

DEPARTMENT OF AGRICULTURE

Repeal of Chapter 4-87 and
Adoption of Chapter 4-87.1
Hawaii Administrative Rules

April 7, 2009

SUMMARY

1. Chapter 4-87, Hawaii Administrative Rules, entitled "Voluntary Registration of Service Persons or Service Agencies," is repealed.
2. Chapter 4-87.1, Hawaii Administrative Rules, entitled "Voluntary Registration of Service Persons," is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 87.1

VOLUNTARY REGISTRATION OF SERVICE PERSONS

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§4-87.1-2	Violations
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Historical note: This chapter is based substantially upon chapter 4-87.
[Eff 1/27/72; am 12/26/81; R APR 25 2009]

§4-87.1-1

§4-87.1-1 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remainder of this chapter and, to this end, the provisions of this chapter are severable. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-2 Violations. (a) It shall be a violation of this chapter for any person to:

- (1) Use for any purpose a measure or measurement standard which has not been certified as required under section 4-87.1-13;
- (2) Install or return to service any measure or measurement standard which has not been approved as to type by the administrator;
- (3) Install or return to service any measure or measurement standard which does not comply with all requirements of this chapter;
- (4) Affix a seal to a measure until the measure has been tested and found to comply with all requirements of this chapter;
- (5) Fail to properly execute and submit to the administrator the placed-in-service report required under section 4-87.1-12;
- (6) Adjust any measure to other than as closely as practicable to zero error or make any adjustment that would favor any party;
- (7) Fail to submit measurement standards and measures for examination and certification as required under section 4-87.1-13.

(b) Any person who omits the required acts or commits the proscribed acts of this chapter shall be in violation of this chapter and subject to the provisions of chapter 486, Hawaii Revised Statutes. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-3 Applicability. This chapter applies to any person who, for consideration or payment of any kind, alters the state of any component of a measure or measurement standard or its performance, and who voluntarily registers with the administrator. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-4 Definitions. As used in this chapter:

"Acceptance tolerance" establishes limits of inaccuracy permissible for measures susceptible of commercial usage. Acceptance tolerance applies to a new or newly overhauled or newly installed or adjusted measure, and is smaller than the maintenance tolerance, usually by one-half.

"Administrator" means the administering officer of the quality assurance division, or any qualified person so designated by the chairperson of the board of agriculture.

"Certificate of conformance" means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories and constitutes evidence of conformance of a type with the requirements of the National Institute of Standards and Technology Handbook 44, 105-1, 105-2, or 105-3.

"Department" means the department of agriculture.

"Maintenance tolerance" establishes the limits of inaccuracy within which measures susceptible of commercial usage shall perform, and beyond which the use of such measure becomes unlawful. The maintenance tolerance applies to measures which have been in use for more than thirty days.

"Measure" includes all measures of every kind, including but not limited to weight, mass, length, volume, time, and count; instruments and devices for weighing, measuring, or counting; and appliances and accessories associated with any such instruments and devices.

"Measurement standards" includes any standard, definition, model, reference, or measurement relating to metrology including but not limited to weights and measures, artifacts, and reproducible definitions of a unit of measure and their applicable tolerances including those of the International Standards, and definitions of a lot size, sample, and tolerances as related to statistical inspection.

"Registered service person" means a person who, for consideration or payment of any kind, alters the state of any component of a measure or measurement standard or its performance, and who voluntarily registers with the administrator.

"Seal" means the sign, symbol, or object placed upon a measure to indicate that it has been inspected and tested by the administrator or registered service person and found to be in compliance with all applicable requirements.

§4-87.1-4

"Susceptible of commercial usage" includes persons, things, actions, including governmental agencies, involved in establishing the net, gross, or tare measure, cost, or value of any part, portion, or proration of the total, as it may be used in the quantification or measurement of anything impacting upon salary or wages, commerce or trade, or their documentation, including the establishing of a basis for taxes due. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-5 Incorporation of federal general code. National Institute of Standards and Technology HANDBOOK 44 2008 Edition is incorporated in and made a part of this chapter. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-6 Qualifications. A service person who is able to satisfactorily demonstrate the following qualifying abilities may apply to the administrator for registration:

- (1) Is fully qualified to install, service, repair, relocate, or recondition a measure;
- (2) Has a thorough working knowledge of applicable measurement standards laws, rules, procedures, and orders; and
- (3) Has possession of, or available for use, measurement standards or measures appropriate in design, adequate in amount, and currently certified as correct by the administrator.

[Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87-7.1 Reciprocity. The administrator may accept a certificate of registration from an individual or a representative of a service agency from another state which is a party to a similar voluntary registration program.

[Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-8 Voluntary registration. A person may apply for registration by using the form supplied by the department. This form, when fully executed and signed, shall entitle the applicant to demonstrate knowledge and ability regarding the measure and laws governing that measure cited on the application form, to the administrator. The demonstration shall include technical competence in standard tests and standard methods prescribed for the measure.

[Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-9 Certificate of registration; fee. (a) Upon a person's satisfactory demonstration of qualifying ability, technical competence, and thorough knowledge of applicable legal requirements, the administrator shall issue a certificate of registration as provided by the department, including a unique identification number, which shall remain in effect until withdrawn by the administrator or surrendered by the registered service person.

(b) For each certificate of registration, a fee of \$100 shall be paid to the department for a period of validity from July 1 to midnight of the following June 30.

(c) A renewal fee of \$100 shall be paid to the department for a period of validity from July 1 to midnight of the following June 30.

(d) Payment of the renewal fee after July 1, but prior to the following June 30, shall result in an additional late fee of \$25.00 per quarter.

(e) Failure to pay the renewal fee for each certificate of registration will result in forfeiture of the certificate of registration. The certificate of registration will be forfeited as of July 1 if the renewal fee is not received, but will be reinstated if the renewal fee is received in addition to the late fee. One year after the forfeiture of registration without renewal, the registered service person must reapply for a new certificate of registration in accordance with section 4-87.1-6 and this section. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-10 Privilege of registered service person. A registered service person may place in service, or remove an official state rejection tag and return to service, any device that complies with chapter 4-101, by applying thereon a seal supplied by the administrator, subject to section 4-87.1-2(b).

[Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-11

§4-87.1-11 Follow-up investigations. The administrator shall as often as deemed necessary, periodically check the effectiveness of the registered service person by follow-up investigations and tests in accord with the applicable specifications, tolerances, and other technical requirements for measures and measurement standards, as appropriate. When a follow-up is made within thirty days of the date identified on the placed-in-service report cited under section 4-87.1-12, the administrator shall apply acceptance tolerances in the investigation. A follow-up beyond thirty days of the date identified on the placed-in-service report shall result in the administrator applying maintenance tolerances in the investigation. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-12 Placed-in-service reports. (a) The administrator shall furnish each registered service person with a supply of placed-in-service report forms as supplied by the department. The registered service person shall type or print the required information on the report, including:

- (1) The owner of the device;
 - (2) The location of the device;
 - (3) The identification number of the registered service person;
 - (4) The rejection tag number, if any;
 - (5) The date the device was returned to or initially placed in service;
 - (6) The standard test or standard method used to determine compliance and certification; and
 - (7) The certificate of conformance number of the device.
- (b) The report shall be executed as follows:
- (1) The original, after being countersigned by an agent of the owner or operator, shall be retained by the person countersigning;
 - (2) A copy shall be forwarded to the administrator within seventy-two hours of installation or return of the device to service, along with any rejection tag removed from the device; and
 - (3) A copy shall be retained by the registered service person.

(c) Failure to submit a placed-in-service report to the administrator within seventy-two hours of installation or return to service of a device shall result in a late fee of \$25.00 per violation. Failure to submit the \$25.00 late fee, in addition to the placed-in-service report, to the administrator within thirty days of installation or return to service of a device shall result in revocation of certificate of registration. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-13 Correct measurement standards and measures; fee. (a) Each registered service person shall submit, prior to use, and when annually scheduled or deemed necessary by the administrator for examination and certification, measurement standards and measures over which that person exercises custodial control, and which are susceptible of use in performance of the required service and testing functions cited herein.

(b) Registered service persons who are owner(s) of the measurement standards and measures submitted to the administrator shall follow the same procedures for examination and certification as established by the administrator.

(c) For measurement standards and measures submitted to the administrator for examination and certification, a fee shall be paid as prescribed in Table II, Schedule of Calibration Fees, of chapter 4-96.1. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-14 Revocation of certificate of registration. In addition to the provisions of chapter 486, Hawaii Revised Statutes, the administrator may, for actions contrary to the requirements of this chapter, suspend or revoke a certificate of registration. The registered service person shall be notified of the suspension or revocation by registered mail. Upon notification, the registered service person shall immediately lose all privileges under section 4-87.1-10, and shall have twenty business days to correct any actions contrary to the requirements of this chapter to the satisfaction of the administrator. Once the administrator is satisfied that all actions contrary to the requirements of this chapter are corrected, the certificate of registration may be reinstated. [Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-87.1-15

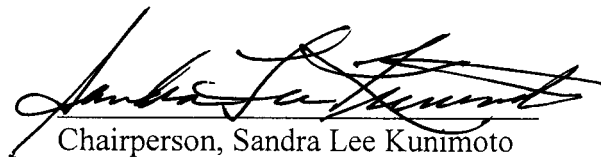
§4-87.1-15 Limited authority. This chapter confers limited quasi-measurement standard inspector authority upon a certified registered service person; however, certification in no way obligates or creates any liability on the part of the administrator, arising from any true or alleged improper, imprudent, unsound, unlawful, or illegal act of a registered service person.

[Eff APR 25 2009] (Auth: HRS §486-7) (Imp: HRS §486-7)

DEPARTMENT OF AGRICULTURE

The repeal of Chapter 4-87 and the adoption of chapter 4-87.1, Hawaii Administrative Rules, on the Summary Page dated November 25, 2008, were adopted on November 25, 2008 following public hearings held on Oahu; Kauai and Maui; Kona and Hilo; respectively, on October 28, 24, 23, 22, and 21, 2008, after public notice was given, respectively, in The Honolulu Star Bulletin, The Garden Island newspaper, Maui News, the West Hawaii Today, and the Hawaii Tribune-Herald newspapers on Sunday September 21, 2008.

The repeal of chapter 4-87 and the adoption of chapter 4-87.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.


Chairperson, Sandra Lee Kunimoto
Board of Agriculture

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


LINDA LINGLE
Governor
State of Hawaii

Dated: APR 14 2009

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LIEUTENANT GOVERNOR'S OFFICE

Filed