules and regulations, it has the option not to adopt any rules for a variety

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of reasons. The very nature of the power granted gives the agency this authority. There is a problem, however, of enforcement in that it is difficult to determine whether an agency has exercised its option and thus is required to promulgate its rules under the APA. In the case of statutes that mandate an agency to pass rules and regulations, this difficulty is lessened.

Chapter II

COMPLIANCE

In compiling this report, 62 state agencies and approximately 400 statutes requiring rules and regulations were surveyed. The investigation focused on three areas of compliance:

1. Agency promulgation of rules and regulations.
2. Agency publication of rules and regulations.
3. Agency compliance with the procedural aspect of conducting contested cases and hearings.

Determination of compliance in the first area is set forth in the tables and commentary at the end of this chapter. In addition to the rules and regulations required by statute for activities supervised by the agencies, the APA requires rules of procedures for: public information;¹ petitions by the public to submit, amend, or repeal agency rules;² and obtaining declaratory rulings from an agency on rules and statutes supervised by the agency.³ The rules passed under these sections are termed rules of practice and procedure and it is mandatory that all agencies covered by the APA have these rules. When this study commenced in August, 1969, it was found that approximately 50 per cent of the agencies did not have these rules of practice and procedure. However, when this deficiency was pointed out, many of the agencies proceeded to comply.

The second area of compliance is the requirement of publication of the rules and regulations of an agency under section 91-5. This section requires publication of all rules after January 2, 1962, the effective date of the APA, and revision of the rules at least every ten years. In determining compliance with this section, it was necessary to define the term "publication." According to a leading authority, "... 'publication' contemplates printing and general distribution."⁴ Since all agencies prepare their rules and regulations in some printed form for general availability to the public, compliance was met in this area.

The final area of compliance concerns the procedures for conducting contested cases and hearings held by agencies. This area is governed by: (1) section 91-9 which requires reasonable notice of hearing, opportunities to present evidence by all parties, and a record of the hearing; (2) section 91-10 which governs the rules of evidence in contested cases; (3) section 91-11 which provides for examination of the evidence by the agency; and (4) section 91-12 which provides for

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a written decision accompanied by findings of fact and conclusions of law to be sent to the parties in a contested case. A review of agency files indicated full compliance in this area.

The tables which follow show the agencies which are required to have rules and regulations and the statutes from which the agencies derive their rule-making powers. In compiling the tables, the Hawaii Revised Statutes was thoroughly searched to find all possible instances of rule-making power granted to the agencies. Statutes, however, enacted during the 1969 legislative session have been excluded from the tables because it was felt that it was too soon after the session to expect compliance by the agencies. The agencies should be given a reasonable time to comply. Also, the Department of Defense is not listed since it has no rule-making power.

The statutes are listed numerically by agency, with the exception of the rules of practice and procedure required by the APA. These rules are listed immediately after each agency heading. Where the rules of practice and procedure are the only listing, it signifies that the agency handles only contested cases and has no other rule-making power. When compliance is indicated in such cases, it denotes the availability of rules of procedure for hearings held before the agency.

An "S" after the statute indicates that agency promulgation of rules is mandatory and an "M" specifies that the decision to promulgate rules is at the agency's discretion. "M" is also used to designate statutes that did not readily fall within the mandatory or discretionary classification.

The third column is labeled compliance. A "C" in the compliance column indicates that when this study was commenced in August of this year, the agency had adopted the necessary rules and regulations after requisite notice, public hearing, executive approval, and filing with the Lieutenant Governor's office. An "A" indicates that the agency had adopted the required rules and regulations after this study was commenced and had filed the same with the Lieutenant Governor's office prior to the publication of this report. Where agencies are in the process of finalizing their rules (i.e., a notice of public hearing has been placed in the newspaper and it is only a matter of formality to complete the adoption of the rule) but had not filed them with the Lieutenant Governor's office prior to the publication of this report, the term "in process" is indicated in the compliance column. Where the agency has no rules or is in the process of drafting rules but has not placed a notice of public hearing in the newspaper, "NR" is used.

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The tables have been grouped into four classifications according to the reasons given by the agencies for the non-existence of rules.

Group A

Except as explained below, where "NR" is indicated the agencies listed in this group did not give any reason for the absence of rules. The Department of Transportation has interpreted section 80-11, relating to the working hours of employees reporting to a central pick-up point, as an internal management matter of the agency. Therefore, rules are not promulgated in this area by the department since such matters are not, under section 91-1(4), within the definition of a rule. Rules were not adopted for section 268-14, regarding the payment of claims for the operation of ferries or terminals, since there are no ferries or ferry terminals in operation at the present time.

<u>ABSTRACT MAKERS, BOARD OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	1
1Only handles contested cases under section 436-2.			

BOARDS OF REGISTRATION (VOTERS)

Ch. 91	Practice and Procedure	S	1
1Only handles contested cases under section 11-22. The board has promulgated rules of procedure for contested case hearings but not the practice and procedure rules required by Ch. 91.			

COMPLIANCE

<u>COMMISSION ON AGING</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 349-10	Administration	M	NR

EMPLOYEES RETIREMENT SYSTEM

Ch. 91	Practice and Procedure	S	NR
Sec. 88-28	Administration of funds of system	S	NR
Sec. 88-50	Determination of year of service	S	NR
Sec. 88-52	Allowing a legislator to become a member of the system	M	NR
Sec. 88-85	Withholding an amount as will equal federal income taxes on the allowance pay- ment	S	C
Sec. 88-229	Federal social security for public employees	M	NR

HOUSING AUTHORITY, HAWAII

Ch. 91	Practice and Procedure	S	C
Sec. 356-10	Effect the purposes and powers of authority	M	C
Sec. 359-4	State housing projects, 1947	M	C
Sec. 359-34	State housing projects, 1949	M	C
Sec. 359-54	Housing for elderly persons	M	C

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		<u>Type</u>	<u>Compliance</u>
Sec. 359-59	Development, operation, maintenance and administration of housing projects	M	C
Sec. 359-124	State rent supplements	S	NR
Sec. 516-7	Residential leaseholds, condemnation, etc.	M	C

LAND AND NATURAL RESOURCES, DEPARTMENT OF

Ch. 91	Practice and Procedure	S	C
Sec. 6-1	Use of historical areas	M	C
Sec. 6-13	Permits to examine ruins excavate, etc.	M	C
Sec. 171-6	Public lands	M	C
Sec. 174-5(3)	Water and land development	M	NR
Sec. 174-19	Administration of irrigation projects	M	NR
Sec. 175-8	Molokai irrigation and water utilization project	M	NR
Sec. 177-7	Ground-water use	M	NR
Sec. 177-16(d)	Declaration of existing use of ground-water	M	NR
Sec. 177-33	Water shortages and ground-water use	M	NR
Sec. 177-34	Emergency powers and ground-water	M	NR

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 178-3	Regulations of artesian wells	M	NR
Sec. 180-2	Soil and water conservation districts	M	NR
Sec. 182-14	Reservation and disposition of government mineral rights	M	C
Sec. 183-2	Preservation, protection, extension and utilization of forest reserves	S	C
Sec. 183-41	Forest and water reserve zones	M	C
Sec. 184-5	State park system and property	M	C
Sec. 184-14(10)	Administration and management of resort facility areas	M	C
Sec. 186-4	Lands classified as tree farm property	M	NR
Sec. 187-2	Fish and game generally	S	C
Sec. 187-3	Protection of animal, bird, and vegetable life in certain named islands	M	C
Sec. 188-35	Fishing in Waikiki for pua, etc, using nets for the purpose of stocking fish ponds	M	NR
Sec. 188-37	Fishing in Leeward islands	M	C
Sec. 188-47	Protection of introduced fresh water and salt water fish	M	C

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		<u>Type</u>	<u>Compliance</u>
Sec. 188-53	Fresh water fishing reserves and public fishing areas	M	C
Sec. 188-60	Pearl oyster fisheries	S	C
Sec. 189-6	Fish from waters outside State during closed season in State	M	C
Sec. 190-3	Marine life conservation program	M	C
Sec. 191-9	Open and closed season on game birds	M	C
Sec. 191-12	Permits to take wild birds	M	C
Sec. 191-20	Hunting of deer, etc. on Maui	S	C
Sec. 191-21	Open and closed season on mammals	M	C
Sec. 191-22	Games reserves, refuges, public shooting grounds	M	C
Sec. 192-1	Private and commercial shooting preserve and farmer's license	M	NR
Sec. 193-12	Youth Conservation Corps	M	NR
Sec. 193-22	Youth Employment Program	M	NR
Sec. 206-4	Oahu Land Development	M	NR

MEDICAL EXAMINERS, BOARD OF

Ch. 91	Practice and Procedure	S	1
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¹Prior to Act 257, Session Laws of Hawaii 1969, the Board only handled contested cases

COMPLIANCE

under section 453-4. The board has promulgated rules of procedures for contested case hearings but not the practice and procedure rules required under Ch. 91.

PACIFIC WAR MEMORIAL COMMISSION

		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 6-27	Conduct of affairs and matters committed to its charge	M	NR

PUBLIC EMPLOYEES COMPENSATION APPEALS BOARD

Ch. 91	Practice and Procedure	S	NR
Sec. 77-4(c)	Conduct of hearings, public and appeal	M	C

TRANSPORTATION, DEPARTMENT OF

Ch. 91	Practice and Procedure	S	C
Sec. 80-11	Working hours of employees reporting to central pick-up point	S	Internal Management
Sec. 261-12	Aeronautics	M	C
Sec. 261-16(a), (b)	Licensing of airports	M	In process
Sec. 262-3	Airport zoning regulations	M	In process
Sec. 264-7(b)	Fee schedule for issuance of permit for disturbing state highway	S	In process

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		<u>Type</u>	<u>Compliance</u>
Sec. 264-73	Erection and maintenance of outdoor advertising	M	C
Sec. 264-86	Location, planting, construction, etc of screening for junkyard control	M	NR
Sec. 266-2,3	Administration of harbors	M	C
Sec. 266-12	Fee of warfingers	M	C
Sec. 266-21	Purpose and use of small board harbors	M	C
Sec. 267-2,4	Administration of boating law	M	C
Sec. 267-10	Reciprocal agreements with other jurisdictions	M	C
Sec. 267-12(7)	Fees and charges, exemptions	M	C
Sec. 267-15	Special rules for operation within local jurisdiction	M	C
Sec. 268-14	Payment of claims in regard to operation of ferries or terminals	M	NR

UNIVERSITY OF HAWAII (BOARD OF REGENTS)

Ch. 91	Practice and Procedure	S	NR
Sec. 303-4	Employees' Annuity Contracts	M	NR
Sec. 304-15	Definition of bona fide resident for scholarships	M	NR

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 304-75 (11)	Administration of agricultural plans	M	NR
Sec. 308-1	Traffic and parking control	S	C
SLH 1968 Act 71 Sec. 4	Determine qualifications to be possessed by persons teaching agricultural, etc. in colleges or schools as vocational education	M	NR

Group B

The agencies listed in this group are primarily granted discretionary rule-making powers by the statutes. Where "NR" is indicated, the agencies generally felt that the statutes were sufficiently clear to carry out the programs and that implementation of the statutes by rules was unnecessary. Some of the reasons provided by the agencies are:

1. Section 312-1, concerning the management and use of libraries by the Department of Education, relates to internal management since the statute states that the rules shall be for the department's own guidance. Accordingly, under the authority of section 91-1(4), rules were not promulgated in this area.
2. The Highway Safety Coordinator indicated that the insurance rates set by section 286-92, for persons offering driver training to the public, are sufficient; therefore higher rates through the promulgation of rules, are not needed.
3. Statutes under the administration of the Department of Taxation are reasonably complete in themselves and need no implementation by rule. Although section 243-4 requires rules for the reporting and payment of fuel taxes on the sales of benzol, benzene, toluol, or xylol, used in internal

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combustion engines, no sales of these fuels have been made. Thus, no rules have been adopted prescribing the procedure for the reporting and payment of such fuel taxes.

<u>EDUCATION, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 93-5	Rules for publication distribution center	M	NR
Sec. 296-12	Government of teachers, educational officers, other personnel, pupils, etc.	M	C
Sec. 296-42	Appointment of nutrition workers	M	NR
Sec. 296-45	Transportation of school children	M	C
Sec. 296-47	Design, equipment, etc. of school buses	S	C
Sec. 298-5	Fees for breakage, damage, loss, etc. of school property	M	C
Sec. 298-7	Supervision of private schools in regard to sani- tary conditions and hygiene	M	C
Sec. 298-23	Use by public of school grounds	M	C
Sec. 299-1(c)	Driver education	M	NR
Sec. 300-6	Technical and vocational training	M	C
Sec. 300-44	Private trade, vocational or technical schools	M	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 301-26	Exceptional children	M	NR
Sec. 302-7	Agents of private schools and correspondence schools	M	NR
Sec. 303-4	Employee's annuity contracts	M	NR
Sec. 312-1	Management and use of libraries	M	Internal Management

HIGHWAY SAFETY COORDINATOR

Ch. 91	Practice and Procedure	S	C
Sec. 286-8	Identification, surveil- lance of accident locations, etc.	S	C
Sec. 286-26(f)	Administration of safety inspections, etc.	M	C
Sec. 286-81(3)	Specifications for motor- cycle safety devices	M	C
Sec. 286-92	Insurance for driver training business	M	NR
Sec. 286-171	Uniform traffic records system	S	C
SLH 1967 Act 214, Secs. 17,18	Invalidation of exisiting operator's license, re- issuance of new license	M	C

LABOR AND INDUSTRIAL RELATIONS, DEPARTMENT OF

Ch. 91	Practice and Procedure	S	C
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		<u>Type</u>	<u>Compliance</u>
Sec. 104-6	Wages and hours of employees on public works	S	C
Sec. 371-7	Shall make rules for the department	S	C
Sec. 371-8	Protection of health, safety, etc.	M	C
Sec. 371-11	Research and statistics on employment, etc.	M	C
Sec. 371-14(6)	Child Labor	M	C
Sec. 372-5	Apprenticeship	M	l
Sec. 373-9	Records and reports of commercial employment agencies	M	C
Sec. 373-10	Fees charged by commercial employment agencies	M	C
Sec. 373-19	Commercial employment agencies generally	M	C
Sec. 375-6	Labeling of goods under industrial homework certificate	M	NR
Sec. 375-10	Records kept by garment industry homework employer	M	C
Sec. 376-22(7)	Industrial safety, permits and certificates to manufacture or deal in explosives	M	C
Sec. 376-34	Industrial safety, generally	M	C
Sec. 378-8	Discriminatory practices, employment	M	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 378-38	Unlawful suspensions or discharge, employment practices	M	C
Sec. 383-10	Definition of wages paid in a medium other than cash	M	C
Sec. 383-21	Payment of benefits under employment security law	M	C
Sec. 383-29(1)	Eligibility for benefits	M	C
Sec. 383-32	Claim for benefits	M	C
Sec. 383-33	Time limit for furnishing information by employer concerning claims	M	C
Sec. 383-39	Manner of filing appeal and hearing	S	C
Sec. 383-61	Payment of contributions	M	C
Sec. 383-66 (6)	Determination of contribution rates establishing of joint accounts, etc.	M	C
Sec. 383-70(a)	Payment of contributions	M	C
Sec. 383-92	Administration of Employment Security Law generally	M	C
Sec. 384-3	Agricultural Unemployment Compensation Law	M	C
Sec. 385-13	Additional Unemployment Compensation Law	M	2
Sec. 386-21	Change of physician by employee under Workmen's Compensation	S	NR

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		<u>Type</u>	<u>Compliance</u>
Sec. 386-51(7)	Determination of average weekly wages	M	C
Sec. 386-72	Workmen's Compensation generally	M	C
Sec. 386-163	Workmen's Compensation re Hawaii Guard	M	NR
Sec. 386-172	Workmen's Compensation re volunteer personnel	M	NR
Sec. 387-11	Wage and Hour Law, generally	M	C
Sec. 388-13	Payment of wages and other compensation	M	NR

¹Rules for chapter 372 on Apprenticeship have been established but they have not been adopted pursuant to the requirements of the APA.

²Statute does not become operative until a proclamation by the governor that certain conditions exist.

TAXATION, DEPARTMENT OF

Ch. 91	Practice and Procedure	S	C
Sec. 231-3(9)	Carry out purposes of department	M	C
Sec. 233-1	Tax classification of certain business relationships	M	NR
Sec. 235-56(f)	Tax credits against individual net income taxes	M	NR

COMPLIANCE

	<u>Type</u>	<u>Compliance</u>
Sec. 235-57 (e) Tax credits for student attending institutions of higher education, etc.	M	C
Sec. 235-61 (e) Deduction of withholding from wages	M	C
Sec. 235-62 Return and payment of withheld taxes	M	C
Sec. 235-63 Withholding statements to employees	S	C
Sec. 235-66 (a) Further withholding at source; crediting of withheld taxes	M	C
Sec. 235-85 Rules applicable to distributions of electing small business corporations	M	NR
Sec. 235-92 Excuse of filing of return	M	C
Sec. 235-93 Joint return	M	C
Sec. 235-94 (e) Returns by agent, guardian, etc. liability of fiduciary	M	C
Sec. 235-96 Returns by persons making payments	M	C
Sec. 235-97 (a) (1), (5) Estimates; tax payments; returns	M	C
Sec. 235-98 Returns, forms, verification and authentication, time of filing	M	C
Sec. 235-102 (a) Record and special returns	M	C

HAWAII ADMINISTRATIVE PROCEDURE ACT

		<u>Type</u>	<u>Compliance</u>
Sec. 235-118	Administration of income taxes	M	C
Sec. 236-17	Assessment and collection of additional tax concerning Hawaii estate tax	M	NR
Sec. 237-8	Administration of general excise tax	S	C
Sec. 237-13(1)(C)(ii)	Imposition of excise tax	M	NR
Sec. 237-13(2)(F)	Imposition of excise tax	M	C
Sec. 237-19	Determination of value of goods	M	NR
Sec. 237-29(d)	Exemption from excise tax of low and moderate income housing	M	NR
Sec. 237-30	Making quarterly return	M	C
Sec. 238-16	Use tax law	M	C
Sec. 239-7	Public service company tax law	M	C
Sec. 241-6	Taxation of banks and other financial corporations	M	NR
Sec. 242-1	Mortgage loan exemptions for FHA, VA mortgage loans	S	C
Sec. 243-4(c)	Reporting and payment of fuel tax on benzol, benzene, toluol or xylol used in internal combustion engines	S	NR

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 243-16	Fuel tax law	M	NR
Sec. 244-9	Records required for liquor tax law	M	NR
Sec. 244-15	Liquor tax law	M	NR
Sec. 245-8(a)	Records required for tobacco tax law	M	NR
Sec. 245-13	Tobacco tax law	M	NR
Sec. 246-16	Administration of land classified as wasteland development property	M	C
Sec. 246-25	Real property tax exemptions	M	C
Sec. 246-26(d)	Multiple home exemption for real property taxes	S	C
Sec. 246-34(g)	Exemption of dedicated lands in urban districts	M	C
Sec. 246-39(d)	Exemption of low and moderate income housing from property tax	S	C
Sec. 246-61	Schedule of costs, expenses, and charges and manner in which they shall be apportioned between various properties offered for sale at foreclosure sale on a tax lien	M	NR
Sec. 247-9	Conveyance taxes	M	C
Sec. 418-22	Exemptions to corporations licensed as foreign corporations having income in respect of mortgages guaranteed by FHA or VA	S	C

HAWAII ADMINISTRATIVE PROCEDURE ACT

Group C

This group consists of agencies that did not have any common reason for the nonexistence of rules as did the agencies under the two preceding groupings. Accordingly, for easy reference, appropriate comments have been made before each agency listing.

The Department of Accounting and General Services has deemed section 29-18, concerning surplus property, as being explicit enough and therefore considered rules for the implementation thereof as unnecessary. No rules were adopted for section 40-81, pertaining to reports by agencies receiving special money, since the reports were being received by the department in a satisfactory manner without rules. Section 80-11 on working hours for employees reporting to a central pick-up point and section 94-1 concerning the public archives were considered by the department to be internal management matters and therefore no rules have been adopted. For a further explanation from the department, see Appendix C.

<u>ACCOUNTING AND GENERAL SERVICES, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	A
Sec. 29-18(3)	Surplus property	M	NR
Sec. 40-13	Audit and accounting	M	C
Sec. 40-81	Report by agencies receiving special money	M	NR
Sec. 40-84	Petty cash funds	M	C
Sec. 80-11	Working hours for employees reporting to central pick-up point	S	Internal Management
Sec. 94-1	Public archives, disposal of records	M	Internal Management
Sec. 103-11	Public money and contracts, expenditures of state money	M	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 103-43	Hawaii products list	S	C
Sec. 103-49	Value engineering	M	C
Sec. 106-14	Classes of property, expendable or non- expendable or otherwise (delegated by governor)	M	A
Sec. 107-11	Parking control	M	C

The Department of Agriculture does not have a rule for section 155-4 on farm loans. The department did have a book of procedures for its Farm Loan Program, but had not promulgated any rules for the program under the APA. After a discussion with department officials, they indicated that they would proceed to adopt procedures under the APA.

<u>AGRICULTURE, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 26-16	Grading and labeling of agricultural products	S	C
Sec. 141-2	Importation, quarantine, etc. of plants, animals, and minerals	S	C
Sec. 141-4	Weighing coffee prior to shipment	M	C
Sec. 142-2	Inspection, quarantine, disinfection or destruction upon introduction or within the State of animals with disease	M	C
Sec. 144-11	Feeding stuffs	M	C

HAWAII ADMINISTRATIVE PROCEDURE ACT

		<u>Type</u>	<u>Compliance</u>
Sec. 146-5	Issuance and revocation of certificates and minimum sanitation specifications for slaughterhouses	M	C
Sec. 146-8	Operations of slaughterhouses	M	C
Sec. 147-4	Grades and standards of fresh fruits and vegetables	M	C
Sec. 147-22	Grades and standards of exports: fruits, vegetables, and nuts	M	C
Sec. 147-32	Grades and standards of exports of flowers and foliage	M	C
Sec. 147-56, 57	Grades and standards of processed food	M	C
Sec. 147-74	Chicken eggs	M	C
Sec. 147-91	Beef, pork, and poultry carcasses	S	C
Sec. 148-2	Advertising and marketing of fruits, vegetables, and coffee	M	C
Sec. 148-16	Advertising and marketing of poultry	M	C
Sec. 149-5	Economic poisons	M	C
Sec. 150-22	Regulation of the sale of seeds	M	C
Sec. 151-5	Weed control	M	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 151-6(c)	Sale of 2, 4-D, license	M	C
Sec. 151-7(c)	Permit to use 2, 4-D	M	C
Sec. 151-12	Aircraft application of 2, 4-D	M	C
Sec. 152-2	Noxious weed control	M	C
Sec. 153-4	Agricultural products program	M	C
Sec. 154-4(2)	Fruit and nut orchards	M	C
Sec. 155-4	Farm loans	M	NR
Sec. 157-13	Administration of Milk Control Act	M	C
Sec. 157-34(e)	Determination of quotas, transfer of	M	C
Sec. 486-9	Enforcement of chapter on weights and measures	S	C

The Boxing Commission held a hearing on rules for chapter 91, rules of practice and procedure, on February 14, 1963, which were then sent to the Attorney General's Office. However, the adopted rules were not filed with the Lieutenant Governor's Office, and the Executive Secretary of the Commission reports plans for promulgating new rules in 1970.

<u>BOXING COMMISSION</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 440-6	Administration	S	C

HAWAII ADMINISTRATIVE PROCEDURE ACT

Officials of the Department of Budget and Finance stated that the rules required by sections 37-2, budget preparation, 37-33, allotment system, and 214-4, grants-in-aid for county capital improvement projects, need not be promulgated in accordance with the requirements of the APA since the rules are not applicable to the general public. It is true that section 91-1(4) excludes from the APA, "regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public." Said section, however, does not exempt regulations that are concerned with inter-departmental management, as distinguished from the internal management of a single agency. The rules required by sections 37-2, 37-33, and 214-4 are concerned with more than the internal management of the department of budget and finance - they concern other departments in the state government as well as the county governments. Therefore, in adopting the rules required by said sections, the provisions of the APA should be followed.

The department officials also indicated that section 214-4 does not provide the basic guidelines for implementation, and amendments thereto are needed prior to the promulgation of rules. Rules have not been adopted for section 362-52, community improvement grants, since no funds have been appropriated for the program. Rules were adopted for sections 364-3, 364-7, and 364-8, relating to the veterans' home mortgage program, but the provisions of the APA were not followed. These rules will be redrafted and promulgated in accordance with the APA. Rules for chapter 91 on practice and procedure have been drafted and will be transmitted to the Attorney General for his review prior to adoption.

<u>BUDGET AND FINANCE, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 37-2	Help from departments to prepare the budget (Delegated from the governor)	M	NR
Sec. 37-33	Allotment system	M	NR
Sec. 207-5	Granting of mortgage loans, etc.	M	NR
Sec. 214-4	Grants-in-aid for county capital improvement projects	M	NR
Sec. 309-4	United student-aid funds	M	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 361-3	Minimum requirements to be met for community home mortgage requirements	M	NR
Sec. 361-7	Administration of community home mortgage program	M	NR
Sec. 362-52	Community improvement grants	M	NR
Sec. 364-3	Minimum requirement for veterans mortgage	M	NR
Sec. 364-7	Administration of veterans loans	M	NR
Sec. 364-8	Direct loans to veterans	M	NR

The Board of Private Detectives and Guards held a hearing on rules for chapter 91, rules of practice and procedure, on March 23, 1967, which were then sent to the Attorney General's Office. However, the adopted rules were not filed with the Lieutenant Governor's Office, and the Executive Secretary of the Board indicated that new rules would be promulgated in 1970.

<u>DETECTIVES AND GUARDS, BOARD OF PRIVATE</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 463-3	Administration	M	C

The Governor's office indicated that it was preparing a draft on rules of practice and procedure. In the case of sections 128-9 and 27, relating to civil defense emergencies, the State does have a civil defense plan to follow in cases of emergency. The plan, however, was not adopted in accordance with the requirements of the APA.

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<u>GOVERNOR</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 85-47	Administration of loyalty oath	M	C
Sec. 106-21	Sale of produce, disposi- tion of proceeds by any state agency	M	NR
Sec. 128-9(7)	Furtherance of emergency civil defense federal programs	M	NR
Sec. 128-27	Civil defense emergencies	M	NR
Sec. 129-4	Blackouts and illumina- tion control	M	NR

The Department of Health submitted several reasons for the lack of rules for certain statutes. In most areas, the department officials felt that the statute covered the subject sufficiently.

Rules have not been adopted for section 328-20 concerning false advertisement of food, drugs, devices, and cosmetics due to the extensive control in federal and state statutes. No rules were promulgated for section 328-42, dealing with the supervision of cold storage of food, for the department officials felt that the area was covered sufficiently by the general sanitation regulations promulgated under section 321-11.

The department has not yet promulgated rules for section 333-36, dealing with the conservation and disposition of the earnings of patients and wards at the Waimano Training School and Hospital. The department had not realized that rules were required under the 1965 amendment to chapter 333, for previously rules were not required. A draft of rules covering section 333-36 is now being studied by the department.

COMPLIANCE

<u>HEALTH, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 321-5	Contract for exchange of personnel in department with those of another state	M	NR
Sec. 321-9	Seal, and rules and regulations concerning business	M	C
Sec. 321-10	All rules and regulations made by the department shall be made pursuant to chapter 91	S	C
Sec. 321-11	Listing of subjects of rules and regulations	M	C
Sec. 321-12	Concerning barbers, hair-dressers, cosmeticians, cosmetologists, and beauticians	M	C
Sec. 321-13	Regulation of listed occupations	M	C
Sec. 321-16	Sanitation; drainage, water systems, sewage, etc.	M	C
Sec. 321-52(2)	Services for crippled children	M	NR
Sec. 321-71	Industrial hygiene, listed areas	S	C
Sec. 322-62	Controlling and prohibiting air pollution	M	C
Sec. 322-65	Set fees for air pollution permits and inspection prior to issuance of permits	M	C

HAWAII ADMINISTRATIVE PROCEDURE ACT

		<u>Type</u>	<u>Compliance</u>
Sec. 323-15(1)	Carrying out Part II on hospitals and medical facilities survey and construction	M	C
Sec. 323-20	Minimum standards for hospitals and medical facilities maintenance and operation	S	C
Sec. 325-13	Infectious and communicable diseases	M	C
Sec. 325-55	Congenital syphilis	M	C
Sec. 325-78	Test and treatment of tuberculosis	M	C
Sec. 326-10	Transfer to and from Kalaupapa	M	C
Sec. 326-13	Transfers, treatment, etc.	M	C
Sec. 326-20	Permits to treat Hansen's disease	M	NR
Sec. 326-24	Conduct of all matters pertaining to Hansen's disease, treatment, etc.	M	C
Sec. 326-29	Fishing laws exemption; Kalaupapa	S	C
Sec. 327-32	Distribution and use of unclaimed bodies	M	NR
Sec. 328-8	Definition and standard, etc. of any food or class of food	M	C
Sec. 328-11	To prevent contamination of foods	M	C

COMPLIANCE

	<u>Type</u>	<u>Compliance</u>
Sec. 328-13(b) Adding of poisonous or deleterious substance	M	C
Sec. 328-16(c) Drugs limited to dispensing on pre-prescription	M	C
Sec. 328-20(b) False advertising; exceptions	M	NR
Sec. 328-21 Hawaii Food, Drug, and Cosmetic Act	M	C
Sec. 328-42 Supervision of cold storage of food	M	NR
Sec. 328-75 Enrichment of bread and flour	M	NR
Sec. 328-81 Drug abuse, control, definitions	M	C
Sec. 328-86(g) Restrictions concerning depressant or stimulant drugs	M	C
Sec. 328-88 Drug abuse, control	M	C
Sec. 329-6 Issuance of licenses to produce narcotics	S	C
Sec. 330-1 Designate a poison in need of regulation	M	C
Sec. 330-2 Poisons and poison containers	S	C
Sec. 331-2 Use of radium for surgical and medical purposes	M	NR
Sec. 333-1 Administration of test for phenylketonuria	S	C

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		<u>Type</u>	<u>Compliance</u>
Sec. 333-23	Waimano Training School and Hospital	M	NR
Sec. 333-36	Earnings and income of patients	S	NR
Sec. 333-53	Licensing institutions for care of mentally retarded	M	C
Sec. 334-3	Standards for licensing psychiatric facilities	S	C
Sec. 334-9	Mental health, mental illness, drug addiction, and alcoholism	M	NR
Sec. 336-15	Patients with certain chronic diseases	M	NR
Sec. 338-2	Public Health Statistics Act	M	C
Sec. 338-18	Disclosure of records	M	C
Sec. 445-101	Milk for producers, processors, etc.	M	C
Sec. 445-194	Operation of steam laundries in Honolulu	M	C
Sec. 450-4	Fumigation	M	C
Sec. 452-18	Sanitary rules for massage business	M	C
Sec. 469-2	Undertakers, embalmers, and funeral directors	M	C

Officials of the Department of Planning and Economic Development stated that section 48-2, concerning industrial development bonds,

COMPLIANCE

is inoperative since none of the bonds would be marketable under present statutory provisions due to the requirement of public sale at par value and inadequate mortgage and leasing provisions. Section 209-26, providing commercial loans for disaster relief and rehabilitation, was considered by the department to be a one-time statute passed for the 1960 Hilo tidal wave victims. However, since it was pointed out to the department that it is still servicing loans made under this statute, rules are now in the process of being drafted. No rules were drafted for sections 211-2 and 211-5, concerning the guarantee of commercial loans made by private lending institutions to eligible businesses, since no funds had been allotted for the program. The department, however, has now decided to draft rules for commercial loans in order to administer the program when funds are allotted.

<u>PLANNING AND ECONOMIC DEVELOPMENT, DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	A
Sec. 48-2	Industrial development bonds	M	NR
Sec. 209-26	Commercial loans for disaster relief and rehabilitation	S	NR
Sec. 210-4	Capital loan program	M	A
Sec. 211-2	Standards for guaranteeing loans made by private lending institutions	M	NR
Sec. 211-5	Guarantee of commercial loans generally	S	NR
Sec. 212-4	Operation, maintenance and policing of Foreign-Trade Zones (delegated by the governor)	M	A

Officials of the Public Utilities Commission stated that the rules required by section 269-24, regarding certificates of public

HAWAII ADMINISTRATIVE PROCEDURE ACT

convenience and necessity, for air carriers have not been promulgated since the authority for such certificates rests with the federal government.

<u>PUBLIC UTILITIES COMMISSION</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 269-14	Procedure before commission	M	C
Sec. 269-24	Certificates of public convenience and necessity for air carriers	M	NR
Sec. 271-9	Administration of motor carrier law	M	C
Sec. 271-12(e)	Deviation from route by common carrier	M	C
Sec. 271-26	Removal of books and records from the State by motor carrier	M	C
Sec. 271-28	Settlement of rates and charges	M	C
Sec. 271-36 (a)	Safety inspection of motor vehicle	M	C

Officials of the Department of Social Services gave the following information on statutes for which the promulgation of rules are discretionary. Rules are being drafted for section 346-34 on the food stamp program, section 350-2 dealing with child abuse, and section 363-2 concerning veterans rights and benefits. Rules have not been adopted for section 346-61, relating to the receipt of grants-in-aid for public assistance from the Federal Government, and section 354-10, dealing with the correctional industries, since officials of the department felt that the sections were sufficiently comprehensive. Rules for section 353-94, governing the county jails,

COMPLIANCE

have not been adopted since the jails are under the jurisdiction of the various police chiefs. The department indicated that it is unwise to subject county employees to state department regulations when the administration of the jails is within the jurisdiction of the counties.

<u>SOCIAL SERVICES,</u> <u>DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 102-14	Use of public buildings by blind, etc.	S	C
Sec. 346-10	Protection of records	M	C
Sec. 346-12	Appeal to director by applicant or recipient	M	C
Sec. 346-14(9)	Administration of department (11)	M	C
Sec. 346-17	Child placing organization, child caring institutions, and foster boarding homes	M	C
Sec. 346-20	Day care centers	M	C
Sec. 346-34	Food Stamp program	M	NR
Sec. 346-61	Receipt from federal government of grants-in-aid for public assistance	M	NR
Sec. 346-71	Assistance of needy persons	M	C
Sec. 348-3,6	State vocational rehabilitation program	M	C
Sec. 350-2	Child abuse	M	NR
Sec. 352-5	Hawaii youth correctional facility	M	C

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		<u>Type</u>	<u>Compliance</u>
Sec. 353-22(f)	Conditional release centers, forloughs for prisoners	M	C
Sec. 353-94	Government of county jails	M	NR
Sec. 354-10	Correctional industries	M	NR
Sec. 363-2	Veterans rights and benefits	M	NR

The Real Estate Commission held a public hearing on November 28, 1961 on rules and regulations for section 514-48 on Horizontal Property Regimes, but had not filed the rules with the Lieutenant Governor's Office. The Commission is planning to hold new hearings on these rules in 1970.

<u>REAL ESTATE COMMISSION</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 467-4(3)	Real estate brokers and salesmen	M	C
Sec. 514-48	Administration regarding Horizontal Property Regimes	M	NR

Representatives of the Department of Regulatory Agencies stated that the statutes on banking and insurance were complete in themselves and implementation thereof by rules was not necessary. The department is presently preparing a draft of rules for: practice and procedure as required by chapter 91; section 449-2, relating to escrow depositories; and section 454-6, dealing with mortgage brokers and solicitors. It is expected that these rules will be ready by early 1970. Rules are also being drafted for section 484-10 on Uniform Land Sales Practices, which are expected to be completed by late 1970. Rules have not been promulgated for Section 470-7 on itinerant vendors as there are no itinerant vendors.

COMPLIANCE

<u>REGULATORY AGENCIES,</u> <u>DEPARTMENT OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	NR
Sec. 26-9	Licensing and operation of, and register and supervise the conduct of trades, business, and professions, including banks, insurance companies, brokerage firms, etc.	S	C
Sec. 403-14	Use of terms "investment banker" and "investment banking" and the conduct of such business	M	NR
Sec. 403-25	Hearing application for authority to organize a bank	M	NR
Sec. 403-93	Acceptance of sight drafts	M	NR
Sec. 405-8	International-foreign banking corporation	M	NR
Sec. 406-3	Hearing for allowing corporations to do business as a trust company	M	NR
Sec. 407-102(b)	Conservator of savings and loan associations	M	NR
Sec. 470-7	Itinerant vendors (see health department, sec. 321-13)	M	NR
Sec. 477-3	Disclosure of finance costs	S	C
Sec. 484-10	Uniform land sales practices	S	NR

HAWAII ADMINISTRATIVE PROCEDURE ACT

		<u>Type</u>	<u>Compliance</u>
Sec. 485-2	Uniform Securities Act	M	In process
Sec. 485-14(k)	Minimum capital requirement for securities dealers	M	In process
Sec. 515-9(6)	Discrimination in property transactions	M	NR

ACTING AS BANK EXAMINER

Sec. 401-18	Destruction of records of banks, etc.	M	NR
Sec. 408-21	Keeping of books by industrial loan company	M	NR
Sec. 409-29	Small loan companies	M	NR
Sec. 449-2	Escrow depositories	M	NR

ACTING AS INSURANCE COMMISSIONER

Sec. 431-35	General power to make rules for insurance	M	C
Sec. 431-148	Fee on use of funds of domestic insurer for investment	M	NR
Sec. 431-176	Domestic stock insurers	M	C
Sec. 431-261(7)	Assets of insurers	M	NR
Sec. 431-495	Filing of accident and sickness policies	M	NR
Sec. 431-694(g)	Rate filings (casualty, vehicle, surety)	M	NR

COMPLIANCE

	<u>Type</u>	<u>Compliance</u>
Sec. 431-703(d) Rate administration of casualty, vehicle and surety insurers	M	NR
Sec. 431-714(h) Rate filings (property, marine, transportation)	M	NR
Sec. 431-723(d) Rate administration of property, marine, and transportation insurers	M	NR
Sec. 432-31(2) Title insurance and title insurers	M	NR
Sec. 434-22 Optional and prohibited provisions in accident and health insurance	M	NR

ACTING AS MORTGAGE COMMISSIONER

Sec. 454-6	Mortgage brokers and solicitors	M	NR
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Group D

This group contains agencies which are in full compliance with the APA and have passed rules for all statutes mentioning rules or are in the process of finalizing the promulgation of rules.

Two inactive boards are listed here because the statutes establishing them are extant and these boards have rule-making powers. The Board of Photography is inactive, possibly due to a Hawaii Supreme Court decision declaring chapter 462 unconstitutional insofar as it prohibits an uncertified photographer from practicing photography for compensation or holding himself out as competent to practice.⁵ The Radio Board became inactive after the last appropriation was made in the 1949-1951 biannual budget. The last appointment to the board was made in 1943.⁶

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<u>ACCOUNTANTS, BOARD OF</u>		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 466-4(6)	Administration	M	C
Sec. 466-8(d)	Character and variety of experience as qualification of CPA	S	C
 <u>ATTORNEY GENERAL, DEPARTMENT OF</u>			
Ch. 91	Practice and Procedure	S	A
Sec. 28-33	Civil identification	M	C
Sec. 456-8	Notaries Public	M	C
 <u>BARBERS, BOARD OF</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 438-5	Administration	M	C
 <u>CEMETERY BOARD</u>			
Ch. 91	Practice and Procedure	S	In process
Sec. 441-19	Administration	M	A
 <u>CHIROPRACTIC EXAMINERS, BOARD OF</u>			
Ch. 91	Practice and Procedure	S	In process
Sec. 442-5	Administration	M	In process
 <u>CIVIL SERVICE COMMISSION</u>			
Ch. 91	Practice and Procedure	S	C

COMPLIANCE

COLLECTION AGENCIES ADVISORY BOARD

		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 443-4	Administration	M	C

CONTRACTORS LICENSE BOARD

Ch. 91	Practice and Procedure	S	C
Sec. 444-4	Administration	M	C
Sec. 444-8	Classification and limitation of contractors	M	C

COSMETOLOGY, BOARD OF

Ch. 91	Practice and Procedure	S	C
Sec. 439-7	Administration	M	C
Sec. 439-14	Examination of applicants	S	C

CRIMINAL INJURIES COMPENSATION COMMISSION

Ch. 91	Practice and Procedure	S	C
Sec. 351-68	Administration, procedures for filing, etc.	M	C

DENTAL EXAMINERS, BOARD OF

Ch. 91	Practice and Procedure	S	C
Sec. 448-6	Administration	M	C

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EMPLOYMENT RELATIONS BOARD

		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C
Sec. 377-11	Exercise of powers and governing proceedings	M	C

ENGINEERS, ARCHITECTS, SURVEYORS, BOARD OF REGISTRATION

Ch. 91	Practice and Procedure	S	C
Sec. 464-7	Administration	S	C

ETHICS COMMISSION, STATE

Ch. 91	Practice and Procedure	S	In process
Sec. 84-31(a) (5)	Administration	M	C

FIRE MARSHAL

Ch. 91	Practice and Procedure	S	C
Sec. 132-2,3	Prevention of fires, etc.	M	C
Sec. 133-3	Manufacturing, etc. of combustibles	M	C

HAWAIIAN HOME LANDS, DEPARTMENT OF

Ch. 91	Practice and Procedure	S	C
Sec. 222	Administration of Hawaiian homes act	S	C
SLH 1965 Act 4 Sec. 4(213)	Hawaiian home-loan fund, etc.	S	C

COMPLIANCE

INDUSTRIAL RELATIONS APPEAL BOARD

		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	C

LAND USE COMMISSION

Ch. 91	Practice and Procedure	S	C
Sec. 205-7	Regulations for matters within its jurisdiction	M	C

LEGISLATIVE REFERENCE BUREAU

Ch. 91	Practice and Procedure	S	A
Sec. 304-34	Use of bureau by private citizens	M	A

LIEUTENANT GOVERNOR

Ch. 91	Practice and Procedure	S	A
Sec. 14-12	Absentee voting, generally	M	C
Sec. 14-14	Persons confined to homes due to illness	M	C
Sec. 14-16	Voters who vote absentee for religious reasons	M	C
Sec. 15-11	Voting machines and electronic voting	M	C
Sec. 338-41	Hawaiian Birth Certificates	M	C

MESSAGE, BOARD OF

Ch. 91	Practice and Procedure	S	C
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		<u>Type</u>	<u>Compliance</u>
Sec. 452-6(a)	Administration	S	C
<u>NATUROPATHY BOARD OF EXAMINERS IN</u>			
Ch. 91	Practice and Procedure	S	In process
Sec. 455-5	Administration	M	In process
Sec. 455-6(2)	Means, terms, translation, and definitions relating to the practice of naturopathy	M	In process
<u>NURSING, BOARD OF</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 457-4(1)	Administration	M	C
<u>OPTICIANS, BOARD OF DISPENSING</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 458-3	Administration	M	C
<u>OPTOMETRY, BOARD OF EXAMINERS IN</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 459-4	Administration	S	C
<u>OSTEOPATHIC EXAMINERS, BOARD OF</u>			
Ch. 91	Practice and Procedure	S	C

COMPLIANCE

		<u>Type</u>	<u>Compliance</u>
Sec. 460-4	Administration	M	C
<u>PAROLES AND PARDONS, BOARD OF</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 353-65	Rules for paroles	M	C
<u>PERSONNEL SERVICES, DEPARTMENT OF</u>			
Ch. 91	Practice and Procedure	S	C
Sec. 76-17	Civil service law, generally	S	C
Sec. 76-23	Filling vacancy	S	C
Sec. 76-26	Reemployment of retirees for service connected occupational disability	S	C
Sec. 76-27	Probational service and other requirements for civil service membership	M	C
Sec. 76-30	Tenure, resignation	M	C
Sec. 76-31(b)	Provisional and short term appointments	M	C
Sec. 76-32	Education and other leaves	M	C
Sec. 76-42	Grievance procedure	S	C
Sec. 76-43	Layoff	S	C
Sec. 76-52	Reports and statements	M	C
Sec. 76-53(a)	Certification of payrolls	M	C

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		<u>Type</u>	<u>Compliance</u>
Sec. 76-103	Veteran's preference	S	C
Sec. 77-10	Adjustments and changes in compensation due to promotion, demotion, etc.	S	C
Sec. 79-12	Vacation and sick leave (Delegated by the governor)	S	C
Sec. 80-4(1)	Hours of work of officers, employees, overtime, premium pay	S	C
Sec. 82-5	Incentive and service awards	M	C
Sec. 83-3	Interchange of public employees between this State and other states	S	C
Sec. 85-2(1)	Procedure for checking loyalty	M	C

PHARMACY, BOARD OF

Ch. 91	Practice and Procedure	S	C
Sec. 461-4	Regulation of pharmacists and pharmacies	M	C

PHOTOGRAPHY, BOARD OF

Ch. 91	Practice and Procedure	S	NR
Sec. 462-8	Administration	M	NR

COMPLIANCE

PSYCHOLOGISTS, BOARD OF CERTIFICATION FOR PRACTICING

		<u>Type</u>	<u>Compliance</u>
Ch. 91	Practice and Procedure	S	A
Sec. 465-6(4)	Administration	M	A

REFEREE FOR UNEMPLOYMENT COMPENSATION

Ch. 91	Practice and Procedure	S	C
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RADIO BOARD

Ch. 91	Practice and Procedure	S	NR
Sec. 274-3	Administration of chapter	S	NR

TAXATION DISTRICTS, BOARDS OF REVIEW FOR

Ch. 91	Practice and Procedure	S	C
Sec. 232-14	Procedure, forms, etc.	M	C

VETERINARY EXAMINERS, BOARD OF

Ch. 91	Practice and Procedure	S	C
Sec. 471-14	Administration	M	C

Chapter III

EVALUATION OF COMPLIANCE

More than one half of the agencies have promulgated rules required by the statutes and such rules are in full compliance with the APA. However, thirteen of the sixteen departments involved, including twelve boards or commissions attached to the thirteen departments, do not have rules or are not in full compliance with the APA for the reasons set forth in chapter II. Although the degree of rule-making differs in Groups A, B, and C, the following generalizations may be made:

1. If the statute directing the agency to pass rules and regulations is mandatory, the agencies have, in most cases, passed the required rules.
2. Where the statute grants discretionary powers to the agency to adopt rules, it is difficult to determine compliance. However, generally, where the rules affect the public and there is a need to implement or interpret the statutes, the agencies have exercised their discretionary power and promulgated rules.
3. The APA uses very broad, general language in its definition of rule and agency and this factor has caused, in some cases, confusion as to whether a governmental unit is an agency within the meaning of the APA and whether certain functions performed by the governmental unit fall within the definition of a rule.

The large number of rules adopted and the high compliance rate of many agencies may be due to the position taken by the office of the Attorney General that when a statute is not clear as to whether rules are required to be promulgated under the APA, the agency should follow the requirements of the APA. This is also the position taken by the United States Attorney General when he stated:¹

Thus, an agency's internal personnel and budget procedures need not be published (e.g., rules as to leaves of absence, vacation, travel, etc.). However, in case of doubt as to whether a matter is or is not one of internal management, it is suggested that the matter be published in the Federal Register, assuming it does not require secrecy in the public interest.

Publication in the Federal Register is required when complying with the Federal Administrative Procedure Act. The Federal Register is published Tuesday through Saturday and contains notices of hearings of contemplated rules, and the rules themselves when finalized.

Chapter IV

SUGGESTED REVISION TO THE APA

This report and the Bureau report on county agency compliance have uncovered several reasons why agencies are not in complete compliance with the APA. This chapter will attempt to clarify the problem areas and present suggestions for solutions to these problems.

Identifying Agencies Under the APA

The report on county compliance indicated that the county attorneys favored the listing of agencies which they felt would be exempt from the APA.¹ This approach is followed by Georgia, Massachusetts, Michigan, Indiana, Maryland, Oregon, and Virginia.² These states have defined agency in broad terms, then listed the agencies which they considered to be exempt in addition to the legislative and judicial branches of government. The agencies usually listed include:

1. The Workmen's Compensation Commission
2. The Unemployment Compensation Commission
3. The Public Utilities Commission
4. The Department of Taxation
5. The Board of Paroles and Pardons

Since Hawaii is unique in its inclusion of county agencies, within the definition of agency, there is no indication from other states as to which county agencies may be excluded from the APA.

Chapter I discussed the problem concerning the inclusion of officers and commissions dealing with interstate compacts. It might be well to include these types of organizations in any listing of agencies that are exempt from the APA. Other agencies could be suggested by the Attorney General or county attorneys. If this method is used, however, due care should be exercised in listing the agencies since such listing would totally exempt the agency from the APA.

An alternative method for identifying agencies under the APA is to list the agencies to which the APA should apply. This method is followed in California, Maine, New Mexico, New Hampshire, and Ohio.³ If this method is used in Hawaii, the list would be quite long since it will include both the state and county agencies. Also, all new

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agencies would have to be added to the list as they are created. This alternative seems too cumbersome for practical use.

Changes to the Definition of Rule

The definition of rule was established earlier as being too broad for easy application. During the Bureau study on county compliance, county attorneys submitted suggestions for rewriting the definition of rule to make it more clear and concise.⁴ The office of the Attorney General, on the other hand, had no suggestions to make in this area.

It is difficult, if not impossible, to define rule to cover all circumstances that may arise. Court decisions are not helpful because the problem is handled by the courts on a case to case basis with no guidance on the formulation of an all-inclusive rule.⁵ A leading authority in the field of administrative law has stated that there is no need for a perfect definition for most functions of an agency fall within the definition of rule. As to those activities of an agency that do pose a problem, the determination should be made with an eye towards producing a good result--i.e., a good result would keep the public in mind, and if the activity affects the public and would not be administratively overburdensome the question should be decided in favor of rule-making under the APA.⁶

Cooper, another authority on administrative law, has noted that the reason for the broad definition of rule is to prevent agencies, in the adoption of rules, from avoiding the procedures required by the APA on technical grounds:

First, the concept should be described in broadly inclusive terms (the word "statement" has been most popular). This has proved necessary to defeat the inclination shown by some agencies to label as "bulletins," "announcements," "guides," "interpretative bulletins," and the like, announcements which, in legal operation and effect, really amount to rules; and then to assert that their promulgations are not technically rules but merely policy statements, and hence may be issued without observance of the procedures required in connection with the adoption of rules.⁷

Cooper, however, recognizes that a broad definition will, in certain cases, impose hardships and suggests exceptions to the definition where experience has shown the justification thereof. He states that "after experience of five to ten years, if it appears that adherence to the formal rule-making requirements imposes an undue burden with respect to some types of rules, the legislature may, as it did

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in Wisconsin, make such exceptions as experience has disclosed to be advisable."⁸ Wisconsin, like Hawaii, initially adopted the broad definition of rule and, after working with this definition, found through studies that it was in the best interest of the public to adopt a number of carefully formulated and specific exceptions.⁹ The Wisconsin statute is found in Appendix B.

After seven years of experience with the broad definition of rule, Hawaii may now be able to evaluate its effectiveness and modify it as necessary. One suggestion to assist in clarifying doubtful areas would be to expand the present exceptions to the definition as follows:

"Rule" means each agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice, requirements of any agency, but does not include:

- (1) Rules concerning the internal management of an agency and not affecting private rights of, or procedures available to, the public.
- (2) Declaratory rulings issued pursuant to section 91-8.
- (3) Intra-agency memoranda.
- (4) Rules relating to the use of public works, including streets and highways, when the substance of such rules is indicated to the public by means of signs or signals.
- (5) Use of public library facilities. (This is included as it presently seems to be exempt from the APA as internal management under section 312-1.)
- (6) Rules relating to military or naval affairs. (Presently exempt under section 121-5.)
- (7) Rules establishing personnel qualification standards or job classifications for state or county employees who are in classified civil service.

Items (4) to (7) are new and include areas in which problems have been indicated. Other exclusions might be added after a more detailed study of the operations of the state and county agencies are made.

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It should be noted that the above recommendation of a rule does not include the term "particular" statement.¹⁰ Except for the Federal APA, Hawaii is the only state that includes the term in its definition of rule.¹¹ This is probably due to the fact that the Federal APA was considered by the legislature when the Hawaii APA was enacted in 1961.¹²

The term "particular" statement has been included in the Federal APA because of the distinction made in the Federal Act between rule-making and adjudication.¹³ Under the federal system, the rule-making activity also includes certain rules that are directed to named persons and the formal procedure followed involves legal rights of the named persons.¹⁴ For example, the Federal Act requires that the establishment of rates, such as freight rates of certain named companies, be determined after a formal hearing and the decision made upon the record of the hearing is called a rule,¹⁵ and is published and filed as a rule. Such a rule or decision may be appealed directly to the courts.¹⁶

Under the Hawaii APA, however, the rule adoption procedure is not designed to determine the legal rights of named individuals. Instead, as in other state APA's, the rule-making procedure is designed primarily to provide the public with information on agency rules and to allow the public to participate in the adoption of such rules.¹⁷ On the other hand, provisions of the Hawaii APA relating to a contested case, as set forth in sections 91-9 to 91-13, do provide procedures under which the legal rights, duties or privileges of specific parties may be determined after an opportunity for an agency hearing. Further, the decision or order made after an agency hearing may be appealed to the courts.¹⁸ Thus, it would appear that the reason for the inclusion of the term "particular statement" in the definition of a rule under the Federal APA does not exist under the Hawaii APA and therefore the term should be deleted as being superfluous.

Chapter V

ENFORCEMENT

This report and the report on county compliance revealed areas where rules and regulations have not been promulgated, or if promulgated the requirements of the APA have not been followed.

During the course of our study it was found that once a statute or ordinance is enacted which required the promulgation of rules by an agency, it was left to the judgment of the agency to determine how soon the required rules will be adopted. No central agency is charged with the responsibility of seeing that the rules, if required, are promulgated within a reasonable time. In certain instances, agencies did not adopt any rules for several years even if the statute mandated the promulgation of rules. This problem is further complicated by the fact that agencies, as was discussed in chapter I, are often granted discretionary powers and the determination as to whether rules are necessary or how soon they will be promulgated is left entirely within the judgment of the agency.

To promote greater compliance with the APA and more extensive rule-making, it is suggested that a method be adopted whereby the administration of the APA would be placed in one central office to see that all rule making agencies comply with the APA and that rules, if required, are promulgated within a reasonable time. There are several alternative ways in which this result may be achieved. One would be to require an annual report to the legislature, or council for county activities. This report should include the rules and regulations that have been adopted in the last year, sections of the statute that have not had rules and regulations passed under them, and the reasons why rules and regulations have not been promulgated. This report could be made by:

1. The agencies concerned,
2. The Lieutenant Governor, as the central filing agency or the county clerk for county agencies, or
3. The Attorney General or county counsel since they approve the form of the rules.

Enforcing the report would be a matter for consideration by the legislative bodies.

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Another method to facilitate enforcement may be through the Lieutenant Governor and the county clerk. As the central filing office, the Lieutenant Governor presently maintains an index and a file of all rules for both state and county rules. The county clerk has a similar file for county rules. Both officers would be able to know in which areas no rule exists and once noncompliance or need is determined, they could inform the agencies of this deficiency and request corrective action.

A third alternative would be a report by the Attorney General to the Governor and by the county counsel to the mayor. Under the present procedure, both the Attorney General and the county counsel must approve the rules and regulations as to form prior to their adoption. They would be able to keep up with developments in this area and to inform the chief executives of the status of rules and regulations. The chief executives could, in turn, compel the agencies to promulgate rules and regulations or to require them to submit reasons for the noncompliance. Enforcement under this method may be faster and more flexible than an annual report to the legislature or county council, particularly in the county area where the chief executive would be more familiar with the local situation. Moreover, the chief executives could continually check on the progress of the agencies in their compliance with the APA.

FOOTNOTES

Chapter I

1. The Council of State Governments, Administrative Rule-Making Procedure in the States (Chicago: 1961), p. 1; Frank E. Cooper, State Administrative Law (Indianapolis: Bobbs-Merrill, 1965), Vol. 1, p. 9.
2. Council of State Governments, p. 1; Cooper, Vol. 1, p. 9.
3. Council of State Governments, p. 1; Cooper, Vol. 1, p. 9.
4. Hawaii, Journal of the House of the First Legislature, General Session of 1961, pp. 653-654.
5. Rev. Laws of Hawaii, secs. 7-28 to 7-41 (1955).
6. Hawaii, Journal of the House, p. 654.
7. See Hawaii Rev. Stat., ch. 91.
8. For the purposes of this report we shall adopt the conclusion of the 1968 Bureau study on county compliance that an agency is one "authorized by law" and that this means one authorized by statute. See Sonia Faust, Compliance of County Agencies with the Hawaii Administrative Procedure Act, University of Hawaii, Legislative Reference Bureau, Report No. 3 (Honolulu: University of Hawaii, 1968), pp. 2-3.
9. Hawaii Rev. Stat., sec. 353-81(5).
10. Hawaii Rev. Stat., secs. 582-1 (Article XII), and 582-2.
11. Sess. Laws of Hawaii 1968, Act 30, Sec. 1 (Article VII).
12. Hawaii Rev. Stat., sec. 310-2 (Article VII).
13. Hawaii Rev. Stat., sec. 335-2.
14. Faust, p. 5.

Chapter II

1. Hawaii Rev. Stat., sec. 91-2(a)(1) and (2).
2. Hawaii Rev. Stat., sec. 91-6.
3. Hawaii Rev. Stat., sec. 91-8.
4. Frank E. Cooper, State Administrative Law (Indianapolis: Bobbs-Merrill, 1965), Vol. 1, p. 233.
5. See Territory v. Fritz Kraft, 33 Hawaii 397 (1935).
6. For further information, see Appendix C for a letter from the Department of Accounting and General Services concerning the board.

Chapter III

1. U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act (Kansas: 1947), p. 18.

Chapter IV

1. Sonia Faust, Compliance of County Agencies with the Hawaii Administrative Procedure Act, University of Hawaii, Legislative Reference Bureau, Report No. 3 (Honolulu: University of Hawaii, 1968), p. 27.
2. Frank E. Cooper, State Administrative Law (Indianapolis: Bobbs-Merrill, 1965), Vol. 1, pp. 102-104.
3. Ibid., Vol. 1, pp. 104-105.
4. Faust, pp. 25-29.
5. See for example: Willapoint Oysters, Inc. v. Ewing, 174 F.2d 676 (9th Cir. 1949); People v. Cull, 10 N.Y.2d 123, 176 N.E.2d 495 (1961); and People v. Widelitz, 31 Misc.2d 25, 239 N.Y.S.2d 707 (1963).
6. Kenneth Culp Davis, Administrative Law Treatise (St. Paul, Minnesota: West Publishing Co., 1958), Vol. 1, p. 293.
7. Cooper, Vol. 1, p. 108.
8. Ibid., Vol. 1, p. 112.
9. Ibid., Vol. 1, p. 111.
10. Hawaii Rev. Stat., sec. 91-1(4) now reads: "'Rule' means each agency statement of general or particular applicability and future effect that implements, interprets or prescribes law or policy . . ." (Emphasis added)
11. Cooper, Vol. 1, p. 113.
12. Hawaii, Journal of the House of the First Legislature, General Session of 1961, pp. 653-654.
13. Cooper, Vol. 1, p. 108.
14. U.S. Congress, Administrative Procedure Act - Legislative History, 79th Cong., 2d Sess., 1946, Senate Doc. 248, p. 283.
15. Administrative Procedure Act, Secs. 3(a), 4(a), 7, 8, 60 Stat. 237 (1946), 5 U.S.C.A. Secs. 551(4), 553(b), 556, 557 (1966).
16. Ibid., Sec. 10, 60 Stat. 237 (1946), 5 U.S.C.A. Secs. 702, 704 (1966).
17. See Hawaii Rev. Stat., secs. 91-2 to 91-4.
18. See Hawaii Rev. Stat., sec. 91-14.

Appendix A

CHAPTER 91 ADMINISTRATIVE PROCEDURE

SECTION

- 91-1 DEFINITIONS
- 91-2 PUBLIC INFORMATION
- 91-3 PROCEDURE FOR ADOPTION, AMENDMENT OR REPEAL OF RULES
- 91-4 FILING AND TAKING EFFECT OF RULES
- 91-5 PUBLICATION OF RULES
- 91-6 PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULES
- 91-7 DECLARATORY JUDGMENT ON VALIDITY OF RULES
- 91-8 DECLARATORY RULINGS BY AGENCIES
- 91-9 CONTESTED CASES; NOTICE; HEARING; RECORDS
- 91-10 RULES OF EVIDENCE; OFFICIAL NOTICE
- 91-11 EXAMINATION OF EVIDENCE BY AGENCY
- 91-12 DECISIONS AND ORDERS
- 91-13 CONSULTATION BY OFFICIALS OF AGENCY
- 91-14 JUDICIAL REVIEW OF CONTESTED CASES
- 91-15 APPEALS
- 91-16 SEVERABILITY
- 91-17 FEDERAL AID
- 91-18 SHORT TITLE

§91-1 Definitions. For the purpose of this chapter:

- (1) "Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.
- (2) "Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.
- (3) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.
- (4) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.
- (5) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
- (6) "Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14. [L. 1961, c 103, §1; Supp. §6C-1]

§91-2 Public information. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

- (1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.
- (2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.
- (3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.
- (4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof.

(c) Nothing in this section shall affect the confidentiality of records as provided by statute. [L 1961, c 103, §2; Supp. §6C-2]

§91-3 Procedure for adoption, amendment or repeal of rules. (a) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

- (1) Give at least twenty days' notice for a public hearing. Such notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, and published at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies.
- (2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.

(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the chairman of the board of supervisors or the mayor of the county. The provisions of this subsection shall not apply to the adoption, amendment, and repeal of the rules and regulations of the county boards of water supply. [L 1961, c 103, §3; am L 1965, c 96, §139a; Supp, §6C-3]

§91-4 Filing and taking effect of rules. (a) Each agency adopting, amending, or repealing a rule, upon approval thereof by the governor or chairman of the board of supervisors or the mayor of the county, shall file forthwith certified copies thereof with the lieutenant governor in the case of the State, or with the clerk of the county in the case of a county. In addition, the clerks of all of the counties shall file forthwith certified copies thereof with the lieutenant governor. A permanent register of the rules, open to public inspection, shall be kept by the lieutenant governor and the clerks of the counties.

(b) Each rule hereafter adopted, amended, or repealed shall become effective ten days after filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties.

- (1) If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided,

that no rule shall specify an effective date in excess of thirty days after the filing of the rule as provided herein.

- (2) An emergency rule shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, for a period of not longer than one hundred twenty days without renewal unless extended in compliance with the provisions of subdivisions (1) and (2) of section 91-3 (a), if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety, or morals. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule. [L 1961, c 103, §4; am L 1965, c 96, §139b; Supp, §6C-4]

§91-5 Publication of rules. (a) Each agency shall, as soon as practicable after January 2, 1962, compile, index, and publish all rules adopted by the agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years.

(b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons each agency may fix a price to cover mailing and publication costs. [L 1961, c 103, §5; Supp, §6C-5]

§91-6 Petition for adoption, amendment or repeal of rules. Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for the petitions and the procedure for their submission, consideration, and disposition. Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with section 91-3. [L 1961, c 103, §6; Supp. §6C-6]

§91-7 Declaratory judgment on validity of rules. (a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) herein by bringing an action against the agency in the circuit court of the county in which petitioner resides or has its principal place of business. The action may be maintained whether or not petitioner has first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions, or exceeds the statutory authority of the agency, or was adopted without compliance with statutory rule-making procedures. [L 1961, c 103, §7; Supp. §6C-7]

§91-8 Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders. [L 1961, c 103, §8; Supp. §6C-8]

§91-9 Contested cases; notice; hearing; records. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided, that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished;

(5) The fact that any party may retain counsel if he so desires.

(c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of agency decisions, the record shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;

- (5) Report of the officer who presided at the hearing;
- (6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.
- (f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.
- (g) No matters outside the record shall be considered by the agency in making its decision except as provided herein. [L 1961, c 103, §9; Supp. §6C-9]

§91-10 Rules of evidence; official notice. In contested cases:

- (1) Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law.
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (3) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.
- (4) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. [L 1961, c 103, §10; Supp. §6C-10]

§91-11 Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. [L 1961, c 103, §11; Supp. §6C-11]

§91-12 Decisions and orders. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a

certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to his attorney of record. [L 1961, c 103, §12; Supp. §6C-12]

§91-13 Consultation by officials of agency. No official of an agency who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [L 1961, c 103, §13; Supp. §6C-13]

§91-14 Judicial review of contested cases. (a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to the provisions of the Hawaii Rules of Civil Procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court. The court in its discretion, may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the agency decisions; but the agency or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the designation of the record on appeal, or within such further time as the court may allow, the agency shall transmit to the reviewing court the designated record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record, except that in the cases where a trial de novo, including trial by jury, is provided by law and also in cases of alleged irregularities in procedure before the agency not shown in the record, testimony thereon may be taken in court. The court shall, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
 - (2) In excess of the statutory authority or jurisdiction of the agency; or
 - (3) Made upon unlawful procedure; or
 - (4) Affected by other error of law; or
 - (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (h) Upon a trial de novo, including a trial by jury as provided by law, the court shall transmit to the agency its decision and order with instructions to comply with the order. [L 1961, c 103, §14; Supp, §6C-14]

§91-15 Appeals. An aggrieved party may secure a review of any final judgment of the circuit court under this chapter by appeal to the supreme court. The appeal shall be taken in the manner provided in the Hawaii Rules of Civil Procedure. [L 1961, c 103, §15; Supp, §6C-15]

§91-16 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [L 1961, c 103, §16; Supp, §6C-16]

§91-17 Federal aid. The provisions of section 91-14 shall not be applicable where such applicability would jeopardize federal aid or grants of assistance. [L 1961, c 103, §19; Supp, §6C-17]

§91-18 Short title. This chapter may be cited as the Hawaii Administrative Procedure Act. [L 1961, c 103, §20; Supp, §6C-18]

Appendix B

WISCONSIN STATUTE

227.01 Definitions. In this chapter:

(1) "Agency" means any board, commission, committee, department or officer in the state government, except the governor or any military or judicial officer of this state.

(2) "Contested case" means a proceeding before an agency in which, after hearing required by law, the legal rights, duties or privileges of any party to such proceeding are determined or directly affected by a decision or order in such proceeding and in which the assertion by one party of any such right, duty or privilege is denied or controverted by another party to such proceeding.

(3) "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law, issued by an agency to implement, interpret or make specific legislation enforced or administered by such agency or to govern the organization or procedure of such agency.

(4) Every statement of general policy and every interpretation of a statute specifically adopted by an agency to govern its enforcement or administration of legislation shall be issued by it and filed as a rule. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within sub. (3) or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this subsection.

(5) "Rule" as defined in sub. (3) does not include or mean, and the provisions of sub. (4) do not apply to, action or inaction of an agency, regardless of whether otherwise within sub. (3) or (4), which:

(a) Concerns the internal management of the agency and does not affect private rights or interests;

(b) Is a decision or order in a contested case;

(c) Is an order which is directed to a specifically named person or to a group of specifically named persons which does not constitute a general class, and the order is served on the person or persons to whom it is directed by the appropriate means applicable thereto. The fact that the named person who is being regulated serves a group of unnamed persons who will be affected does not make such order a "rule";

(d) Relates to the use of the highways and is made known to the public by means of signs or signals;

(e) Relates to the construction or maintenance of highways or bridges or the laying out or relocation of a highway;

(f) Relates to the curriculum of public educational institutions or to the admission, conduct, discipline, or graduation of students of such institution;

(g) Relates to the use of facilities of public libraries;

(h) Relates to the management, discipline or release of persons who are committed to state institutions or to the state department of public welfare or who are placed on probation;

(i) Relates to military or naval affairs;

(j) Relates to the form and content of reports, records, or accounts of state, county or municipal officers, institutions or agencies;

(k) Relates to expenditures by state agencies, the purchase of materials, equipment or supplies by or for state agencies, or to printing or duplicating of materials for state agencies;

(l) Establishes personnel standards, job classifications, or salary ranges for state, county or municipal employees who are in the classified civil service;

(m) Determines water levels;

(n) Fixes or approves rates, prices, or charges, except when a statute specifically requires the same to be fixed by rule;

(o) Determines the valuation of securities held by insurance companies;

(p) Is a statistical plan relating to the administration of rate regulation laws applicable to casualty insurance or to fire and allied lines insurance;

(q) Is a form the content or substantive requirements of which are prescribed by a rule or a statute; or

(r) Is a pamphlet or other explanatory material not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature.

(s) Prescribes or relates to a uniform system of accounts for persons, including municipalities, regulated by the public service commission.

Appendix C

JOHN A. BURNS
GOVERNOR



KENAN KIM
COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P. O. BOX 119
HONOLULU, HAWAII 96810

September 8, 1969

Mr. Henry Kitamura, Director
Legislative Reference Bureau
University of Hawaii
Honolulu, Hawaii

Attention: Mr. Richard Kahle, Jr.

Dear Mr. Kitamura:

In connection with our meeting and discussion on Senate Resolution 16 with your Mr. Kahle, transmitted herewith for your information are our comments on the questions raised in reference to certain sections of the Hawaii Revised Statutes:

Section 91-2, 5 and 8 Practice and Procedure

Our records indicate no rules on Practice and Procedure has been filed. Based on this information, rules are being currently prepared with the cooperation of the Attorney General for adoption and will be filed according to Statute.

Section 29-18(3) Surplus Property

Although this section authorizes rules and regulations, they are not deemed necessary and in fact would be redundant because (1) Section 29 delineates the function of the agency quite explicitly and (2) operating details are spelled out in the federally-required state plan of operation referred to in Section 29-18(7). This plan of operation incorporates rules and regulations promulgated by the federal government; as such, they are considered an exception to the Administrative Procedure Act.

Section 40-81 Report by Agencies receiving Special moneys

Reports in compliance with Section 40-81, HRS, are now routinely received in a satisfactory manner and there has been no difficulty in this matter either on the part of operating agencies or of the Department of Accounting and General Services. Therefore, we believe promulgation of rules and regulations through the Administrative Procedures Act is not required to regulate the reporting requirement.

September 8, 1969

Section 80-11 Working hours of employees reporting to central pick-up point

Rules required by Section 80-11 have been adopted and implemented. Inasmuch as these rules concern only the internal management of the department, they were not processed through the Administrative Procedures Act.

Section 94-1 Public Archives, Disposal of records

Rules and regulations for the conduct of the Records Management Program have been adopted and in effect. Because these rules are for internal management purposes, it was not necessary to process them through the Administrative Procedures Act.

Section 106-14 Classes of property, expendable or nonexpendable or otherwise

Rules and regulations were not required in this area in the past, because disposal procedures were prescribed in detail by the Revised Laws of Hawaii. However, these procedures were inadvertently omitted from the Hawaii Revised Statutes; because of this omission, rules and regulations have been drawn up and will be published in accordance with the Administrative Procedures Act. Public hearing was held on August 28, 1969.

Section 106-21 Sale of Produce, disposition of proceeds by any state agency

The activities covered by this section lie outside the province of this department. Therefore, promulgation of rules and regulations are not applicable.

Section 274-3 Radio Board, Practice and Procedure

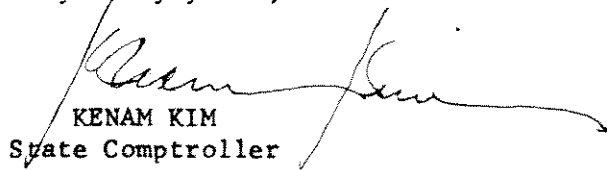
Our check with the Archives Division regarding Section 274-3 disclosed the following:

1. The Board seems to have been made inactive by just dropping the appropriation.
2. The last appropriation was made for the 1949-1951 biennium.
3. The 1951-1953 budget request states "Governor's Recommendation: Disallowed."
4. The last appointment to the Board was in 1943.

Based on the above information, it appears that the Radio Board is defunct and the entire Chapter 274, HRS, repeal.

If you should need further assistance in your study, please feel free to call on me.

Very truly yours,


KENAM KIM
State Comptroller

PUBLISHED REPORTS OF THE LEGISLATIVE REFERENCE BUREAU

- 1959 1. The Foreign-Trade Zone. 48 p.
- 2. Administration of Indigent Medical Care in Hawaii. 55 p. (out of print)
- Some Effects of Hawaii's 1957 Tax Law. 118 p.
- Hawaii State Government Organization. 2 volumes. (out of print)
- 1960 1. Pre-Session Filing and Related Legislative Procedures. 38 p. \$1
- 2. Capital Improvements Programs in Hawaii. 47 p. \$1
- 3. The Costs of Hospitalization for Indigents in Hawaii. 42 p. \$1
- 4. Public Assistance in Hawaii: Statutory Provisions and Trends in Payments. 31 p. \$1
- The Structure of the Hawaii State Government. 25 p. (out of print)
- 1961 1. Disaster Relief: Considerations for State Action. 60 p. \$1
- 2. Free Choice of Physician in Hawaii's Medical Care Program. 21 p. \$1
- 3. Real Property Tax Exemption in Hawaii. 29 p. \$1
- 4. School Boards and Public Education. 139 p. \$1
- 5. Public Land Policies of the United States and the Mainland States. 67 p. \$1
- 6. The Hawaii Public Utilities Commission. 89 p. (out of print)
- 7. Care of the Chronically Ill and Disabled Aged. 44 p. \$1
- 8. The Hawaii Antitrust Act. 68 p. (out of print)
- 1962 1. Tax Problems and Fiscal Policy in Hawaii. 74 p. \$1
- 2. Hawaii Legislative Manual. Rev. ed. 80 p. (out of print)
- 3. Nursing and Nursing Education in Hawaii. 117 p. \$1
- 1963 1. Study of the Workmen's Compensation Law in Hawaii. 154 p. (out of print)
- 2. Hawaii's General Excise Tax. 56 p. \$1
- 3. Nonresidents Students and the University of Hawaii. 96 p. \$1
- 4. The Role of the State in the Regulation of Pharmacy. 159 p. \$1
- 5. The Uniform Commercial Code and the Hawaii Law. 346 p. (out of print)
- 1964 1. The Hawaiian Homes Program: 1920-1963. 52 p. (out of print)
- 1a. Legal Aspects of the Hawaiian Homes Program. 72 p. (out of print)
- 1b. Land Aspects of the Hawaiian Homes Program. 47 p. (out of print)
- 1c. Social Aspects of the Hawaiian Homes Program. 74 p. (out of print)
- 1d. The Maori Affairs Program. 43 p. \$1
- 2. Public Land Policy in Hawaii: Land Exchanges. 79 p. (out of print)
- 3. College and the Needy Student in Hawaii. 2 volumes. \$2
- 1965 1. Public Land Policy in Hawaii: The Multiple-Use Approach. Rev. 1969. 95 p. \$2.50
- 1966 1. Hawaii Legislative Manual: A Handbook for Legislators. Third Edition. 81 p. \$1.50
- 2. Public Land Policy in Hawaii: Land Reserved for Public Use. 95 p. (out of print)
- 3. Education in a Changing World of Work in a Democratic Society. 157 p. \$2
- 1967 1. Trading Stamp Legislation. 75 p. \$1.50
- 2. Public Housing in Hawaii--The Evolution of Housing Policy. 2 volumes. \$3.50
- 3. Public Land Policy in Hawaii: Major Landowners. 131 p. \$4
- 4. Hawaii Tax Rate Distribution Estimates. 223 p. \$3
- 1968 1. Practical Guide to the Uniform Commercial Code in Hawaii, Articles 1, 2, 6, 7 and 9. 290 p. \$2
- 2. The Hawaii Wage and Hour Law. 62 p. \$1
- 3. Compliance of County Agencies with the Hawaii Administrative Procedure Act. 50 p. \$1
- 4. Quest for Compensatory Education in the State of Hawaii. 97 p. \$1.25
- 5. Dental Care for the Indigent and Medically Indigent in the State of Hawaii. 97 p. \$1.50
- 6. Regulation of Political Contributions. 158 p. \$2.50
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- 3. Credit Life and Credit Disability Insurance in Hawaii. 52 p. \$1
- 4. Nursing in Hawaii, 1968. 52 p. \$1
- 5. Public Land Policy in Hawaii: An Historical Analysis. 200 p. \$4
- Directory of State, County and Federal Officials. 109 p. \$1
- Guide to Government in Hawaii, Fourth Edition. 81 p. \$1