Small Business Regulatory Review Board Meeting

January 21, 2021

10:00 a.m.

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov
Tel: 808 586-2419

AGENDA
Thursday, January 21, 2021 ★ 10:00 a.m.

As authorized under the Governor's December 16, 2020, Seventeenth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

https://zoom.us/j/97410567038

Copies of the Board Packet will be available on-line for review at: https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, January 20, 2021.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of November 19, 2020 Meeting Minutes

III. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 256 Section 73 **Kaneohe Bay Ocean Waters**, promulgated by Department of Land and Natural Resources – Discussion Leader – Taryn Rodighiero

IV. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Section 5A-11.4 of the Kauai County Code, **Home and Related Exemption Rules**, promulgated by County of Kauai Department of Finance – Discussion Leader – William Lydgate / Back-up Discussion Leader if necessary – Taryn Rodighiero

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218 **Kakaako Reserved Housing Rules**, promulgated by Hawaii Community Development Authority / Department of Business, Economic Development and Tourism – Discussion Leader – Chair Robert Cundiff

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 60.1, **Air Pollution Control**, promulgated by Department of Health – Discussion Leader – Harris Nakamoto / Back-up Discussion Leader if necessary – Dr. Nancy Atmospera-Walch

IV. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Administrative Rules (HRS)

V. Next Meeting: Thursday, February 18, 2021 at 10:00 a.m.

VI. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of November 19, 2020 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - DRAFT
November 19, 2020

I. CALL TO ORDER: Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:
- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate

STAFF: DBEDT
Dori Palcovich
Jet'aime Alcos

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF October 15, 2020 MINUTES

Vice Chair Albitz motioned to accept the October 15, 2020 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS - Before Public Hearing

A. Discussion and Action on the Proposed Amendments to HAR Title 13 Chapter 241, Numbering of Vessels, promulgated by Department of Land and Natural Resources

Discussion leader Ms. Rodighiero stated that after she spoke with DOBOR's Legal Fellow, Mr. Todd Tashima, it was determined that the proposed rule amendments allow DOBOR to act as a DMV, but for boats. This is the result of a law that was passed in 2018 requiring boats to be titled as well as registered with the State. As such, this proposal outlines the titling of boats and the fees associated with the titling.

DLNR's DOBOR Administrator, Mr. Edward Underwood, explained that Hawaii is the fifth state to follow the Uniform Title Act. In regard to the fees, the fee amount being charged does not represent "catch up" from the last time the fees were increased, which was ten years ago. The fees solely represent the cost of implementing the program.

In terms of how long it will take for boat owners to get their boats titled, Mr. Underwood said that the process will likely take about a year to complete as there is no need to rush it. Titling is expected to be done when re-registration of the boats is being done.

Mr. Ritchie motioned to send the proposed rule amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Chapter 229, General, Administrative and Legal Provisions, promulgated by Department of Labor and Industrial Relations and Natural Resources

Discussion leader and Vice Chair Ms. Albitz stated that there were no attendees at the public hearing and no comments were submitted. DLIR's HIOSH Administrator, Mr. Norman Ahu said that his division continues to work with the stakeholders and small business owners who seem to appreciate HIOSH's ability to do the best it can, given the current pandemic.

Mr. Blair Suzuki, Operations Manager at Otis Elevator, testified that he was disappointed in how the process proceeded as neither Otis Elevator nor other stakeholders received notice of or knew that the rules went to public hearing. He added that although there was a stakeholder meeting with HIOSH in September, there has been no effort on HIOSH's part to reconvene another meeting or to keep the stakeholders apprised of the status of the rules. In response, Mr. Ahu stated that the minimum legal requirements for posting the public hearing notice in the newspaper of 30 days was followed and fulfilled.

While Mr. Ahu's attempt at resolving some of the stakeholders' issues and concerns were appreciated, Mr. Suzuki believed that things appear to have regressed in the past few months. This is largely because HIOSH has not scheduled elevator inspections until the end of the year, which will ultimately impact the safety of a company's operations. He added that the stakeholders need an "action plan" from HIOSH.

Mr. Ahu explained that HIOSH is currently short two to three elevator inspectors and may lose another one largely due to the fear of traveling and being exposed to COVID; this is why the fee increase is so important. Currently, there are only six inspectors; however, with the additional funds, new inspectors will be hired. Because it takes six months to a year to fully train inspectors to learn the system and the standards, HIOSH is currently doing its best to extend the permits and accommodate the businesses.

Mr. Suzuki, on behalf of Otis Elevator and its represented stakeholders, were in strong opposition of the fee increases as they would not help to improve receiving building permits and inspections. Mr. Ahu understood but did not concur.

Upon hearing the concerns of Mr. Suzuki and responses from Mr. Ahu, Chair Cundiff reminded the attendees that this Board's purview is to review business impact, not to review the implementation of the rules. At the prior stakeholder meeting there appeared to be, at least, some progress and agreement made towards addressing the process and the proposed fee schedule. Even though no feedback was provided at the public hearing, it also appears there is some general acceptance to the rationale of the fee increase. Thus, if HIOSH does not move forward with an increase in the fee schedule it will not allow for the ability to fund the additional elevator inspectors and/or fund a process that will assist in making the inspection process move forward.

Vice Chair Albitz was concerned that the notice of public hearing was announced in the minimal way versus reaching out to the stakeholders. In response to a suggestion for "self-certification" Mr. Ahu replied that it would likely not be a reasonable alternative due to potential liability.

Further, Chair Cundiff explained that this Board is aware of the stakeholders' ongoing concerns as to how DLIR is conducting the process relative to inspections, which need to continue to be addressed. There also needs to be ongoing dialogue between small business stakeholders and HIOSH relative to agreements that may have been made based on recommendations from small businesses in prior stakeholder meetings to ensure that there are ongoing improvements. While it may not be at a time that small businesses would like to see, it is important to continue the dialogue to ensure that small business is being heard, that the activity is ongoing, and that there are improvements coming.

In response to asking HIOSH for a commitment to continue to conduct dialogue with the stakeholders, engage with them on an ongoing basis, and collectively look to viable solutions that may not entail union impact or other difficulties, Mr. Ahu concurred and HIOSH is committed to working with Mr. Suzuki and the small business stakeholders moving forward. It was recognized that it may take time to address the immediate need of elevator inspections done so that the stakeholders may conduct business in compliance with state regulations.

In response to Chair Cundiff's question as what would occur or what resolution would result if the fee increase was not instituted, Mr. Suzuki was not sure. This is largely because there has been a lack of commitment to change the process by the state with potential improvements. Further, he believes that an increase in the fees should be tied to measurable metrics, and that the business community needs to be informed as to what exactly they are paying for and why it cannot be done in the current manner.

Mr. Ritchie suggested that comments made during this discussion be incorporated into the memo to the Governor along with the recommendations, and Vice Chair Albitz commented that the motion to the Governor might state "with reservations." Mr. Shick added that there still appears to be a needed commitment on DLIR's part to make the stakeholders comfortable, so measurable committed actions should be included with the Board's motion.

Vice Chair Albitz motioned to send the proposed amendments to the Governor for adoption provided that commitments made by HIOSH/DLIR are in conjunction with its discussions with stakeholders on process improvements and are implemented through measurable outcomes. Mr. Shick seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's Draft 2020 *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), Hawaii Revised Statutes (HRS)

Chair Cundiff noted that the total number of rules reviewed during the calendar year 2020 is significantly down largely due to the pandemic and because agencies and businesses are not necessarily operating as "business as usual."

Mr. Ritchie motioned to approve the Board's draft 2020 *Annual Report Summary* with one noted correction and the possible update of the Chair's message. Vice Chair Albitz seconded, and the Board members unanimously agreed.

B. Review of Proposed Board Meeting Dates for 2021

Board members reviewed and concurred with the upcoming meeting schedule for 2021.

C. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

No updates to the Board's advocacy activities and programs were provided.

VI. NEXT MEETING - Thursday, December 10, 2020 at 10:00 a.m., if necessary.

VII. ADJOURNMENT – Ms. Rodighiero motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:15 a.m.

III. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 256 Section 73 "Kaneohe Bay Ocean Waters," promulgated by DLNR

RECEIVED
By SBRRB at 9:13 am, Dec 10, 2020

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: DLNR Division of Boating & Ocean Recreation

Administrative Rule Title and Chapter: Title 13, Subtitle 11, Chapter 256, Section 73

Chapter Name: Kaneohe Bay ocean waters

Contact Person/Title: Todd Tashima/Rules Writer

Phone Number: 808-587-0142

E-mail Address: todd.h.tashima@hawaii.gov **Date:** 12/10/20

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☑ **Yes** ☐ **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☐ **New** ☐ **Repeal** ☑ **Amendment** ☐ **Compilation**

II. Will the proposed rule(s) affect small business?

☑ **Yes** ☐ **No** (If "**No,**" no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ **Yes** ☑ **No**

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ **Yes** ☐ **No**

(If "Yes" no need to submit this form.)

* * *

V. Please explain how the agency involved small business in the development of the proposed rules.

DOBOR met with affected businesses to discuss proposals that would be fair and compliant with the recommendations of the Kaneohe Bay Master Plan.

a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

Small businesses recommended allowing increased commercial activity. However, DOBOR could not implement this recommendation because of the guidelines of the Kaneohe Bay Master Plan.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

DOBOR notified individuals and businesses who have an interest in the proposed rules and also notified them of the public hearing.

2. A summary of the public's and small businesses' comments.

The Kahaluu Neighborhood Board supported DOBOR's proposed changes. DOBOR did not receive any testimony from businesses.

3. A summary of the agency's response to those comments.

No response needed because the Neighborhood Board's testimony supported DOBOR's proposal as submitted.

4. The number of persons who:
   (i) Attended the public hearing: 3

   (ii) Testified at the hearing: 1

   (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

   ☐ **Yes** ☑ **No**

   (i) If "Yes," was the change adopted? ☐ **Yes** ☐ **No**

   (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Post-Public Hearing Small Business Statement Attachment

Department of Land and Natural Resources, Division of Boating and Ocean Recreation
Proposed amendments to Hawai‘i Administrative Rule Section 13-256-73

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

The Department of Land and Natural Resources, Division of Boating and Ocean Recreation is proposing to amend HAR 13-256-73, Kaneohe Bay ocean waters, to clarify commercial activity provisions and make amendments for organization. Proposed amendments will remove the language regarding activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization.

RECEIVED
By SBRRB at 9:12 am, Dec 10, 2020

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-73
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

"**§13-256-73 Kaneohe Bay ocean waters.** (a) Kaneohe Bay ocean waters means the area [~~encompassed by~~] within the boundaries shown on [~~Exhibit "V", "Kaneohe Bay, Oahu, Hawaii," dated April 16, 2001,~~] "Exhibit V. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N / 157° 43' 21.6" W, then in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N / 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

[~~(b) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.~~

~~(c) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.~~

~~(d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:~~

~~Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N / 157° 47' 45.5" W.~~

~~(e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown~~

~~on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:~~

~~Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N / 157° 48' 08.5" W.~~

~~(f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:~~

~~Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N / 157° 48' 13.5" W.~~

~~(g) Zones A, B, and C are subject to the following:~~

~~(1) Zones A, B, and C are designated as commercial thrill craft zones where full service permittees shall be required to operate. Not more than six rental thrill craft shall operate within each of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.~~

~~(2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C on Sundays or federal holidays.~~

~~(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this~~

~~subchapter and incorporated herein. The boundaries of Zone D are as follows:~~

~~Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately 21° 28' 32" N / 157° 49' 39" W, then by a straight line in a due East (true) direction to approximately 21° 28' 32" N / 157° 49' 32" W, then in a straight line to approximately 21° 28' 10.5" N / 157° 49' 27" W, then in a straight line due West (true) to approximately 21° 28' 10.5" N / 157° 49' 34" W, then in a straight line back to beginning.~~

~~Zone D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.~~

~~(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone E are as follows:~~

~~Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27' 25" N / 157° 47' 46.5" W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use~~

~~extreme caution while this zone is occupied during diving activities.~~

~~(j) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone F are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then in a straight line to the point of beginning.~~

~~Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.~~

~~(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone G are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to~~

~~approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning. Zone C is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.~~]

(b) The boundaries of zones in Kaneohe Bay ocean waters are as indicated in Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019. The zones of Kaneohe Bay ocean waters are shown on "Exhibit X. Kaneohe Bay, Oahu, Hawaii", dated July 25, 2019, incorporated herein, and located at the end of this subchapter.

(c) Restrictions in Kaneohe Bay ocean waters shall be as follows:

(1) All commercial ocean use activities in Kaneohe Bay ocean waters are prohibited on Sundays and federal holidays.

(2) There shall be no walking, sitting, standing, or anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters. All participants in underwater activities, including, but not limited to, SCUBA, snorkeling, and sea-walker use, shall avoid touching coral or any living parts of a reef.

(3) All sea-walker activity shall only be conducted on a flat, sandy bottom.

(4) Commercial SCUBA activities shall be prohibited in Kaneohe Bay ocean waters,

except that commercial SCUBA activities shall only be allowed in Kaneohe Bay ocean waters zone D.

(d) Kaneohe Bay ocean waters are designated according to the following restricted zone uses. See Table 1, "Summary of Kaneohe Bay Ocean Waters Zones & Uses", dated July 25, 2019.

(1) Zones A, B, and C are designated for operation of commercial thrill craft by full service permittees between the hours of 9:00 a.m. and 5:00 p.m. At any one time, not more than six rental thrill craft shall be allowed to operate in zones A and B, and not more than three rental thrill craft shall be allowed to operate in zone C. All commercial thrill craft shall only be operated in a clockwise direction within zones A, B, and C.

(2) Zone D is designated for SCUBA, snorkeling, and sightseeing cruises only. Activity is limited to near the reef, and not on the reef.

(3) Zone E is designated for SCUBA, snorkeling, underwater activities, and sightseeing cruises only.

(4) Zones F and I are for non-exclusive commercial ocean water sports activities. All activity on top of Checker Reef in zone F is prohibited. Vessels operating in zone I shall exercise care to stay clear of sea turtles, which may migrate to the north central part of the zone. Commercial operators whose passengers are not operating thrill craft in zone I shall keep those passengers out of zones B and C.

(5) Zones G and H are for non-exclusive use by commercial large full-service permittees and non-commercial recreational users which shall share this zone for water skiing, water sledding, and operations of towed devices used to carry passengers. For safety, no more than one commercial vessel

for water sledding shall be permitted to tow at any speed in zone G at any one time. No more than two commercial vessels for water sledding shall be permitted to tow at high speed in zone H. All towing shall be conducted in a clockwise direction. No person shall moor or anchor within these zones. High speed operations shall take place in water at least two hundred feet from any reef edge, reef crest, or sand flat.

[~~(l)~~] (e) Recreational thrill craft shall not be operated in any area of Kaneohe Bay except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly [~~to~~] through the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

[~~(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone H are as follows:~~

~~Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.~~

~~Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for~~

~~safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.~~

~~(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, located at the end of this subchapter and incorporated herein. The boundaries of Zone I are as follows:~~

~~Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.~~

~~Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may migrate to the north central part of the zone, and exercise care to stay clear of any turtle observed.~~

~~(o) Kaneohe Bay speed restrictions. In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef~~

~~shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, ("The Sand Bar").~~

~~(p) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay waters.~~

~~(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.~~

~~(r) Anchoring or mooring on living coral is prohibited.~~

~~(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.~~

~~(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.~~]

(f) Slow-no-wake restrictions shall apply in Kaneohe Bay ocean waters zones D, E, F, and I; Kaneohe Bay offshore mooring areas; Kualoa waters zone B; within Kaneohe Bay for vessels within two hundred feet of Kapapa Island; and the Central Reef shallows where mean lower low water areas are less than or equal to five feet in depth including the area of Ahu o Laka (the "Sand Bar"); in addition to speed restrictions found in section 13-244-9.

(g) Commercial operators conducting snorkeling activities shall have a snorkel vest available for each snorkeler in the water and encourage use of vests to avoid the likelihood of snorkelers standing on coral.

(h) Vessels entering any Kaneohe Bay ocean waters zones shall use extreme caution, especially while in a zone with diving activities taking place.

(i) No increase in the level of commercial ocean use activities existing on July 1, 1993 will be permitted within Kaneohe Bay ocean waters." [Eff

2/24/94; am 11/7/11; am] (Auth: HRS §§ 200-22, 200-24, 200-37) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37)

Table 1. Summary of Kaneohe Bay Ocean Waters Zones & Uses

July 25, 2019

Zone	Origin*	Boundary 1	Boundary 2	Boundary 3	Boundary 4	Use Restrictions
A Checker reef 200-foot radius circle	21° 26' 27.5"N 157° 47' 45.5"W (center)					Comm. thrill craft zone (full service permit); no more than 6. Clockwise only 9am – 5pm
B (Sand flat) 200-foot radius circle	21° 27' 28.5"N 157° 48' 08.5"W (center)					(Same as Zone A)
C (Sand flat) 200-foot radius circle	21° 27' 32"N 157° 48' 13.5"W (center)					Comm. thrill craft zone (full service permit); no more than 3. Clockwise only 9am – 5pm
D	21° 28' 32"N 157° 49' 39"W	21° 28' 32"N 157° 49' 32"W	21° 28' 10.5"N 157° 49' 27"W	21° 28' 10.5"N 157° 49' 34"W		SCUBA, snorkel, & sightseeing cruises; near reef, not on reef; comm. SCUBA zone.
E 310-yard radius circle	21° 27' 25"N 157° 47' 46.5"W (center)					SCUBA, snorkel, U/W activities, & sightseeing cruises.
F Including Checker Reef	21° 26' 50"N 157° 47' 45"W	21° 26' 23.5"N 157° 47' 25"W	21° 26' 16"N 157° 47' 34"W	21° 26' 20.5"N 157° 47' 59.3"W	21° 26' 28.5"N 157° 48' 09"W	Non-exclusive comm. water sports zone. No activity on Checker Reef.
G	21° 26' 25"N 157° 47' 49"W	21° 26' 22"N 157° 47' 34"W	21° 26' 16.5"N 157° 47' 36"W	21° 26' 19"N 157° 47' 51"W		Non-exclusive comm. & rec. water ski and water sledding. Clockwise, one permittee at time. Rec. thrill craft only.
H	21° 27' 32.5"N 157° 48' 19.5"W	21° 27' 26.5"N 157° 48' 10"W	21° 27' 14.5"N 157° 48' 17"W	21° 27' 20"N 157° 48' 27"W		Non-exclusive comm. & rec. water ski and water sledding zone. No more than 2 comm. water sleds at high speed. Clockwise towing, no mooring. High speed areas designated.
I	21° 27' 41"N 157° 48' 18"W	21° 27' 32"N 157° 48' 02"W	21° 27' 25"N 157° 48' 07"W	21° 27' 34"N 157° 48' 22.5"W		Non-exclusive comm. ocean water sports zone. Comm. operators must keep passengers who are not operating thrill craft out of B & C.

*Unless indicated, points are connected by straight lines with the final point back to the point of origin.

Exhibit V. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.
(All boundaries are unchanged.)

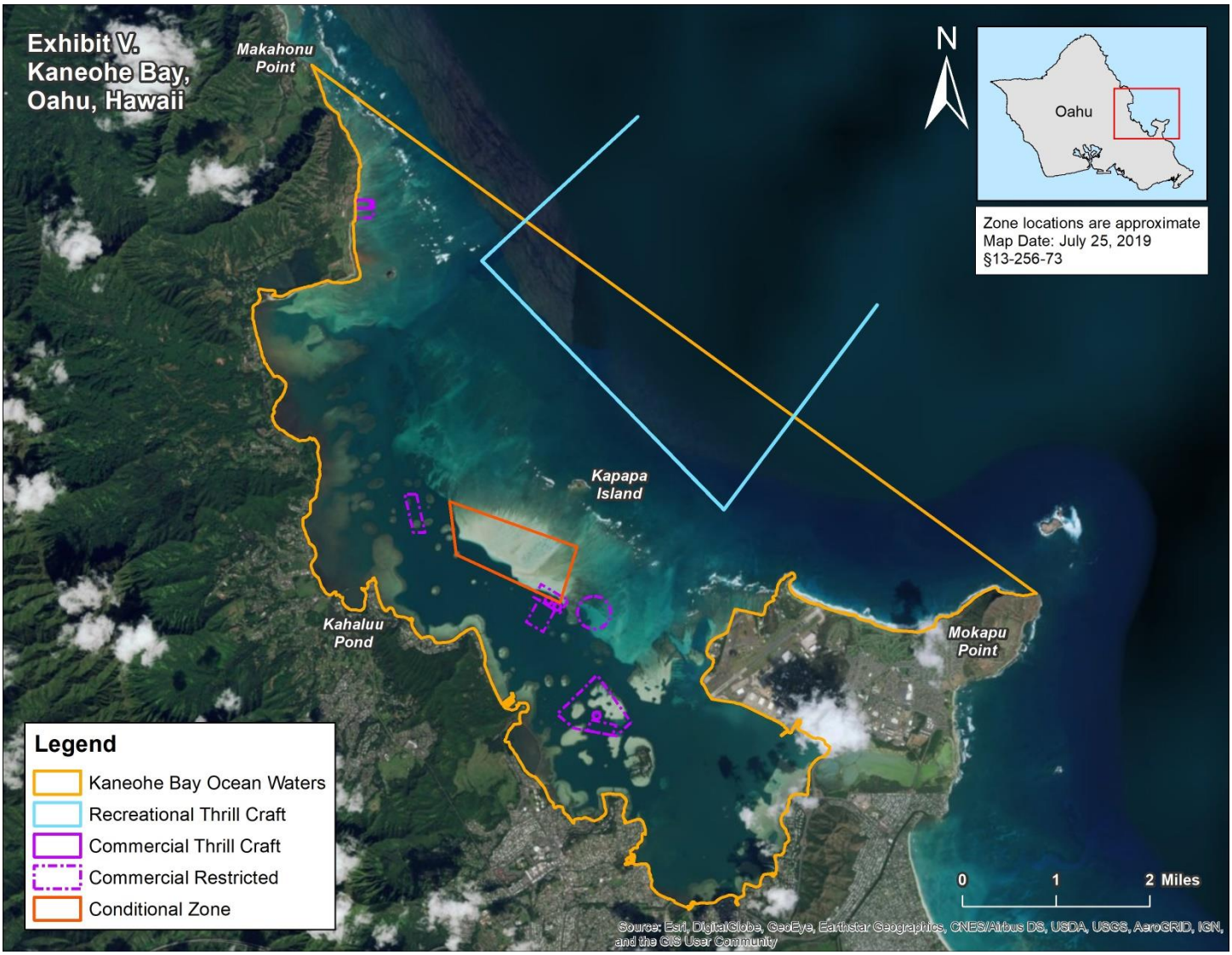
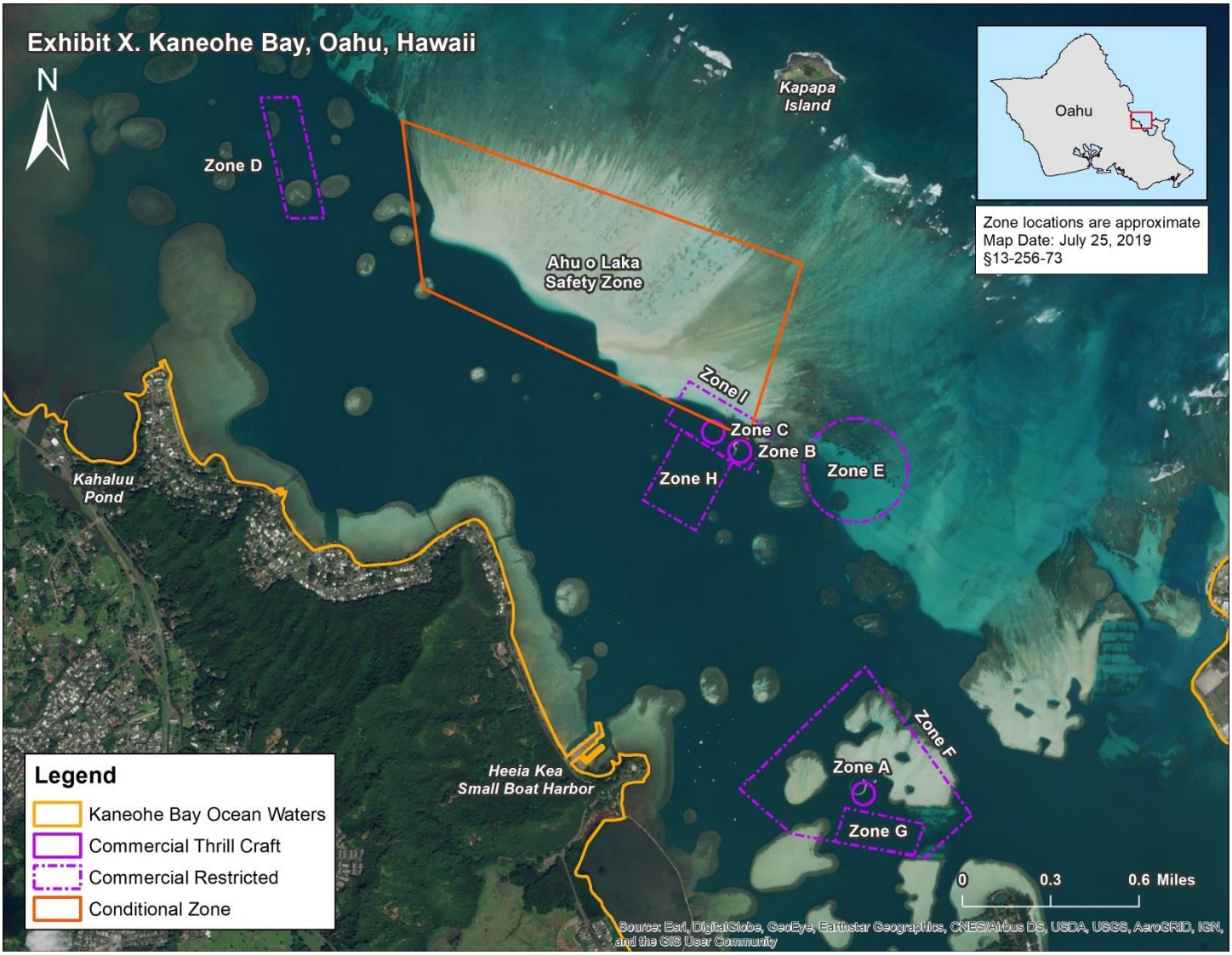


Exhibit X. Kaneohe Bay, Oahu, Hawaii, July 25, 2019.
(All boundaries are unchanged.)



2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. The amendments to Section 13-256-73, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

_____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

_____
Deputy Attorney General

IV. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Section 5A-11.4 of the Kauai County Code, "Home and Related Exemption Rules," promulgated by County of Kauai Department of Finance

RECEIVED
By SBRRB at 11:39 am, Dec 09, 2020

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 12/4/2020

Department or Agency: County of Kauai Department of Finance

Administrative Rule Title and Chapter: Home and Related Exemption Rules

Chapter Name: Section 5A-11.4 of the Kauai County Code

Contact Person/Title: Brad Cone, Real Property Tax Manager

E-mail: bcone@kauai.gov Phone: 241-4228

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☑ No

If "**Yes**," provide details: _____

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☑ Yes ☐ No

(If "**No**," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part- time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

   While these rules relate to owner-occupant residential dwellings, they may have an impact on those owner-occupied properties that conduct business on that premises (home office). Those are currently classified as Commercialized Home Use but need the home exemption in order to qualify for that tax class. These rules are a reflection of new law and make it more difficult to qualify for a home exemption.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

   If a resident were to lose a home exemption on a residential property, they would move from a $3.05 per $1,000 in assessed value tax rate to $6.05 (unless the property is valued over $2,000,000 and is vacant, then their rate would be $9.40).

   If the proposed rule imposes a new or increased fee or fine:

   a. Amount of the current fee or fine and the last time it was increased.

      N/A

   b. Amount of the proposed fee or fine and the percentage increase.

      N/A

   c. Reason for the new or increased fee or fine.

      N/A

   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

      N/A

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

   None. The intent is to make it more difficult to qualify for the home exemption to be more uniform with the other Hawaii Counties. We anticipate very few, if any, that would be removed from that tax class.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
   N/A

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
   N/A

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
   N/A

7. How the agency involved small business in the development of the proposed rules.
   N/A

   a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.
      N/A

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.
   The revisions reflect a newly adopted County law.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

a. Description of the public purposes to be served by the proposed rule.
   N/A

b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
   Section 5A-11.4 of the Kauai County Code

c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
   It is merely an update to reflect County law.

d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
   N/A

e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.
   N/A

* * *

RECEIVED
By SBRRB at 11:42 am, Dec 09, 2020

COUNTY OF KAUA'I DEPARTMENT OF FINANCE

Pursuant to the authority granted to the Director of Finance under the Kaua'i County Code Section 5A-11.2, the Director proposes to amend the Department of Finance Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on (DATE) via the Microsoft Teams online platform at 9:00 a.m., or soon thereafter.

DEPARTMENT OF FINANCE
COUNTY OF KAUA'I
REAL PROPERTY TAX DIVISION
HOME AND RELATED EXEMPTION RULES

Administrative Rules of the Director of Finance Relating to Home Exemptions and Related Exemptions under Section 5A-11.4 of the Kaua'i County Code 1987, as amended

Section RP-10.1 Purpose. These rules implement the provisions of Sec. 5A-11.4 of the Kaua'i County Code 1987, as amended, relating to home exemptions and related exemptions. These rules are further intended to ensure that the referenced provisions are applied in a uniform and equitable manner.

Section RP-10.2 Definitions. a. As used in these rules:

1. The term "director" shall mean the director of finance or **[~~his~~]** a designee.
2. "Owner" shall be as defined in K.C.C. Sec. 5A-7.1**[.]** and K.C.C. Sec. 5.A 1.1.
3. "Care home" shall mean an adult residential care home, intermediate care facility, skilled nursing facility, acute care facility, assisted living facility, expanded adult residential care home as they are defined in Chapter 321 of the Hawai'i Revised Statutes.
4. The term "temporarily" shall mean less than one year.
5. "Commercial activities" shall mean use of the property to generate income, monetary gain or economic benefit in the form or money or money's worth at any time during the assessment year. Commercial activities shall include, but **[~~is~~]** are not limited to, any income-producing activities, short or long term **[~~rental~~]** occupancy of the property, use of the residential structure as home-office, or bed and breakfast operations.
6. "Home exemption" shall mean the exemption as provided in K.C.C. Sec. 5A-11.4(a)
7. "Homestead" shall mean the properties which are used exclusively as the owner's principal residence as defined in Section RP-10.4, and shall refer to one of the tax classifications in **[~~Sec. 5A-8.1~~]** Sec. 5A-6.4.

b. Use of **[~~gender or~~]** number. Words importing the singular number may extend and be applied to several persons or things**[~~; words importing the plural may include the singular; and words importing the masculine gender may be applied to females~~].**

Section RP-10.3 Eligibility for Home Exemption. An owner is entitled to a home exemption if the following requirements are met:

1. The property is owned and occupied as of the assessment date;
2. The owner's ownership is recorded at the Bureau of Conveyances in Honolulu on or before **[~~December 31~~]** September 30 preceding the tax year for which the exemption is claimed;

3. The owner files a claim for the home exemption and submits it to the Real Property Division on or before **[~~December 31~~]** September 30 preceding the tax year for which the exemption is claimed; [and]

4. The owner files an income tax return as a resident of the State of Hawai‘i with a reported address within the County of Kaua‘i the year prior to the effective date of the exemption. Non-resident and part-year resident State of Hawai‘i income tax returns do not qualify for the home exemption;

[~~4.~~] 5. The owner may not hold a homeowner's exemption or claim a principal home on any other property, whether on Kaua‘i, in the state of Hawai‘i, in another state, or in another country. Possession of multiple homeowners' exemptions for any given tax year shall result in the revocation of all homeowners' exemptions within the County of Kaua‘i for those periods in which the multiple homeowners' exemptions were held. Adjustments and rollback taxes due to the loss or denial of an exemption shall be imposed in accordance to K.C.C. Sec. 5A-11.1(e) and 5A-3.4. Property owners may reapply for a homeowner exemption in the tax year following the revocation**[.]**;

6. In the event that a married couple are living separate and apart in the state of Hawai‘i, the qualified exemption may be split in half for a maximum period of two years; and

7. Property taxes related to this parcel are considered current. No home exemption shall be allowed if taxes on the property are delinquent unless the taxpayer has entered into a payment agreement with the Director and the taxpayer meets the terms of said agreement.

Section RP-10.4 Criteria for determination of “principal” home or residence. In addition to all other applicable requirements of K.C.C. Sec. **[~~4A-11.4~~]** 5A-11.4 and its implementing administrative rules, the director **[~~may~~]** will rely on the following criteria to determine whether real property is being used as the owner's "principal" home or residence:

1. The address used for Hawai‘i residential tax returns, driver's license, car and voter registration, bills and correspondence;
2. Presentation of a valid Hawai‘i Driver’s License or Hawai‘i State ID; and
3. Amount of time used at this residence, which shall be based on a more than **[~~181~~]** 270 calendar days per year (the calendar year shall begin on the date of assessment, October 1, and end on September 30 of the following year).

[~~4. Place of employment;~~]

[~~5. Where other family members reside;~~]

[~~6. The location of the owner's banks religious organizations or recreational clubs;~~]

[~~7. Other uses of property, such as commercial activities, leasing or renting.~~]

In addition, an owner who has temporarily moved into a care home that is licensed in Hawaii may have **[~~his~~]** the owner’s property deemed a "principal" home or residence provided he does not rent the property or permit new individuals (other than immediate family members) to reside at the property and meets all other applicable requirements K.C.C. Sec. 5A-11.4.

Notwithstanding any law to the contrary, in the event the owner of real property vacates the home for which an exemption is granted and moves to another residence temporarily within the County during the renovation of the home, the real property will continue to be entitled to the exemption contained in this section provided that:

a. The taxpayer submits to the director a change in status report regarding vacating the home during renovations which identifies:
    i. The building permit number issued by the County building division;
    ii. The renovation start date as indicated on the building permit;

iii. A verifiable address within the County where the taxpayer will reside during the renovation period and where the assessment notices will be mailed; and
iv. The value attributed to the renovation will reset the assessment cap basis.

[~~Further, per K.C.C. Sec. 5A-1.4(a)(1)(E), the home exemption shall be applied only to the portion of the property being used exclusively as a home. Should the entire property be rented or used for commercial activities for any amount of time, the property shall not be considered an owner's "principal" home or residence.~~]

Section RP-10.5 Forms. To determine whether an owner qualifies or, if already received, continues to qualify for an exemption pursuant to K.C.C. Sec. 5A-11.4, the director may require an owner to complete a form that requests information relevant to the exemption and/or to produce relevant documents. Should the owner fail to complete the form **[~~entirety~~]** entirely or fail to provide the requested documents or fail to respond, the director may refuse to permit the exemption or, if applicable, disallow the exemption. After reviewing the form or documents, the director may require the owner to provide additional information, if the director deems it necessary to determine if the owner qualifies or continues to qualify for the exemption.

All requested forms shall be due within fifteen days of being mailed to the owner's last known address, unless otherwise provided by law. It is the owner's responsibility to keep the Real Property Division current as to the owner's last known address.

Section RP-10.6 Effect of Home Exemption. Once it is determined that an owner is entitled to a home exemption for **[~~his~~]** the property, the owner shall receive the exemption as provided K.C.C. Sec.5A-11.4(a) Where a home exemption is a prerequisite to other exemptions or special treatment, an owner may also receive those exemptions or special treatment as permitted in Chapter 5A, if applicable and if the owner meets all other necessary requirements. For example, pursuant to K.C.C. Sec. 5A-11.4(a) home exemptions may be granted to properties that qualify under the criteria for "principal" home or residence (RP-10.4), but which may also have additional uses. However, for the determination of the appropriate tax classification per K.C.C. Sec. 5A-**[~~8.1(c)(2) & (4)~~]** 6.4(c) & (e), only those properties that are used ***exclusively*** as "principal" homes or residences shall qualify for the homestead tax class. Should the entire property be **[~~rented~~]** occupied for short-term accommodation or used for commercial activities **[~~for any amount of time~~]** at any time during the assessment year, the property shall not **[~~be considered an owner's "principal" home or residence~~]** qualify for a homestead tax classification.

Section RP-10.7 Appeals. The owner may appeal any disapproved exemption, or any determination that an exemption has been violated, just as an appeal from an assessment. Appeals shall be governed by applicable section of Chapter 5A, K.C.C., and may be taken to the board of review or be taken directly to the tax appeal court, without having to appeal the board of review.

Section RP-10.8 Severability. If any provision of these rules, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

IV. New Business – Before Public Hearing

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218, "Kakaako Reserved Housing Rules," promulgated by Hawaii Community Development Authority / DBEDT

RECEIVED
By SBRRB at 11:21 am, Dec 22, 2020

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: December 21, 2020

Department or Agency: Hawaii Community Development Authority

Administrative Rule Title and Chapter: HAR Chapter 15-218

Chapter Name: Kakaako Reserved Housing Rules

Contact Person/Title: Deepak Neupane

E-mail: Deepak.Neupane@hawaii.gov Phone: 594-0300

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☑ No

If "**Yes**," provide details: _____

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☐ Yes ☑ No

(If "**No**," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part- time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

   The proposed amendments do not affect small businesses.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

   Not applicable.

   If the proposed rule imposes a new or increased fee or fine:

   a. Amount of the current fee or fine and the last time it was increased.

   b. Amount of the proposed fee or fine and the percentage increase.

   c. Reason for the new or increased fee or fine.

   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

   Not applicable.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Not applicable.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Not applicable.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Not applicable.

7. How the agency involved small business in the development of the proposed rules.

Not applicable.

   a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Not applicable

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

a. Description of the public purposes to be served by the proposed rule.

b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Summary of Proposed Amendments:

The proposed amendments to Hawaii Administrative Rules ("HAR"), Chapter 15-218, Kakaako Reserved Housing Rules ("RH Rules"), proposes to allow for the payment of equity sharing without sale or transfer of the Reserved Housing unit.

The shared equity concept was first incorporated into the Hawaii Community Development Authority's ("HCDA or Authority") Rules in 1985. Its purpose was to allow the Authority to collect its share of the equity in the reserved housing unit with the owner when the unit was sold.

Background.

In July 2018, the Authority adopted recommendations of the Affordable Rental Housing Development Permitted Interaction Group. One of the recommendations pertained to: "Consider a policy to allow owners of reserved housing units to pay the equity sharing out front instead of waiting until the resale or transfer of the reserved housing unit. Money collected for early payment of equity sharing can be used for purchasing land for affordable rental housing projects and/or providing gap financing."

The current RH Rules does not include the provision for payment of shared equity without sale or transfer of reserved housing unit. An amendment to the RH Rules is necessary to allow for payment of shared equity without sale or transfer of reserved housing unit. The proposed amendment adds language to allow for payment of equity sharing without sale or transfer of reserved housing unit. See Exhibit A.

The proposed amendment will be applicable to all reserved housing units in the KCDD regulated under the Authority's administrative rules pertaining to reserved housing units.

Attachment: Exhibit A - Proposed Draft HAR Chapter 15-218

as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or workforce housing unit shall become due upon sale of the unit.

(c) If the authority's percentage share of equity is less than one-half of one percent, or if the resale fair market value of the reserved housing or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (a) shall not be applicable.

(d) The authority shall determine the fair market value of the reserved housing or workforce housing unit at the time of original sale and also at the time of resale.

(e) The resale price and terms shall be approved by the authority.

(f) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

(1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;

(2) Any mortgage insured or held by a federal housing agency; and

(3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

(g) The owner of a reserved housing or workforce housing unit may at any time, via submission of a written application to the executive director, pay all or a portion of the authority's share of equity without selling or transferring the reserved housing or workforce housing unit. The minimum amount of any partial payment of the authority's share of equity shall be not less than twenty-five percent of the authority's shared equity. This subsection shall apply

to all reserved housing units regulated under the authority's administrative rules pertaining to reserved housing units.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-42 Deferral of first option to purchase and equity sharing. The authority may defer its first option to purchase and equity sharing in the following instances:

(1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
(2) Transfer to a relative who meets eligibility requirements upon death of the purchaser;
(3) Transfer to spouse or children who meet eligibility requirements;
(4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes the owner;
(5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
(6) Transfer into a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-43 Terms of reserved housing and workforce housing for rent. Reserved housing and workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Amendments and Compilation of Chapter 15-218
Hawaii Administrative Rules

[September 6, 2017] December 9, 2020

SUMMARY

1. §15-218-1 is amended

2. §15-218-3 to §15-218-5 are amended

3. §15-218-17 and §15-218-18 are amended

4. §150218-19 to §15-218-21 are added

5. §15-218-29 to §15-218-35 are amended

6. §15-218-36 and §15-218-37 are repealed

7. §15-218-38 to §15-218-42 are amended

8. §15-218-43 is renumbered to §15-218-47 and amended

9. §15-218-44 to §15-218-46 are added

10. §15-218-48 is added

11. §15-218-55 is repealed

12. Chapter 218 is compiled

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 218

KAKAAKO RESERVED & WORKFORCE HOUSING RULES

Subchapter 1 General Provisions

Subchapter 2 Reserved Housing and Workforce Housing Requirements

Subchapter 3 Sale and Rental of Reserved Housing and Workforce Housing Units

§§15-218-49 to 15-218-54 (Reserved)

Subchapter 4 Repealed

§15-218-55 Repealed

Historical note: Chapter 15-218 is based substantially upon Chapter 15-22. [Eff 9/8/86; am and comp 1/28/88; am 7/28/88; am 12/10/88; am 3/9/89; am 7/8/89; am 10/28/89; am 1/29/90; am and comp 2/24/90; am 7/26/90; am 9/15/90; am 10/3/94; am 12/15/94; am 8/14/95; am 11/25/96; am 1/25/97; am 3/27/97; am 6/13/97; am 8/1/97; am 9/19/97; am 8/16/99; am 1/13/00; am 9/15/01; am 6/13/05; R 11/11/11]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-218-1 Purpose and intent. Consistent with the intent of section 206E-33, Hawaii Revised Statutes, the purpose of this chapter is to establish an increased supply of housing for low-or moderate-income households within the Kakaako community development district. Such housing targeted to low-or moderate-income households, is henceforth termed "reserved housing" and "workforce housing" in the subsequent subchapters. Reserved housing shall be required as a condition of multifamily residential development or redevelopment within the Kakaako community development district. Workforce housing shall be voluntary as part of workforce housing program described in this chapter. [Eff 11/11/11; am and comp] Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-2 Administration. The authority, through its executive director, shall administer the provisions of this chapter. [Eff 11/11/11; comp] Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-3 Severability. If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective. [Eff 11/11/11; am and comp] Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-4 Interpretation by the executive director. (a) In administering this chapter, the executive director, when deemed necessary, may render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity, and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

(1) Identification of the section of this chapter in question;

(2) A statement of the problem;

(3) A statement of interpretation; and

(4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to this chapter shall be public record, and shall be effective on the date signed by the executive director. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-5 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Area median income" means the area median family income (AMI) determined by the United States, Department of Housing and Urban Development annually for the Honolulu metropolitan statistical area as adjusted for household size.

"Authority" or "HCDA" means the Hawaii community development authority established by section 206E-3, Hawaii Revised Statutes.

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any man-made change over, upon, under, or across improved or unimproved real property within the mauka area.

"Executive director" means the executive director of the authority.

"Fair market value" means the unencumbered fair market value of a property that has no state or county restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, Hawaii Revised Statutes.

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a percent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot.

"Gross revenue" means the gross receipt from sale of all residential units, associated parking, and other common area elements in a project for the purpose of calculating cash-in-lieu payment in lieu of providing for-sale reserved housing units. For rental reserved housing, the capitalized value of net operating rent shall be utilized as gross revenue for the purpose of calculating cash-in-lieu payment.

"Household" means:

(1) Single person;

(2) Two or more persons regularly living together related by blood, marriage, or by operation of law;

(3) A live-in aide, who is essential to the care and well-being of a household member subject to proper documentation and credential as a qualified caregiver; or

(4) No more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to the authority in its sole discretion. Affidavits from family members or neighbors are not acceptable.

"Household income" means the total annual income, before taxes and personal deductions, received by all members of the applicant's household, including but not limited to wages, salaries, overtime pay, commissions, fees, tips and bonuses, compensation for

personal services, social security payments, retirement benefits, income derived from assets, cost of living allowance, net income from business or profession, unemployment benefits, welfare benefits, interest and dividend payments. Household income shall exclude income of a co-mortgagor who is not a household member, income from employment of minor children including foster children, and income from employment of full-time students under the age of twenty-three years.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States, Department of Housing and Urban Development.

"Land trust" means a recorded instrument as defined in chapter 558, HRS.

"Licensed life care facilities" means licensed assisted living facilities as defined in section 321-15.1, HRS.

"Low-income household" means a household whose household income does not exceed eighty percent of the area median income.

"Moderate-income household" means a household whose household income in greater than eighty percent but does not exceed one hundred forty percent of the area median income.

"Multi-family residential development" means residential building consisting of more than one residential unit.

"Reserved housing" means housing designated for residents in the low-income or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.

"Workforce housing project" means new multi-family residential development where at least seventy-five percent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty per cent of the AMI.

Terms not defined in this section shall be accorded their commonly accepted meanings. [Eff 11/11/11; am and comp] (Auth: HRS

§§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-6 to 15-218-16 (Reserved)

SUBCHAPTER 2

RESERVED HOUSING AND WORKFORCE HOUSING REQUIREMENTS

§15-218-17 Requirement for reserved housing units. (a) Every developer applying for a development permit for approval to construct multi-family dwelling units on a lot greater than 20,000 gross square feet shall provide at least twenty percent of the total number of residential units in the development as reserved housing units. Reserved housing units may be provided as for-sale units or rental units.

(b) Reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 3. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and the agreements shall be binding upon the developer and any successors in interest, and shall run with the land. The agreement shall provide that the developer must provide certification to the authority as to the compliance of the requirements herein to qualify for a certificate of occupancy for the project for which provisions of this chapter are applicable.

(c) Occupants of reserved housing units shall have access to and use privileges for the same amenities as all other occupants of the development. Reserved housing units shall be distributed in the building in such a manner that they do not form an isolated section of the project.

(d) If the authority so determines, it may allow the developer to meet the requirement of subsection (a) through the following alternatives instead of providing reserved housing units within the development:

(1) By providing reserved housing units elsewhere within the mauka area;

(2) By providing reserved housing units elsewhere within urban Honolulu. The authority may impose additional reserved housing requirements in approving transfer

of reserved housing from mauka area to other locations within urban Honolulu. The additional reserved housing requirements shall be determined on a case-by-case basis by the authority at the time of approval of the development permit; or

(3) By allowing a cash-in-lieu payment instead of providing reserved housing units.

(e) The construction of reserved housing units shall commence prior to the issuance of the initial certificate of occupancy for the project for which reserved housing is required and shall be secured by the developer with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the authority prior to the approval of the building permit for the project by the authority. In addition, the developer shall provide the authority a copy of a duly executed construction contract with a general construction contractor licensed to conduct business in the State of Hawaii for the construction of the reserved housing units.

(f) The developer shall execute such agreements as are necessary to implement any alternative reserved housing requirement, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land.

(g) Licensed life care facilities shall be exempt from the reserved housing requirement. In a proposed development that includes licensed life care facilities as well as residential dwelling units, the reserved housing requirements shall apply only to the residential dwelling portion of the development.

(h) No construction shall commence for any development within the mauka area on a lot greater than 20,000 square feet unless the development conforms to the provisions of this chapter and the authority has certified that the development complies with the requirements of this chapter.

(i) The authority may require guarantees, may enter into recorded agreements with developers and

with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to ensure that the reserved housing units are provided and that they are occupied by qualified persons for the regulated term.

(j) The authority may suspend the requirements for reserved housing for a limited duration or modify any provisions of this rule, if, based on market conditions and in its sole judgment, it determines that the requirements of this rule may unduly impede, preclude, or otherwise negatively impact the primary objective of the authority to promote redevelopment within the Kakaako community development district.

(k) When it has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the development permit application approved as to the reserved housing requirements of this chapter. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-18 Adjustments to height, density, and general development requirements for reserved housing units. (a) Except as otherwise provided, any multi-family residential development on a lot greater than 20,000 square feet that meets applicable provisions of this chapter shall be entitled to adjustments in FAR and general development requirements as follows:

(1) Residential floor area for reserved housing shall be excluded from calculations of floor area ratio; and

(2) Residential floor area for reserved housing shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(b) The authority may also consider modifying the following requirements of the mauka area rules as an incentive to providing reserved housing by an applicant:

(1) Building height;
(2) Street setbacks;
(3) Off-street parking; and
(4) Loading space.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-19 Unit type and corresponding factor. The Reserved Housing Unit Type and Corresponding Factor Table below shall be utilized in determining the total number of reserved housing units required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND CORRESPONDING FACTOR TABLE

Unit Type	Factor
0 Bedroom	0.70
1 Bedroom	0.90
2 Bedrooms	1.00
3 Bedrooms	1.08
3+ Bedrooms	1.16

[Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-20 Occupancy guidelines for sale or rental of reserved housing and workforce housing units. (a) The following occupancy guidelines shall be used for sale or rental of reserved housing units during the initial application period when the number of applications exceeds the number and type of reserved housing units available:

OCCUPANCY GUIDELINE

Unit Type	Preferred Household Size	Minimum Household Size
Studio	1 person	1 person
1 Bedroom	2 persons	1 person
2 Bedrooms	3 persons	2 persons
3 Bedrooms	4 persons	2 persons
4 Bedrooms	5 persons	3 persons

The corresponding household size may be modified by the authority if the units are unsold, unrented, or includes a live-in aide.

(b) The maximum household size shall be based on permissible household size determined by the City and County of Honolulu housing code.

[Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-21 Workforce housing project(s). (a) New residential project(s) where at least seventy-five percent of the residential units are set aside for purchase or for rent by households earning no more

than one hundred forty percent of the AMI shall qualify as a workforce housing project.

(b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

(c) Workforce housing project(s) shall receive a floor area bonus of one hundred percent, provided that the bonus floor area shall be used towards the construction of workforce housing project(s) only.

(d) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(e) The authority may also consider modifying off street parking and loading requirements of the mauka area rules for workforce housing projects. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-22 to 15-218-28 (Reserved)

SUBCHAPTER 3

SALE AND RENTAL OF RESERVED HOUSING AND WORKFORCE HOUSING UNITS

§15-218-29 Purpose. The rules set forth in this subchapter shall govern the sale, rental, or transfer of reserved housing and workforce housing provisions of subchapter 2. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-30 General qualifications for purchase of reserved housing and workforce housing units. (a) The following shall be qualifications for purchasing or renting reserved housing or workforce housing units by a buyer or a tenant. The buyer or the tenant:

(1) Shall be at least the age of majority;

(2) Shall not have a majority interest in a principal residence or a beneficial interest in a land trust on a principal residence within or without the State for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;

(3) Shall not have a spouse or dependent child who has a majority interest, in a principal residence or a beneficial interest in a land trust on a principal residence for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;

(4) Has never before purchased a reserved housing or workforce housing unit under this chapter;

(5) Shall be the owner or lessee and occupant of the reserved housing or workforce housing unit;

(6) Shall not have a record or history of conduct or behavior, including past rent payments, which may prove detrimental to other tenants or the authority. This criterion shall be applied within parameters set by federal laws on discrimination, including the Americans with Disabilities Act; and

(7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing or workforce housing unit, or in case of a rental reserved housing or workforce housing unit demonstrate an ability to pay rent as established by the authority and meet any additional criteria established by the authority for the respective rental housing development for which the applicant is applying.

(b) Subject to approval of the executive director, a current owner of a reserved housing or workforce housing unit may apply to purchase a larger reserved housing or workforce housing unit provided that:

(1) The applicant's current household size determined by the number of individuals on title and their dependents, has increased and exceeds the occupancy guideline established in section 15-218-20;

(2) The applicant has resided in the current reserved housing or workforce housing unit for at least one year; and

(3) The applicant qualifies to purchase a reserved housing or workforce housing unit in accordance with subsection (a), except that the applicant's current ownership of a reserved housing or workforce housing unit shall not disqualify the applicant under subsection (a)(2), (3), and (4).

(c) If a household includes two or more persons regularly living together that are related by blood, marriage, or by operation of law, the majority interest restriction shall apply to all

household members. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-31 Sale and rental of reserved housing and workforce housing units. (a) The authority may advertise the sale or rental of reserved housing and workforce housing units and qualify and select persons for reserved housing and workforce housing units. It may also permit the developer of such units, or the developer's designated representative, to be responsible for advertising, qualifying, and selecting persons subject to the provisions of this chapter.

(b) Applications for the purchase or rental of reserved housing and workforce housing units shall be accepted on a first-come, first-served or on a lottery basis. The applications shall be submitted in person by the applicant. Only completed applications shall be acceptable. Applicants shall not be required to submit a deposit amount exceeding $500.

(c) Notice of the proposed sale or rental of reserved housing and workforce housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include but not be limited to the following:

(1) General description of the project in which the reserved housing or workforce housing units are located including its location, number of reserved housing or workforce housing units, size of the reserved housing or workforce housing units by number of bedrooms, and sales prices or rental rates;

(2) Qualification requirements for purchase of reserved housing or workforce housing units including maximum income limits, restrictions on ownership of property, the authority's first option to purchase and shared equity requirements for reserved housing or workforce housing units for sale, and occupancy guidelines;

(3) A statement that buyers or renters shall be

selected on a first-come, first-served or on a lottery basis, whichever is applicable;

(4) Where and when applications may be obtained and the first date, including time and place, when applications will be accepted, and subsequent dates, times, and places for submission of applications;

(5) Deadline for submission of applications; and

(6) In the case of a reserved housing unit and workforce housing for sale, the deposit amount and mode of acceptable payment.

The time period between publication of the notice and the first acceptance of applications shall not be less than fourteen business days. The period shall be computed from the first day of publication of the notice.

(d) Priority shall be given to applicants who have been displaced from housing within the Kakaako community development district as a result of redevelopment in the mauka area within a five-year period.

(e) Applicants shall be allowed to select a reserved housing or workforce housing unit based on maximum income limits, qualifying income, preference, occupancy guidelines, and availability of the reserved housing or workforce housing unit.

(f) In the event the developer, or the developer's designated representatives have accepted and processed applications and selected applicants for reserved housing or workforce housing units, a certification shall be submitted to the authority that the selection was made on a first-come, first-served or a lottery basis. Applicants shall be listed in the order in which the applications were accepted and the list shall be available for inspection by the authority. The final applications for those persons selected shall be made available to the authority and the authority shall review the applications to ensure that the applicants meet the eligibility requirements established under this chapter.

(g) Reserved housing and workforce housing applicants shall provide financial and family

information with the reserved housing or workforce housing application.

(h) The authority may also require applicants to provide documentation to verify information submitted to the authority, including but not limited to:

(1) Asset verification;

(2) Verification of deposit;

(3) Verification of employment; and

(4) Credit bureau report. An applicant found to have willfully submitted false information, made misstatements, or withheld important information shall be disqualified from purchasing or renting a reserved housing or a workforce housing unit under this chapter. The authority retains its right to recover any money wrongfully gained by the applicant or to any other recourse provided by law.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E 4, 206E-5, 206E-7)

§15-218-32 Income. (a) The household income of the applicant shall not exceed one hundred forty percent of the area median income (AMI) as determined by the United States Department of Housing and Urban Development.

(b) The adjusted household income shall be the income earned during the most current calendar year preceding the date of application to purchase or rent a reserved housing or workforce housing unit and shall be verified by submittal of most current state and federal tax returns.

(c) The assets of the applicant shall not exceed one hundred thirty-five percent of the applicable income limit set forth in subsection (a). As used in this section, assets include all cash, securities, and real and personal property at current fair market value, less any outstanding liabilities secured by these assets. Qualified retirements accounts and gifts of up to twenty percent of the purchase price to

assist in the down payment for purchase of a reserved housing or a workforce housing unit shall not be counted towards assets. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-33 Occupancy requirements. (a) The following are occupancy requirements for reserved housing and workforce housing units:

(1) Applicants for reserved housing and workforce housing units shall certify that, if selected, all applicants will be occupants of the unit; and

(2) The purchaser or lessee shall physically occupy the reserved housing or workforce housing unit.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section 15-218-35 or evict the renter from the unit, as applicable. The authority may require verification of occupancy from the purchaser or the lessee of a reserved housing or workforce housing unit and the purchaser or the lessee shall provide occupancy verification within thirty calendar days from the date of receipt of notification from the authority.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority shall expressly contain the restrictions on occupancy prescribed in this section.

(d) The restriction prescribed in subsection (a) above shall not apply if the authority waives its option to purchase the reserved housing or the workforce housing unit or subsequent to the expiration of the option to purchase period. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-34 Factors to be used for reserved housing and workforce housing unit sale price

determination. (a) The following factors shall be used in determining the reserved housing and workforce housing unit respective sale price:

(1) Down payment amount shall not exceed ten percent of the purchase price;

(2) Maximum allowable monthly housing cost consisting of mortgage payment including principal and interest, real property taxes, mortgage insurance premium, and fees and costs required by the bylaws of a condominium property regime, shall not exceed thirty-three percent of gross monthly household income;

(3) Interest rate shall be derived by taking the average of the thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by the Federal Home Loan Mortgage Corporation (Freddie Mac); and

(4) Unit type and corresponding factor as provided in section 15-218-19.

(b) Annually within forty-five days of HUD's update of area median income (AMI)limits, the executive director shall establish and publish a formula for calculating the applicable sale price of reserved housing and workforce housing units based on the factors enumerated in subsection (a).

(c) The maximum allowable sales price of a reserved housing or a workforce housing unit may be calculated based on an AMI of no more than one hundred forty percent, provided that the weighted average sales price of all reserved housing or workforce housing units in a project shall be the price calculated based on an AMI of no more than one hundred and twenty percent. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-35 Terms of reserved housing and workforce housing units for sale. (a) The regulated term for a reserved housing or workforce housing unit

shall be ten years from the issuance of certificate of occupancy. If the owner of a reserved housing unit or a workforce housing unit wishes to sell the unit within ten years from the date of issuance of certificate of occupancy for the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(b) Sale or transfer of reserved housing or workforce housing units shall be as follows:

(1) The owner shall notify the authority in writing of the intent to sell the reserved housing or workforce housing unit;

(2) The authority shall notify the owner of authority's decision within sixty days of receipt of the owner's notification required in subsection (b)(1). The authority may:

(A) Waive its option to purchase the unit;

(B) Agree to purchase the unit; or

(C) Designate another buyer for the unit;

(3) If the authority fails to notify the owner of a decision in the manner prescribed in paragraph (2), the authority shall have waived its first option to purchase the unit;

(4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and

(5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority.

(c) The buyback price shall be determined based on the original fair market value of the reserved

housing or workforce housing unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors plus the allowable cost of improvements made by the owner, if any, less the authority's share of equity in the unit. The owner shall provide financial documents acceptable to the authority indicating the actual cost of the improvements before the cost shall be eligible for inclusion in determining the buyback price. The buyback price shall be no less than the original sale price of the reserved housing or workforce housing unit. The amount paid by the authority to the seller shall be the difference, if any, between the buyback price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

(d) Any subsequent [mortgage]mortgages placed on the reserved housing or workforce housing unit by the owner shall require approval from the executive director and shall not exceed the buyback price established by subsection (c). [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-38 Foreclosure. In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing or workforce housing unit subject to the restrictions of section 15-218-35, shall, prior to commencing mortgage foreclosure proceedings, notify the authority of:

(1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and

(2) Any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS.

The authority shall be a party to any foreclosure action and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including

liens and encumbrances of record, up to a maximum of the authority's share of equity in the unit. The person in default shall be entitled to any amount remaining after payment of the authority's share of equity in the unit. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-39 Transfers of title pursuant to a mortgage foreclosure. The conditions prescribed in section 15-218-35 and section 15-218-41 shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-40 Incorporation in deed. The provisions of sections 15-218-35 and 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for reserved housing and workforce housing units. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-41 Equity sharing requirements.

(a) The authority's share of the equity in the reserved housing or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one percent.

(b) If the authority waives its first option to purchase a reserved housing or workforce housing unit

as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or workforce housing unit shall become due upon sale of the unit.

(c) If the authority's percentage share of equity is less than one-half of one percent, or if the resale fair market value of the reserved housing or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (a) shall not be applicable.

(d) The authority shall determine the fair market value of the reserved housing or workforce housing unit at the time of original sale and also at the time of resale.

(e) The resale price and terms shall be approved by the authority.

(f) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

(1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;

(2) Any mortgage insured or held by a federal housing agency; and

(3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

(g) The owner of a reserved housing or workforce housing unit may pay all or part of the authority's share of equity at any time without a sale or transfer of the reserved housing or workforce housing unit by making an application to the executive director. The minimum amount of partial payment shall be no less than twenty-five percent of shared equity. Provisions of this paragraph shall be applicable to all reserved housing units regulated under the authority's

administrative rules pertaining to reserved housing units.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-42 Deferral of first option to purchase and equity sharing. The authority may defer its first option to purchase and equity sharing in the following instances:

(1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
(2) Transfer to a relative who meets eligibility requirements upon death of the purchaser;
(3) Transfer to spouse or children who meet eligibility requirements;
(4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes the owner;
(5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
(6) Transfer into a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-43 Terms of reserved housing and workforce housing for rent. Reserved housing and

workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. The maximum allowable rent may be calculated based on an AMI of one hundred and forty percent. The weighted average rent of all reserved housing or workforce housing units in a project shall not exceed the allowable rent calculated based on one hundred twenty percent of AMI. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent. Monthly rent for reserved housing or workforce housing units for rent shall be based on no more than thirty percent of the applicable AMI. Monthly rent shall include all utilities and other building operating costs but may exclude telephone, cable television, and internet service, and parking fees. Allowance for tenant furnished utilities and other services shall be based on data published by the authority on an annual basis. Annually within forty-five days of HUD's update of area median income limits, the executive director shall establish and publish a formula for calculating the applicable monthly rents for reserved and workforce housing units based on the factors enumerated in this section. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term. The authority may on a case-by-case basis consider requests from a reserved housing or workforce housing unit owner to rent the reserved housing or workforce housing unit during the regulated term. The rental of reserved housing or workforce housing units by owner shall be regulated by sections 15-218-32, 15-218-43

and 15-218-44. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-46 Cash-in-lieu. The authority, at its sole discretion, may allow a developer to provide a cash payment in lieu of providing the required reserved housing units. The amount of such cash-in-lieu payment shall be the higher of:

(1) Seven percent of the gross revenue of the development project; or

(2) The difference between the average fair market value of the unit in the development project and the average reserved housing unit sale price in the development project multiplied by the number of reserved housing units required.

For determining a partial cash-in-lieu payment, a proportional formula shall be utilized. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-47 Effects of subsequent rule amendments. (a) In the case of subsequent rule amendments, reserved housing and workforce housing owners shall be permitted at their election to:

(1) Remain subject to the rules in effect at the time of the purchase of the unit; or

(2) Be governed by the amended rules.

(b) The authority or any other entity that the authority transfers the reserved housing or workforce housing to shall notify all reserved housing or workforce housing owners of any change made by law, ordinance, rule, or regulation within one hundred eighty days of the changes. The notice shall clearly state the enacted or proposed new provisions, the date upon which they are to be effective and offer to each owner of reserved housing units constructed and sold prior to the effective date, an opportunity to be governed by the new provision.

(c) No reserved housing or workforce housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing or workforce housing unit, without the written permission of the holder of a duly-recorded first mortgage on the unit and the owner of the fee simple or leasehold interest in the land underlying the unit.

(d) This section shall apply to all reserved housing and workforce housing units developed, constructed and sold pursuant to this chapter. [Eff 11/11/11; §15-218-43; am, ren §15-218-47, and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-48 Fees for administering reserved housing and workforce housing program. The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for administering its reserved housing and workforce housing program. At the beginning of each fiscal year the executive director shall publish a schedule of fees for administering the reserved housing and workforce housing program. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-49 to 15-218-54 (Reserved)

SUBCHAPTER 4

WORKFORCE HOUSING PROJECT(S): REPEALED

§15-218-55 REPEALED

Amendments to and compilation of chapter 218, title 15, Hawaii Administrative Rules, on the Summary Page dated June 21, 2018, were adopted on June 13, 2018, following public hearings held on June 6, 2018, and June 13, 2018, after public notice was given in the Honolulu Star Advertiser, The Maui News, West Hawaii Today, Hawaii-Tribune Herald, and the Garden Isle on May 1, 2018.

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

_____

John P. Whalen
Chairperson
Hawaii Community Development Authority

APPROVED AS TO FORM:

_____
Deputy Attorney General

_____
DAVID Y. IGE
Governor
State of Hawaii

Date:

_____
Filed

IV. New Business – Before Public Hearing

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 60.1, Air Pollution Control, promulgated by DOH

RECEIVED
By SBRRB at 2:07 pm, Jan 14, 2021

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 1/14/2021

Department or Agency: Department of Health, Clean Air Branch

Administrative Rule Title and Chapter: HAR Title 11, Department of Health, Chapter 60.1

Chapter Name: Air Pollution Control

Contact Person/Title: Barry Ching, Program Specialist

E-mail: barry.ching@doh.hawaii.gov Phone: 586-4200

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☑ No

If "**Yes**," provide details: _____

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☑ Compilation

II. Will the proposed rule(s) affect small business?

☑ Yes ☐ No

(If "**No**," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part- time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
   Please see our Small Business Impact Statement.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

   If the proposed rule imposes a new or increased fee or fine:

   a. Amount of the current fee or fine and the last time it was increased.

   b. Amount of the proposed fee or fine and the percentage increase.

   c. Reason for the new or increased fee or fine.

   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

7. How the agency involved small business in the development of the proposed rules.

    a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

a. Description of the public purposes to be served by the proposed rule.

b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

RECEIVED
By SBRRB at 12:27 pm, Jan 14, 2021

Small Business Impact Statement
Department of Health, Clean Air Branch
2021 Proposed Amendments to HAR 11-60.1 Air Pollution Control

The Hawaii Department of Health (DOH), Clean Air Branch (CAB) is proposing amendments to Hawaii Administrative Rules (HAR) 11-60.1, Air Pollution Control. Pursuant to Hawaii Revised Statutes (HRS) 201M, Small Business Regulatory Flexibility Act, CAB is submitting this Small Business Impact Statement (SBIS). While CAB has determined that the proposed changes will not cause a direct and significant economic burden upon a small business or impose provisions more stringent than comparable federal, state or county standards, the amendments may be directly related to the formation, operation, or expansion of a small business.

CAB is responsible for protecting our community by implementing the statewide air pollution control program. In the program, CAB staff perform engineering analysis and permitting; conduct monitoring, inspections, and investigations; and enforce federal and state air pollution control laws and regulations.

In Hawaii, an operation that generates air emissions above a threshold limit is required to obtain an Air Pollution Control permit from CAB. Currently, approximately 150 Covered Source Permits (CSP) and 250 Noncovered Source Permits (NSP) are active statewide. Covered sources, which are generally the larger air pollution emitters, are regulated by both federal and state air requirements and can be further distinguished as major and nonmajor. Noncovered sources are considered smaller emitters to which only state air requirements apply. It should be noted that a company may have more than one permit.

For this discussion, it is important to understand that *the distinction between a covered and noncovered source does not necessarily correlate with being a large or small business, respectively*. One of the main proposed amendments is to convert the nonmajor CSP sources to NSP. As a result, very few, if any, small businesses would be a covered source. A Small Business is defined in HRS 201M as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees. Although CAB cannot determine exactly which companies qualify as a small business, that definition has been conservatively applied in estimating the number of companies affected by these proposed changes and describing the companies affected.

In addition to air pollution control permits, CAB issues Agricultural Burning Permits (AGP) to those who want to use open burning for agricultural operations, forest management or range improvement. Roughly 150 AGPs are issued each year and the vast majority of permit holders are small businesses.

The current action proposes a number of revisions to a variety of topics in HAR 11-60.1. To make this discussion simpler and clearer, the relevant proposed amendments can be grouped into the five categories shown in the following table.

	Purpose	HAR Sections
1	Change the status of non-major Covered Source Permits (CSP) to Noncovered Source Permits (NSP)	§§11-60.1-1, -63, -76 & -111
2	Exempt nonroad engines from air permitting.	§§11-60.1-1, -62 & -82
3	Add test methods and remove director's discretion in the determination of air violations.	§§11-60.1-1, -33 & -35 to -42
4	Improve existing regulations, or add new ones, for open burning and agricultural burning	§§11-60.1-51, -52, & -55
5	Add new categories of field citations.	§§11-60.1-192 & -193

The attached Justification for Proposed Amendments lists every proposed amendment, not just those that relate to small businesses, and provides a rationale for each change.

If you have any questions, please contact Mr. Barry Ching or Ms. Val Ishihara, Clean Air Branch, Department of Health at 586-4200 or cleanairbranch@doh.hawaii.gov.

A. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

1. Convert nonmajor CSP to NSP

   A covered source is considered to be major if it generates at least:

   a. 10 tons per year (tpy) of a single hazardous air pollutant (HAP);
   b. 25 tpy of a combination of HAPS; or
   c. 100 tpy of any other air pollutant.

   With this amendment, the businesses that would require a CSP would primarily be large organizations (e.g., Hawaiian Electric Company, Par Hawaii, etc.), those organizations with solid waste incineration units under Section 129 of the Clean Air Act, and organizations with municipal solid waste landfills above a specified capacity. About 100 CSPs are nonmajor and would convert to an NSP. CAB estimates that approximately 70 of these are held by small businesses. These companies would benefit because a noncovered source typically has simpler permits, lower annual fees, and lower application fees than a covered source (*discussed in sections B & C*).

2. Exempt nonroad engines

   Nonroad engines exist in a variety of businesses, small or large, and can currently be found in both CSP and NSPs. The US Environmental Protection Agency (EPA) regulates nonroad engines in 40 Code of Federal Regulations, Part 89 Control of Emissions from New and In-use Nonroad Compression-ignition Engines. Nonroad engines are not stationary sources; the DOH will no longer regulate nonroad engines through air pollution control permits. Any business with nonroad engines would benefit from the removal of the requirements for an air permit (*discussed in sections B & C*).

3. Replace director's discretion with test methods

The changes to violation determinations may affect any business that generates fugitive dust or air pollutants (*discussed in section B & C)*. The two key changes would be the following:

a. A business may have a fugitive dust violation, even if it practices reasonable precautions (§11-60.1-33(c)). Currently, even if an operation generates dust, it would not be in violation if it was determined to be applying reasonable precautions. Note that agricultural operations are excluded from the new requirements in (§11-60.1-33(c).

b. Empirical test methods were added to, and director's discretion was removed from, a number of potential violation categories.

4. Clarify open burning and no-burn regulations

The open burning rules attempt to balance allowing acceptable uses while minimizing potential smoke impacts to neighboring parties (*discussed in section B & C)*. The proposed amendments could affect a business in a few ways:

a. A business involved in open fire cooking, which does not require DOH notification or approval, would see new requirements for attending the fire and restrictions on fuels that may be used. These changes are intended to prevent burning to dispose of waste or other materials under the guise of legitimate cooking. Moreover, the business would be prohibited from causing visible smoke from entering a residence, business or public area. Conversely, a small business would benefit from these amendments in that it would be protected from visible smoke from a cooking fire that enters its building or from illegal burning.

b. Businesses that want to use open burning for 1) recreational, social, religious, ceremonial or decorative purposes; or, 2) cultural or traditional purposes; would require approval from the Director. A related amendment repeals the Director's authority to grant approval to any category of open burning. As a result, without these provisions, the activities described would be prohibited.

c. Agricultural operations with an AGP would see a clarification to "range improvement" to prevent misuse of that category to obtain a permit.

d. The determination of a "no-burn" day, a period when an AGP holder is not allowed to burn, would be based on scientific forecasting. Currently, a "no-burn" is determined by a judgment call regarding visibility.

5. Add field citation categories

As explained in the justification document, the Field Citation offers an intermediate, expedited action between an informal notice of violation (INOV), which does not include a fine, and a formal notice and finding of violation and order (NOVO), which typically includes a large fine and a lengthy process. The proposed action would add seven new field citation categories and remove one. The additional field citation categories could apply to any business, small or large. The first field citation would apply to anyone who generates fugitive dust, except when engaged in agricultural operations, under new §11-60.1-192(a)(3), which states that even if you use reasonable precautions, you could still be found in violation. The other new field citations apply broadly to any failure to comply with a condition or requirement of the prohibitions in HAR 11-60.1, Subchapter 3, Open Burning, or an AGP, NSP, or CSP. It is important to understand that while

a monetary fine is included with a field citation, in most cases it saves the violator time and money (*discussed in Section C*).

B. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

In general, the proposed rule amendments will not require additional compliance and will not adversely affect small businesses.

1. Convert nonmajor CSP to NSP
   A result of the conversion of the majority of nonmajor CSP sources to NSP would be that most permitted small businesses would become a noncovered source. Generally speaking, in comparison to a CSP, an NSP is simpler and has fewer requirements. Moreover, an NSP is not subject to a 45-day EPA review period as are CSPs.

2. Exempt nonroad engines
   A small business with only nonroad engines would no longer be required to have, and pay fees for, an air permit. In lieu of the permit, the proposed amendment would require that businesses maintain a location log to track the movement of any nonroad engine it owns.

3. Replace director's discretion with test methods
   These amendments would not change the businesses required to comply with CAB's general prohibitions; any small business, including those without a CSP, NSP or AGP, would still be subject to these requirements. The intended results of these amendments are to minimize the director's discretion in determining "grey area" violations and to increase the use of scientific test methods in making those determinations.

   Fugitive dust would be the violation most likely to apply to any small business whether it does or does not have a CSP, NSP, or AGP. Construction sites, agricultural operations, and unpaved roads are the most common locations of fugitive dust.

4. Clarify open burning and no-burn regulations
   a. For any business that uses open burning for cooking, the proposed amendments would do the following:
      - More clearly define the requirement for an active presence at the location of the fire;
      - Specify that the cooking fire use fuels such as untreated wood, charcoal, natural or synthetic gas, butane, propane or other commercially available fuel intended for cooking; and
      - Prohibit visible smoke from entering a residence, business or public area.

      None of the cooking requirements would be considered unreasonable or beyond the current practices of any legitimate and responsible food business. These changes are intended to prevent abuse by people who pretend to cook while burning green waste, household garbage, or other

unwanted products and to minimize visible smoke impacts on a neighboring residence, business or public area.

b. The proposed amendments would expand one existing or add two new categories under which a small business is allowed to open burn subject to DOH approval (HAR 11-60.1-52(d)). Because of the corresponding repeal of the Director's power to approve any type of open burning, the amendments should be seen as slightly expanding the scenarios in which these types of open burning would be allowed if approval is granted.

c. Any small business that applies for an AGP under the category of "range improvement" would need to be a legitimate operation dealing with livestock or wild animals. No businesses, small or large, should be allowed to misuse an AGP to simply burn an open field.

d. The change to base "no-burn" determinations primarily on forecasting should not have a significant effect on an agricultural business, small or large, with an AGP. It cannot be determined whether this would result in more or fewer burning days in a year but the decision would be based on more sophisticated scientific reasoning than the current subjective determinations as to visibility.

5. Add field citation categories
The first proposed field citation relates to fugitive dust under new §11-60.1-33(c) and, as explained above, may apply to any small business, except when engaged in agricultural operations, even one without a CSP, NSP, or AGP. The six other proposed field citations would apply only to a small business that conducts open burning, or holds an AGP, NSP, or CSP and only if it fails to comply with the rules, a permit condition or requirement.

C. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

The proposed amendments will not cause a direct and significant economic burden upon a small business. In some cases, an increase or decrease in fees is possible.

1. Convert nonmajor CSP to NSP
The conversion of a nonmajor CSP business to NSP would potentially reduce its annual fees and application fees. An NSP requires a flat annual fee of $500 per year. The annual fee for a CSP is calculated based on the amount of air pollutants generated during the year; with a minimum of $500. Therefore, any small businesses that pays more than the minimum for a nonmajor CSP would see their annual fees capped at $500 under an NSP. Similarly, the application fees for NSP sources are overall lower than those for a CSP.

2. Exempt nonroad engines
A small business with only nonroad engines would no longer have to pay annual fees or application fees associated with an air permit. Assuming the company is

an NSP source, it would avoid annual fees of $500 per year and any applicable application fees that might arise during the life of its permit. If the small business is a CSP source, the annual and application fees it would avoid could be more.

3. Replace director's discretion with test methods
No significant financial impacts should result from the proposed amendments in this topic.

4. Clarify open burning and no-burn regulations
No significant financial impacts should result from the proposed amendments in this topic.

5. Add field citation categories
The addition of the new field citation categories could affect small businesses financially but not necessarily adversely. Currently, for these types of violations, CAB can only issue an INOV, which does not include a fine, or a NOVO, which does include a fine. The proposed amendment would provide CAB a third option of issuing a field citation for all four proposed cases.

A field citation may be viewed as a middle step between the INOV and NOVO. It is an expedited enforcement action that has the benefits of saving time and having a fixed fine amount that is intended to be less severe than that for a NOVO.

The proposed penalties for the dust-related field citation are $200 for the first violation and $400 for subsequent violations. For the other new field citations, the penalties range from $250 to $750 for a first violation and from $500 to $1,500 for subsequent violations. The current penalty amounts for the corresponding NOVOs are typically $2,000 and higher.

D. The probable monetary costs and benefits to the implementing agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the money will be used.

There will be no additional fees charged to businesses and no monetary benefit to CAB. For CAB, the changes to nonmajor CSP to NSP (#1) and exemption of Nonroad engines (#2) would result in a slight reduction in annual fees and application fees. These fees go to the Clean Air Branch Special Funds.

The effect from the addition of field citation categories (#5) is uncertain but will likely balance out in the long run. It may result in a slight increase or decrease in the fines collected from enforcement actions. More medium-sized field citation fines could be offset by fewer large fines from NOVOs. The money from these enforcement actions do not go to a CAB-related fund and do not benefit CAB.

E. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption or any other mitigating techniques.

1. Convert nonmajor CSP to NSP
   The proposed amendments are a simplification of the distinction between the two permit categories. As a result, approximately 100 businesses, many of which are small businesses, would convert from a non-major CSP to an NSP. These companies will benefit because a noncovered source typically has simpler permits, lower annual fees, and lower application fees than a covered source.

2. Exempt nonroad engines
   No other method, other than a Do Nothing option, was considered to the proposed amendment. With the exemption, a small business that is required to have an air permit solely because it has a nonroad engine would no longer need to get an air permit and pay the annual fees.

3. Replace director's discretion with test methods
   No other method, other than a Do Nothing option, was considered for this topic. The amendments are required by the EPA in order to make these sections approvable in the Hawaii State Implementation Plan.

4. Clarify open burning and no-burn regulations
   Simplified or less stringent amendments were considered for this topic but were determined to be unsatisfactory in mitigating impacts from open burning.

5. Add field citation categories
   No other method, other than a Do Nothing option, was considered for this topic. Adding the intermediate option of a field citation to the two extremes of an INOV and NOVO will save time, increase efficiency, and, in some cases, save money.

F. How the agency involved small business in the development of the proposed rules.

In July 2020, CAB formed two Clean Air Rules Review Teams (CARRT) to review and provide comment on the proposed amendments. The first CARRT addressed only HAR 11-60.1, Subchapter 3, Open Burning, and the second reviewed all the other subchapters. The two CARRTs combined included the following members who directly or indirectly represent small business interests:

- Mr. Michael Moefu, Aloun Farms
- Mr. Gary Maunakea-Forth, MA`O Organic Farms
- Ms. Paula Hegele, Maui Wine
- Ms. Lorina Modelski, Pineridge Farms
- Ms. Janet Ashman, Hawaii Farm Bureau, which represents a large number of small business farmers;

- Mr. Gregg Ichimura (Koga Engineering), and Mr. Victor Szabo (Healy Tibbitts Builders), General Contractors Association, which represents approximately 600 companies, including many that are small businesses;
- Dr. Jim Morrow, Consultant, who represents a number of small business clients in his air permitting work.
- Five Chiefs or Captains from the Fire Prevention Bureaus/Fire Departments for each county, and Mr. Gary Lum from the Hawaii State Fire Council.
- Mr. Earl Yamamoto, Planner, and Mr. Heath Williams, Special Assistant to the Chairperson, Hawaii Department of Agriculture.
- Mr. Mike Walker, Hawaii Department of Land and Natural Resources,

G. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, county standards, with an explanation of the reason for imposing the more stringent standard.

The proposed rules do not impose any stricter requirements than those that are already in place.

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By SBRRB at 12:26 pm, Jan 14, 2021

Justification for Proposed Amendments to

Hawaii Administrative Rules
Title 11
Department of Health
Chapter 60.1
Air Pollution Control

Department of Health
Environmental Management Division
Clean Air Branch
Honolulu, Hawaii

January 14, 2021

Hawaii Revised Statutes §342G-44: Double-sided copying shall be standard operating practice for all state and county agencies, offices, and facilities, as available and appropriate.

Introduction

This justification serves to explain and provide a rationale for the proposed revisions to Department of Health, Hawaii Administrative Rules (HAR), Title 11, Chapter 60.1, Air Pollution Control (hereafter referred to as Chapter 11-60.1).

More than 100 changes are proposed in over 40 sections of the chapter. The main changes, each of which has amendments to multiple sections, include the following:

- Change the status of non-major Covered Source Permits (CSP) to Noncovered Source Permits (NSP).
- Exempt nonroad engines from air permitting.
- Add test methods and remove director's discretion in the determination of air violations.
- Improve existing regulations, or add new ones, for open burning and agricultural burning.
- Add new categories of field citations.
- Make additional amendments such as mandatory updates or changes to correct, enhance, or clarify an existing rule

Additional information on these proposed rule amendments may be obtained by contacting Mr. Barry Ching or Valerie Ishihara of the Clean Air Branch (CAB) at the following:

Clean Air Branch
Hawaii Department of Health
2827 Waimano Home Road, #130
Pearl City, HI 96782

Phone: (808) 586-4200
Fax: (808) 586-4359
email: cleanairbranch@doh.hawaii.gov

Proposed Changes and Justification

The proposed changes are shown in Ramseyer format where material to be deleted is bracketed and over struck and new material is underscored. To minimize the amount of paper used in this document the draft rules are not shown exactly as they would appear according to the Hawaii Administrative Rules Drafting Manual.

The amendments are presented in order and grouped by subchapter. Each proposed amendment is listed by section. Often, a section may have more than one change; when multiple purposes for the changes exist, each is addressed. A line of asterisks within a section indicates a portion of a section that is not affected and therefore not displayed.

The draft rules and the justifications refer to a number of acronyms or initializations including the following:

EPA	U.S. Environmental Protection Agency
40 CFR	Title 40, Protection of Environment, Code of Federal Regulations
PSD	Prevention of Significant Deterioration
DOH	Hawaii Department of Health
CAB	Clean Air Branch, DOH
CSP	Covered Source Permit (also "Title V" permit)
NSP	Noncovered Source Permit
HAR	Hawaii Administrative Rules
NSPS	New Source Performance Standards
NESHAP	National Emission Standards for Hazardous Air Pollutants

1. Amendments to Subchapter 1 General Requirements

§11-60.1-1 Definitions. As used in this chapter, unless otherwise defined for purposes of a particular subchapter or section of this chapter:

* * *

"Covered source" means:

(1) Any major source;

(2) Any source subject to a standard or other requirement under Section 111 of the Act;

(3) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and

(4) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

Exemptions from the requirement to obtain a covered source permit are identified in 11-60.1-82(d).

* * *

"Credible evidence" means various kinds of information other than reference test data, much of which is already available and utilized for other purposes, that may be used to determine compliance or noncompliance with emission standards.

* * *

"Gas-tight" means no detectable gaseous emissions.

* * *

"Major source" means:

(1) For hazardous air pollutants, a source or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) and that emits or has the potential to emit considering controls and fugitive emissions, any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more of a single pollutant or twenty-five tons per year or more of any combination of pollutants; or

(2) For any other pollutant, a source, or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) belonging to a single major industrial grouping (i.e., all having the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit, considering controls, one hundred tons per year or more of any air pollutant subject to

regulation other than the pollutant greenhouse gases. Fugitive emissions from the stationary source shall be considered in determining whether the stationary source is major, if it belongs to one of the following categories of stationary sources:

(A) Coal cleaning plants (with thermal dryers);
(B) Kraft pulp mills;
(C) Portland cement plants;
(D) Primary zinc smelters;
(E) Iron and steel mills;
(F) Primary aluminum ore reduction plants;
(G) Primary copper smelters;
(H) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
(I) Hydrofluoric, sulfuric, or nitric acid plants;
(J) Petroleum refineries;
(K) Lime plants;
(L) Phosphate rock processing plants;
(M) Coke oven batteries;
(N) Sulfur recovery plants;
(O) Carbon black plants (furnace process);
(P) Primary lead smelters;
(Q) Fuel conversion plants;
(R) Sintering plants;
(S) Secondary metal production plants;
(T) Chemical process plants – the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
(U) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
(V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
(W) Taconite ore processing plants;
(X) Glass fiber processing plants;
(Y) Charcoal production plants;
(Z) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
(AA) Any other stationary source which as of August 7, 1980 is being regulated by a standard promulgated pursuant to Section 111 or 112 of the Act.

* * *

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * *

"Monitoring device" means the total equipment, required under the monitoring of operations sections in all applicable subparts, used to measure and record (if applicable) process parameters. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

* * *

"No detectable emissions" means less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR Part 60.

* * *

"Nonroad engine" means:

(1) Except as discussed in paragraph (2) of this definition, an internal combustion engine that meets any of the following criteria:

(A) It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).

(B) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).

(C) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if it meets any of the following criteria:

(A) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.

(B) The engine is regulated under 40 CFR Part 60, (or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411)).

(C) The engine otherwise included in subparagraph (1)(C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in

a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. See 40 CFR Section 1068.31 for provisions that apply if the engine is removed from the location.

* * *

"$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

* * *

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

* * *

"Significant" means in reference to a net emissions increase or the potential of a source to emit:

(1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:

(A) Carbon monoxide: one hundred tpy;

(B) Nitrogen oxides: forty tpy;

(C) Sulfur dioxide: forty tpy;

(D) Particulate matter: a total of twenty-five tpy of particulate matter of all sizes;

(E) PM_{10}: fifteen tpy;

(F) $PM_{2.5}$: ten tpy of direct $PM_{2.5}$, forty tpy of sulfur dioxide, forty tpy of nitrogen oxide;

(G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;

(H) Greenhouse Gases: forty thousand tpy CO_2e[~~(mass biogenic CO_2 emissions accounted for as provided in the "subject to regulation" definition)~~]; or

(I) Lead: 0.6 tpy.

* * *

"Subject to regulation" means for any pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in 40 CFR Subchapter C of Chapter I, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. [~~Except that GHG emissions shall be subject to regulation from a stationary source emitting or having the potential to emit 100,000 tpy or more of CO_2 equivalent emissions and GHGs that~~

~~equal or exceed 100 tpy on a mass basis for Title V or thresholds specified in Subchapter 7 for PSD.~~]

Justification:

The change in the definition for **"covered source"** changes non-major CSP sources to NSP, unless the source is required by an applicable subpart or the administrator to obtain a covered source permit. Hawaii currently requires the majority of non-major sources subject to a standard or other requirement under Sections 111 or 112 (NSPS and NESHAPS) of the Clean Air Act to obtain Title V or Covered Source permits. Amending the definition of "covered source" will allow these non-major sources to construct and operate under noncovered source permits (non-Title V). Hawaii is the only state that requires Title V permitting for these non-major NSPS sources.

When Hawaii's Title V air permit program was first established in 1993, EPA deferred the requirement for certain non-major sources subject to a NSPS or NESHAP published on or prior to July 21, 1992 to obtain Title V permits (i.e. Title V permits were not required for these non-major sources). In addition, for NSPS or NESHAP published after July 21, 1992 the regulations specifically identify whether a nonmajor source is required to obtain a Title V permit. In contrast to 40 CFR Part 70 – State Operating Permit Program for Title V of the Clean Air Act, Hawaii's rules require nonmajor sources subject to a NSPS or NESHAP to obtain a Title V permit regardless of whether it is required by the federal regulation. The proposed change will allow Hawaii to regulate certain nonmajor sources through non-Title V (noncovered source) permitting, consistent with the rest of the nation.

Adding a new definition for **"credible evidence"** supports the proposed new definition "monitoring device" in this section, the addition of new §11-60.1-2.5 and amendment of §11-60.1-32(c), all of which make reference to this term. The cumulative effect of these additions will be to strengthen the use of credible evidence in CAB enforcement actions and to make the CAB rules more consistent with federal rules.

The new definition **"gas-tight"** is added to clarify existing text that references this term in §11-60.1-39 and -40.

The definition of "**Major source**" was revised to align with changes made to federal GHG regulations and guidance documents that came into effect subsequent to the last HAR revision. The revision clarifies that greenhouse gases are not included in the 100 tpy major source threshold.

A definition for **"malfunction"** is established to correspond with the amendments in §11-60.1-32 which addresses startup, shutdown, and malfunction of equipment. This amendment will make the CAB rules more consistent with federal rules.

The addition of **"monitoring device"** is needed because the term is referenced in a number of sections of the CAB rules. Moreover, this definition specifically includes "credible evidence" as a monitoring device. This will improve CAB's enforcement capabilities, and will make the CAB rules more consistent with federal rules.

The new definition **"no detectable emissions"** is added to clarify existing text found in the new definition of **"gas-tight"**.

A definition for **"nonroad engine**" is added because that category will be explicitly exempted from air permit requirements. Owners of nonroad engines will be required to maintain a location log for this specific group of equipment, but they will not be required to obtain an air permit for their nonroad engine.

A specific group of engines categorized as "nonroad engines" are excluded from the Clean Air Act Section 302(z) definition of "stationary source" and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines by pollution control agencies in the United States varies. Some agencies fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will grant nonroad engines exemption from Hawaii's air permitting requirements. The revised rules include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes which provides the Clean Air Branch the means to verify the status of the unit as a nonroad engine.

Language was added to the definitions of **"PM2.5"** and **"PM10"** for consistency with the federal definition.

The reference to biogenic GHG emissions in §11-60.1-1(1)(H) of the definition for **"significant"** was removed because EPA's work for regulating biogenic emissions is pending. Permitting issues involving biogenic emissions will be resolved on a case-by case basis as they arise. The Deferral Rule that deferred applicability of permitting programs to biogenic CO_2 emissions expired on July 21, 2014 and determinations on how to regulate biogenic GHG emissions are ongoing.

The definition for "**subject to regulation**" is amended in order to align with current and future federal guidance for regulating GHG emissions. A recent Supreme Court ruling has invalidated a portion of the federal Tailoring Rule which incorporated the first standards for Greenhouse Gases. This amendment removes the requirement for a source to obtain a Title V or PSD permit due solely to their GHG emissions. Current federal guidance for regulating GHGs is provided in EPA's December 19,2014 Memorandum, Subject: Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements.

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§11-60.1-2.5 Credible evidence. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

Justification:

This proposed amendment will give the CAB the specific authority to use credible evidence and will make the CAB rules comport with the federal rules in this area. In addition, this amendment supports the proposed amendment referencing "credible evidence" found in §11-60.1-32.

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§11-60.1-11 Sampling, testing, and reporting methods. (a) All sampling and testing shall be made and the results calculated in accordance with the reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, an owner or operator of a stationary source may be required to conduct tests of emissions of air pollutants at the owner or operator's expense. The owner or operator of the stationary source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) The director may require the owner or operator of any stationary source to maintain files on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS, any state ambient air quality standard, or other provisions of this chapter in a permanent form suitable for inspection or in a manner authorized by the director.

(d) The information recorded shall be summarized and reported to the director as specified in the permit and in accordance with any requirement of this chapter. Recording periods shall be January 1 to June 30 and July 1 to December 31, or any other period specified by the director, except the initial recording period shall commence on the date the director issues the notification of the recordkeeping requirements. The director may require the owner or operator to submit any reported summary to the Administrator.

(e) Information recorded by the owner or operator of a stationary source and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for a specified time period from the date on which the information is recorded or the pertinent report is submitted. The specified time period shall be as required in sections 11-60.1-68(5)(F) or 11-60.1-90(7)(H) or as identified within an applicable requirement [~~of~~] for the stationary source.

(f) Owners or operators of stationary sources shall correlate applicable emission limitations and other requirements within the report.

Justification:

The amendment improves clarity.

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§11-60.1-12 Air quality models. (a) All required estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W.

(b) Where an air quality model specified in [~~Appendix A of~~] 40 CFR Part 51, Appendix W is inappropriate, the model may be modified or another model substituted on written request to and written approval from the director. The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment, on all proposed modifications or substitutions of an air quality model. Written approval from the director, and EPA through the director shall be obtained for any modification or substitution.

Guidelines identified in 40 CFR Part 51, Appendix W for substituting or using alternate models shall be used in determining the acceptability of a substitute or alternate model.

Justification:

The amendment updates this section to indicate the correct reference.

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§11-60.1-13 Operations of monitoring stations. The EPA monitoring requirements of [~~Appendix B~~]Appendices A, C, D and E to 40 CFR Part 58, "Ambient Air Quality Surveillance," shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter.

Justification:

The amendment updates this section to reference the correct appendices.

2. Amendments to Subchapter 2 General Prohibitions

§11-60.1-31 Applicability. (a) All owners or operators of an air pollution source are subject to the requirements of this subchapter, whether or not the source is required to obtain a noncovered or covered source permit.

(b) In the event any federal or state laws, rules, or regulations are in conflict with the provisions of this subchapter, the most stringent requirement shall apply.

(c) This section shall apply to all federal and state laws, rules or regulations implemented through this chapter.

Justification:

This section is being amended to ensure it is clear that in the event when any federal law, rule, or regulation incorporated by reference into the CAB rules creates a conflict with an existing CAB rule that the more stringent requirement(s) shall apply.

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§11-60.1-32 Visible emissions. (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972, shall be as follows:

(1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than forty per cent opacity, except as provided in paragraph (2);

(2) During start-up, shutdown, or when [~~breakdown~~]a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(b) Visible emission restrictions for stationary sources which commenced construction, modification, or relocation after March 20, 1972, shall be as follows:

(1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity, except as provided in paragraph (2);

(2) During start-up, shutdown, or when [~~breakdown~~]a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(c) Compliance with visible emission requirements shall be determined by evaluating opacity of emissions pursuant to 40 CFR Part 60, Appendix A, Method 9[~~and~~], other EPA approved methods, or any other credible evidence.

(d) Emissions of uncombined water, such as water vapor, are exempt from the provisions of subsections (a) and (b), and do not constitute a violation of this section.

Justification:

This section is being revised to ensure that the CAB rules are clear about the consistently enforced CAB policy that any emission limit that is contained in a federal rule, that is incorporated by reference by the CAB rules, is incorporated into, and subject to, this instant CAB rule section as well.

The amendments also clarify the CAB rules' allowance of the use of credible evidence in enforcing all federal and state laws, regulations, and permits.

This section also incorporates the terminology "malfunction" in replacement of the term "breakdown" so that the section reflects the usage of the term "malfunction" instead of "breakdown" in the federal rules, and also, what is utilized in federal case law as well as the case law of most other states.

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§11-60.1-33 Fugitive dust. (a) No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions. Examples of reasonable precautions are:

(1) Use of water or suitable chemicals for control of fugitive dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

(2) Application of asphalt, water, or suitable chemicals on roads, material stockpiles, and other surfaces which may result in fugitive dust;

(3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Reasonable containment methods shall be employed during sandblasting or other similar operations;

(4) Covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;

(5) Conducting agricultural operations, such as tilling of land and the application of fertilizers, in such manner as to reasonably minimize fugitive dust;

(6) Maintenance of roadways in a clean manner; and

(7) Prompt removal of earth or other materials from paved streets which have been transported there by trucking, earth-moving equipment, erosion, or other means.

(b) Except for persons engaged in agricultural operations or persons who [~~can demonstrate to the director that~~] are implementing the best practical operation or treatment [~~is being implemented~~], no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.

(c) Except for persons engaged in agricultural operations, no person shall cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period. Opacity observations shall be conducted in accordance with EPA 40 CFR 51 Appendix M, Method 203B, "Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations." This rule shall be in addition to complying with paragraphs (a) and (b), including when reasonable precautions are applied and shall be applicable in all circumstances.

Justification:

The amendment to **§11-60.1-33(b)** removes director's discretion. The EPA has recommended that the CAB minimize the use of director's discretion in determining violations.

The proposed addition of new **§11-60.1-33(c)** is in response to the EPA's concerns that, in a rare and an extreme case, a situation may arise whereby a generator of fugitive dust, although generating fugitive dust, would still not be in violation of the current rules found in §§ 11-60.1-33(a) and (b) due its use of reasonable precautions to control fugitive dust. In addition to applying whether or not the generator is utilizing reasonable precautions to control fugitive

dust, § 11-60.1-33(c) applies a quantitative test method rather than relying on subjective measures to determine a violation. The proposed language found in § 11-60.1-33(c) was suggested by EPA counsel. EPA has stated that in their current form, sections 11-60.1-33(a) and (b) are not approvable for adoption into the federal State Implementation Plan for Hawaii. Thus the CAB has agreed to include § 11-60.1-33(c) in the rules.

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§11-60.1-35 Incineration. (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

[~~(b)~~](c) All required emission tests shall be conducted at the maximum burning capacity of the incinerator[~~ or at other capacities, as approved by the director~~].

[~~(c)~~](d) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate[~~ or such other rate as may be determined by the director~~].

[~~(d)~~](e) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity.

§11-60.1-36 Biomass fuel burning boilers. (a) No person shall cause or permit the emissions of particulate matter from each biomass burning boiler and its drier or driers in excess of 0.40 pounds per one hundred pounds (four grams per kilogram) of biomass as burned.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

§11-60.1-37 Process industries. (a) No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks, except for incinerators and biomass fuel burning boilers, in excess of the amount determined by the equation $E = 4.10\ p^{0.67}$, where E = rate of emission in pounds per hour and p = process weight rate in tons per hour, except that no rate of emissions shall exceed forty pounds per hour regardless of the process weight rate.

(b) Rate of emissions shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

[~~(b)~~](c) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, including any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

[~~(c)~~](d) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation, the interpretation that results in the minimum value for the allowable emission shall apply.

[~~(d)~~](e) For purposes of this section, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be considered as a single specific process.

§11-60.1-38 Sulfur oxides from fuel combustion. (a) No person shall burn any fuel containing in excess of two [~~per cent~~]percent sulfur by weight[~~, except for fuel used in ocean-going vessels~~].

(b) No person shall burn any fuel containing in excess of 0.50 [~~per cent~~]percent sulfur by weight in any fossil fuel fired power and steam generating unit having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU per hour.

(c) Compliance with sulfur by weight requirements shall be determined by evaluating sulfur by weight pursuant to *American Society for Testing and Materials (ASTM)* Methods.

(1) For liquid fuels: ASTM D129-00(2005) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); D2622-05 Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry; D4294-03 Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry; D5453-05 Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; or other EPA approved methods.

(2) For gaseous fuels: ASTM D1072-90(1999) Standard Test Method for Total Sulfur in Fuel Gases; D3246-05 Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; D4810-88(1999) Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes; D6228-98(2003), D6667-01 or Gas Processors Association Standard 2377-86 Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length-of-Stain Tubes; or other EPA approved methods.

[~~(c)~~](d) The use of fuels prohibited in subsections (a) and (b) may be allowed at the director's sole discretion if it can be demonstrated that the use of these fuels will result in equivalent or lower emission rates of oxides of sulfur.

(1) Compliance with oxides of sulfur emissions requirements shall be determined by evaluating oxides of sulfur emissions pursuant to 40 CFR Part 60, Appendix A-4, Method 8 or other EPA approved methods.

§11-60.1-39 Storage of volatile organic compounds. (a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other

container of more than a forty thousand-gallon (one hundred fifty thousand-liter) capacity any volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is pressurized and capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

* * *

(3) Other equipment or means of equal efficiency for purposes of air pollution control [~~as~~] may be approved by the director[~~,~~] after demonstrating equivalence to the director by one of the following methods:

(A) an actual emission test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or

(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with true vapor pressure requirements shall be determined by evaluating vapor pressure pursuant to ASTM Method D323-82 or other EPA approved methods.

[~~(b)~~](c) No person shall place, store, or hold in any new stationary storage tank, reservoir, or other container of more than a two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such tank, reservoir, or other container is equipped with a permanent submerged fill pipe, is a pressure tank as described in subsection (a), or is fitted with a vapor recovery system as described in subsection (a)(2).

[~~(c)~~](d) Underground tanks shall be exempted from the requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. Any person claiming this exemption shall be responsible for maintaining records which substantiate this claim and make them available to the director upon request.

§11-60.1-40 Volatile organic compound water separation. (a) No person shall use any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) or more of any volatile organic compound a day from any equipment that is processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or greater unless such compartment is equipped with a properly installed vapor loss control device described as follows and which is in good working order, and in operation:

(1) A container having all openings sealed which totally encloses the liquid content. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

(2) A container equipped with a floating roof, consisting of a pontoon type roof, double deck-type roof, or internal floating cover roof, which will rest on the

surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

(3) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All container gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place; or

(4) A container having other equipment of equal efficiency for purposes of air pollution control [~~as~~] may be approved by the director[~~.~~] after demonstrating equivalence to the director by one of the following methods:

(A) an actual emission test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or

(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

§11-60.1-41 Pump and compressor requirements. (a) All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater which can be fitted with mechanical seals shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. Pumps and compressors not capable of being fitted with mechanical seals, such as reciprocating pumps, shall be fitted with the best sealing system available for air pollution control given the particular design of pump or compressor as may be approved by the director. In either case, all pumps and compressors shall be vapor tight where the reading on a portable hydrocarbon meter is less than 500 parts per million (ppm), expressed as methane, above background.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

(c) Compliance with vapor tight requirements shall be determined by evaluating vapor tightness pursuant to EPA Method 21 or other EPA approved methods.

§11-60.1-42 Waste gas disposal. (a) No person shall cause or permit the emissions of gas streams containing volatile organic compounds from a vapor blowdown system unless these gases are burned by smokeless flares, or abated by an equally effective control device as approved by the director.

(b) Compliance with smokeless flare or equally effective control device requirements shall be in accordance with §11-60.1-32.

Justification:

The amendments to **§§11-60.1-35 to 1-42** are proposed in accordance to EPA recommendations to: 1) remove subjective director's discretion, and 2) insert objective test methods in these determinations of violations. EPA has stated that in their current form, these sections are not approvable for adoption into the federal State Implementation Plan for Hawaii.

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§11-60.1-43 All operation and maintenance of permitted source. Permittees shall, at all times, operate and maintain their permitted source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

Determination of whether such operation and maintenance procedures are being used will be based on information available to the director, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

Justification:

The adoption of this new section, along with the amendments to §11-60.1-68 and §11-60.1-90, helps ensure that it is clear that the CAB rules require that all permittees operate and maintain their permitted source in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

3. Amendments to Subchapter 3 Open Burning

§11-60.1-51 Definitions. As used in this subchapter:

* * *

"Attended" means to be physically present at the immediate location of the fire, to actively and physically look after, or to actively and physically take charge of.

* * *

"Auxiliary fuels" means butane, propane, pipeline quality natural gas, liquefied petroleum gas, or a petroleum liquid having an American Petroleum Institute gravity of at least 30.

* * *

"Cooking fuel" means any fuel that is processed, marketed, and sold by commercial establishments specifically for the cooking of food.

* * *

"Range" means an extensive area of open land on which domestic livestock or wild animals wander and graze.

* * *

"Range improvement" means physical modification or treatment of rangeland which is designed to: improve production of forages; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; and otherwise restore, protect, and improve the conditions of the rangeland ecosystems to benefit livestock, horses, and fish and wildlife.

Justification:

Amending the definition of "attended" strengthens a key condition under which open burning is allowed for the cooking of food in **§11-60.1-52(b).** (see justification in §11-60.1-52(b))

The addition of new definitions for "auxiliary fuels" and "cooking fuel" are necessary to support the amendments to **§11-60.1-52(d)(1)** and **§11-60.1-52(b).** In both cases, the CAB is proposing, for the first time, to identify specific categories of fuels that may be used in order to prevent malicious burning of trash, petroleum products, and other dangerous or undesirable fuels.

Adding a definition of **"Range"** prevents the misuse of the open burning exemption for range improvement as a means to conduct open burning on land that is not rangeland.

Amending the definition **"Range improvement"** ensures that the open burning exemption for rangeland applies solely to rangeland, and activities directly related to rangeland improvement.

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§11-60.1-52 General provisions. (a) Except as provided in subsections (b), (c), (d), (e) and section 11-60.1-53, no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring. Subsections (b), (c), (d), (e) and section 11-60.1-53 shall not apply to the open burning of human remains or animal carcasses unless the activities fall under the exemptions found in paragraph (d)(2).

(b) Subsection (a) shall not apply to attended fires for the cooking of food[~~.~~] provided that:

(1) Only untreated dry wood, charcoal, natural or synthetic natural gas, butane, propane, or cooking fuel is used, and

(2) If visible smoke enters any residence, business or public area, best practical measures to eliminate the smoke, including extinguishing the fire, are taken.

(c) Subsection (a) shall not apply to the following, provided that notification is given to the director prior to the commencement of any burn:

(1) Fires set to a building, structure or simulated aircraft for training personnel in firefighting methods.

(d) Subsection (a) shall not apply to the following, provided that the burning is approved by the director:

(1) [~~Fires for recreational, decorative, or ceremonial purposes~~]Outdoor fires for recreational, religious, ceremonial or decorative purposes including, but not limited to, campfires, bonfires, pottery curing fires, that are burning dry untreated wood, charcoal, or auxiliary fuels;

(2) Fires for the disposal of human remains and animal carcasses and debris generated from a natural disaster or catastrophic event, where there is no reasonable alternative method of disposal;[~~ and~~]

(3) [~~Other fires as approved by the director~~]Outdoor fires set for cultural or traditional purposes and fires within cultural or traditional structures including sweat houses or lodges; and

(4) Fires set by any county, state or federal law enforcement agency to dispose of illegal drugs.

(e) Subsection (a) shall not apply to the following, provided that the burning is both approved by the director, and that the burning is allowed under either section 11-60.1-55 or 11-60.1-52(f):

(1) Fires to abate a fire hazard, provided that the hazard is so declared by the fire department, forestry division, or federal agency having jurisdiction, and that a prescribed burning plan, if applicable, has been submitted to and approved by the jurisdictional agency;

(2) Fires for prevention or control of disease or pests; and

(3) Fires for the disposal of dangerous materials, where there is no alternate method of disposal;

(f) The director may provide a waiver to the section 11-60.1-55 "no-burn" period for any exemption to open burning found under subsection 11-60.1-52(e).

(g) Subsections (b), (c), (d), or (e) shall not exempt any activity from the application of any rules or requirements in any other section or chapter.

Justification:

The amendment to **§11-60.1-52(b)** is needed to address the visible smoke impacts from open burning for the cooking of food which in most cases are difficult to resolve. Examples of open fire cooking include barbecues, traditional imu, and grills at the beach – none of which would reasonably be prohibited. Yet people who endure smoke from inconsiderate and sometimes loophole-seeking neighbors continually seek relief. Because open fire cooking is so popular, it is the only category of open burning that is allowed without notification or approval. As such, it is susceptible to improper burning in the guise of legitimate cooking of food. The CAB continually seeks to strike a balance that allows proper cooking while preventing abuse and minimizing smoke impacts. The proposed changes would do four things:

- Specify, for the first time, categories of fuels that may be used in order to prevent improper burning of trash, petroleum products, and other undesirable fuels.
- Add a new definition for "cooking fuel" to support the amendment to §11-60.1-52(b).
- Address the issue of measures to take when "visible smoke" enters a residence, business, or public area due to the cooking of food in §11-60.1-52(b).
- Amend the definition of "Attended" to strengthen a key condition under which open burning is allowed for the cooking of food in §11-60.1-52(b).

In the proposed amendments to **§11-60.1-52(d)(1), (3), and (4)** the CAB is making the exemptions more specific by listing the areas where the exemption would apply, and listing non-exclusive, non-exhaustive examples of these exemptions. For §11-60.1-52(d)(1), the CAB is listing the specific fuels that may be used for these exemptions, in order to prevent the improper burning of trash, petroleum products, and other dangerous or undesirable fuels for these specific CAB approved events.

We propose to repeal the current language in **§11-60.1-52(d)(3)** to eliminate the undefined discretion of the director to approve "other fires" for exemption. This amendment is being made in response to the EPA's concerns that too much discretion is given to the director in this subsection.

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§11-60.1-55 Agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e): "no-burn" periods. (a) Except as provided in subsection (d), no person, with or without an agricultural burning permit, shall cause or allow agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e) [~~under the following conditions:~~] when a "no-burn" period has been declared by the director.

[~~(b) Notices of "no-burn" periods for the specified islands or districts may be provided by radio broadcast and shall apply for a specified "no burn" period.~~

(b) "No-burn" periods shall be determined by current and forecasted weather conditions which inhibit the dispersion of air pollutants. A no-burn period may be declared if unfavorable

meteorological conditions such as high winds, temperature inversions and air stagnation are existing and forecasted to continue or deteriorate. If forecasting is unavailable, "no-burn" periods shall be determined based on visibility.

~~(c) Verification that widespread haze exists in any district may be accomplished by consultation with personnel in the appropriate district fire or police stations.~~]

(c) Visibility shall be used as the basis for determining "no-burn" periods when forecasting is not possible or not available. A "no-burn" call based on visibility shall be made under the following conditions.

(1) When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:
   (A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and
   (B) Beyond ten miles have a blurred appearance;

(2) When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts[~~.~~]; or

(3) On the island of Oahu either when the condition specified in paragraph (1) or (2) occurs or when meteorological conditions have resulted in a rise of the carbon monoxide level exceeding five mg/m^3 for an eight-hour average or the PM_{10} level exceeding one hundred thirty five $\mu g/m^3$ for twenty-four hours and when the director determines that these meteorological conditions will continue or deteriorate.

(d) Verification that widespread haze exists in any district may be accomplished by consultation with department personnel in the appropriate district.

(e) Notices of "no-burn" periods for the specified islands or districts may be posted on a department web page and shall apply to a specified "no burn" period.

[~~(d)~~](f) In a district where a long-term "no burn" declaration is in effect, the director may provide a waiver during an agricultural "no burn" period for the control of plant diseases or infestations when burning is determined to be the [~~sole~~]best available method of control.

Justification:

The current **§11-60.1-55(b)** would be replaced by proposed §11-60.1-55(e) because sharing information on the Internet is much more effective that via radio broadcast. Information can be posted immediately without relying on others (i.e., the radio station) and can be updated throughout the day if necessary. In addition, the information remains available for an extended period; an interested party does not have to rely on catching the radio announcement at the exact right time. The rule amendment does not precluded CAB from using other social or broadcast media for sharing "no-burn" information.

The proposed **§§11-60.1-55(b), (c) (d) and (e)** would make a significant change in the method of making "no-burn" determinations. The new requirement to use forecasting would supersede the current visibility-based method since forecasting is more scientifically based. Visibility would be used as the basis for making a "no-burn" call only if forecasting is not possible or available. Subsection 11-60.1.55(c)(3) reincorporates text that was previously removed. This strengthens the language in combination with new subsections 11-60.1-55(b) and (c) and addresses EPA concerns about a SIP relaxation.

The proposed **§11-60.1-55(d)** would replace the existing §11-60.1-55(c) as the method for determining a ‘no-burn” period based on visibility. Local DOH/CAB staff, rather than county fire or police department personnel, would make the determination.

The change in **§11-60.1-55(f)** is proposed because in many circumstances, open burning is not the sole control method, and would not be allowed as worded, but it is the best method among other options.

4. Amendments to Subchapter 4 Noncovered Sources

§11-60.1-61 Definitions. As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a noncovered source:

(1) Any NAAQS or state ambient air quality standard;

(2) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);

(3) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r)(7) of the Act;

[~~(2)~~](4) The application of best available control technology to control a regulated air pollutant, but only as best available control technology would apply to new noncovered sources and modifications to noncovered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the noncovered source to emit a pollutant; and

[~~(3)~~](5) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

Justification:

The definition of "applicable requirement" pertaining to noncovered sources in Subchapter 4 of the HAR is being revised to clarify the Clean Air Branch's intent to regulate certain nonmajor sources subject to NSPS or NESHAP under the noncovered source permit program.

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§11-60.1-62 Applicability. (a) Except as provided in subsections (d) and (g) and section 11-60.1-66, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any noncovered source without first obtaining a noncovered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a noncovered source holds a valid noncovered source permit. An owner or operator of a grandfathered noncovered source, one constructed, modified, or relocated on or prior to March 20, 1972, may be required by the director to obtain a noncovered source permit if the source is found to operate in violation of an applicable requirement, or is found to have improper or inadequate air pollution controls.

* * *

(c) A noncovered source permit shall not constitute, nor be construed to be an approval of the design of a noncovered source. Noncovered source permits shall be issued in accordance with this chapter and it is the responsibility of the applicants to [~~insure~~] ensure compliance with all applicable requirements in the construction and operation of any noncovered source.

(d) The following are exempt from the requirements of subsection (a), provided that no exemption interferes with the imposition of any requirement of subchapter 5 or the determination of whether a stationary source is subject to any requirement of this chapter. Sources or activities exempt from the requirements of subsection (a) shall not relieve the owner or operator from complying with any other applicable requirement, including provisions of subchapter 2. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director shall reserve the right to disallow any exemption and impose the requirements of subsection (a), if the source or activity requires additional controls or monitoring to ensure compliance with the applicable requirements.

(1) Stationary sources with potential emissions of less than:

(A) 500 pounds per year for each hazardous air pollutant, except lead;

(B) 300 pounds per year for lead;

(C) five tons per year of carbon monoxide;

(D) 3,500 tons per year CO_2e for greenhouse gases; and

(E) two tons per year of each regulated air pollutant not already identified above;

* * *

(21) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;

(22) Nonroad engines. Owners of nonroad engines, except for those exempt engines listed in subsection (d) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:

(A) Owner's Name;

(B) Engine Manufacturer and Model;

(C) Engine Serial Number;

(D) Engine Date of Manufacture; and

(E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;

[~~(22)~~](23) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up;

[~~(23)~~](24) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;

[~~(24)~~](25) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;

[~~(25)~~](26) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;

[~~(26)~~](27) Stacks or vents to prevent escape of sewer gases through plumbing traps;

[~~(27)~~](28) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment, and that do not involve the open release or venting of CFC's into the atmosphere;

[~~(28)~~](29) Woodworking shops with a sawdust collection system; and

[~~(29)~~](30) Other sources as may be approved by the director.

* * *

(f) An owner or operator of a stationary source that becomes subject to the requirements of subchapter 5 pursuant to a new or amended regulation under [~~section~~]Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

(1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or

(2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

Justification:

A specific group of engines categorized as “nonroad engines” are excluded from the Clean Air Act Section 302(z) definition of “stationary source” and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines by pollution control agencies in the United States varies. Some states fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will grant nonroad engines exemption from Hawaii’s air permitting requirements. The revised rules include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes which provides the Clean Air Branch the means to verify the status of the unit as a nonroad engine.

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§11-60.1-63 Initial noncovered source permit application. (a) Every application for an initial noncovered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

* * *

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

[~~(7)~~](8) A schedule for construction or modification of the noncovered source, if applicable;

[~~(8)~~](9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;

[~~(9)~~](10) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

[~~(10)~~](11) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;

[~~(11)~~](12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

[~~(12)~~](13) If requested by the director, information on other available control technologies;

[~~(13)~~](14) An explanation of all proposed exemptions from any applicable requirement;

[~~(14)~~](15) A compliance plan in accordance with section 11-60.1-65; and

[~~(15)~~](16) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

Justification:

Currently, the HAR requires nonmajor sources subject to NSPS to obtain a Title V (covered source) permit prior to construction and operation of the source. As described previously, the proposed revisions are intended to allow certain nonmajor sources subject to NSPS or NESHAPs to obtain a noncovered source permit rather than a Title V permit. The addition of this language will require noncovered source permit applicants to identify any applicable requirements (i.e. NSPS or NESHAP) and any required testing

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§11-60.1-68 Permit content. The director shall consider and incorporate the following elements into a noncovered source permit as applicable:

* * *

(7) General provisions including:

* * *

(L) Certification requirements pursuant to section 11-60.1-4; [~~and~~]

(M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and

(N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

Justification:

The proposed language ensures that the requirement for the proper operation and maintenance (O&M) of a permitted source is expressly placed into the permit itself. Although a number of the federal rules and statutes incorporated into the HAR have explicit requirements for proper O&M, there appears to be nothing requiring proper O&M explicitly listed in the HAR. Placing a specific requirement for proper O&M into a permit will ensure that in any future equipment failure, the lack of a specific written requirement for proper O&M in the permit will not be an issue for determining a violation.

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§11-60.1-74 Noncovered source permit renewal applications. (a) Every application for a noncovered source permit renewal is subject to the same requirements for an initial application of a noncovered source permit including the requirements of section 11-60.1-63. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

(1) Name, address, and phone number of:
  (A) The company;
  (B) The facility, if different from the company;
  (C) The owner and owner's agent; and
  (D) The plant site manager or other contact;
(2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent noncovered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures;
(3) A compliance plan in accordance with section 11-60.1-65; and
(4) Other information as may be necessary:
  (A) [~~necessary by~~] for the director to make a decision on the application; and
  (B) [~~As may be necessary~~]to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

Justification:

The proposed change provides clarity and does not change the meaning of the section.

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§11-60.1-76 Applications for modifications. (a) Every application for a modification to a noncovered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

* * *

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;
[~~(7)~~](8) Operational limitations or work practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;
[~~(8)~~](9) A schedule for construction or modification of the noncovered source;
[~~(9)~~](10) All calculations and assumptions on which the information in paragraphs (3), (5), (6), and (7) is based;

[~~(10)~~](11) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the national and state ambient air quality standards;

[~~(11)~~](12) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;

[~~(12)~~](13) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

[~~(13)~~](14) If requested by the director, information on other available control technologies;

[~~(14)~~](15) An explanation of all proposed exemptions from any applicable requirement;

[~~(15)~~](16) A compliance plan in accordance with section 11-60.1-65; and

[~~(16)~~](17) Other information:

(A) As requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

Justification:

Currently, the HAR requires nonmajor sources subject to NSPS to obtain a Title V permit prior to construction and operation of the source. As described previously, the proposed revisions are intended to allow certain nonmajor sources subject to NSPS or NESHAPs to obtain a noncovered source permit rather than a Title V permit, consistent with the rest of the nation. The addition of this language will require noncovered source permit applicants to identify any applicable requirements (i.e. NSPS or NESHAP) and any required testing.

5. Amendments to Subchapter 5 Covered Sources

§11-60.1-82 Applicability. (a) Except as provided in subsections (d), (e), and (k) and section 11-60.1-87, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any covered source without first obtaining a covered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a covered source holds a valid covered source permit.

* * *

(c) The covered source permit shall not constitute, nor be construed to be an approval of the design of the covered source. The covered source permit shall be issued in accordance with this chapter and it is the responsibility of the applicant to [~~insure~~]ensure compliance with all applicable requirements in the construction and operation of any covered source.

(d) The following are exempt from the requirements of subsection (a):

(1) All sources listed in the definition of Covered Source in Subchapter 1 that are not:
(A) major sources;
(B) affected sources; or
(C) solid waste incineration units,
and that are required to obtain a permit pursuant to Section 129(e) of the Act, unless required to obtain a Title V permit under rules promulgated by the Administrator.

[~~(1)~~](2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;

[~~(2)~~](3) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards for Demolition and Renovation" pursuant to the "National Emission Standard for Asbestos," 40 CFR Section 61.145;

[~~(3)~~](4) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;

[~~(4)~~](5) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;

(6) Nonroad Engines. Owners of nonroad engines, except for those exempt engines listed in subsections (f) and (g) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:
(A) Owner's Name;
(B) Engine Manufacturer and Model;
(C) Engine Serial Number;
(D) Engine Date of Manufacture; and
(E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;

[~~(5)~~](7) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up; and

[~~(6)~~](8) Air-conditioning or ventilating systems that do not contain more than 50 pounds of any Class I or Class II ozone depleting substance regulated under Title VI of the Act and are not designed to remove air pollutants generated by or released from equipment.

(e) The owner or operator of any insignificant activity identified in subsections (f) and (g) may begin construction, reconstruction, modification, or operation of the activity without first obtaining a covered source permit, provided:

(1) The insignificant activity is not by itself subject to [~~subchapters 8 or 9~~]Covered Source permitting requirements;

(2) The insignificant activity does not cause a noncovered stationary source to become a major source;

(3) The insignificant activity does not cause the stationary source to become subject to provisions of [~~subchapters~~]subchapter 7[~~, 8, or 9~~]; and

(4) The owner or operator can demonstrate to the director's satisfaction that each activity meets the size, emission level, or production rate criteria contained in subsections (f) and (g).

The insignificant activities listed in subsection (f) shall be identified in the covered source permit application. The insignificant activities listed in subsection (g) need not be identified in the covered source permit application, unless subject to an applicable requirement. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director may request additional information on any insignificant activity to determine the applicability of, or to impose, any applicable requirement. Action to incorporate applicable requirements for insignificant activities into a covered source permit shall be in accordance with section 11-60.1-88.5.

* * *

(k) The director, upon written request and submittal of adequate support information from the owner or operator of a covered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a covered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

(1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a covered source permit or amendment to a covered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the covered source shall submit with the written request, a complete covered source permit application to install and operate the air pollution control device. The application shall include the proposed operating parameters,

including any parametric monitoring to ensure that the control device is operating properly.

(2) Test burns. The director may allow an owner or operator of a covered source to test alternate fuels not allowed by permit if the following conditions are met:

(A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;

(B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing covered source facility, or as an investigative measure to research the operational characteristics of a fuel;

(C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;

(D) The owner or operator of the covered source provides emission estimates of the test burn and demonstrates that no violation of the NAAQS and state ambient air quality standards will occur;

(E) The owner or operator of the covered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and

(F) If a performance test or monitoring is required, the owner or operator of the covered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the covered source at the time of the test burn, and any other significant factors that affected the test or monitoring results.

If the director approves the test burn, the director may set operational limitations or other conditions for the test burn. Deviations from those limits or conditions shall be considered a violation of this chapter.

Justification:

The addition of **§11-60.1-82(d)(1)** will allow non-major sources subject to NSPS or NESHAP regulations, unless required by an applicable subpart or the administrator to obtain a covered source permit, to be regulated under the noncovered source permit program.

With the addition of **§11-60.1-82(d)(6)**, a specific group of engines categorized as "nonroad engines" are excluded from the Clean Air Act Section 302(z) definition of "stationary source" and are exempt from the stationary source permitting requirements for Federal Major and Minor New Source Review and Title V. The regulation of nonroad engines varies by state. Some states fully exempt nonroad engines from air permitting requirements, while others have established nonroad engine reporting programs or nonroad engine permitting programs. The proposed revisions will fully grant nonroad engines exemption from Hawaii's air permitting requirements. The revisions include a requirement for owners or operators of nonroad engines in Hawaii to maintain a log of location changes to provide the Clean Air Branch the means to verify the status of the unit as a nonroad engine.

The change to **§11-60.1-82(e)(1) and (3**) will allow the construction, reconstruction, modification, or operation of an insignificant activity provided the activity by itself is not subject to covered source permitting and provided it does not cause a stationary source to become a major or major stationary source. The proposed change is consistent with the changes to the definition of "covered source."

The change to **§11-60.1-82(e)(4**) is added for clarity.

The proposed addition to **§11-60.1-82(k)(1**) will allow the CAB to incorporate enforceable monitoring requirements into the air permit to ensure the proposed control device achieves stated emission reductions.

The added language requires the applicant to submit information on the proposed air pollution control device. This will allow the CAB to include verifiable conditions in the permit and ensure the effective and proper operation of the air pollution control device.

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§11-60.1-83 Initial covered source permit application. (a) Every application for an initial covered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

* * *

(h) A covered source permit application for a new covered source or a significant modification shall be approved only if the director determines that the construction or operation of the new covered source or significant modification will be in compliance with all applicable requirements and will not interfere with attainment or maintenance of a NAAQS.

Justification:

The change to **§11-60.1-83(a)(7)** is made to be consistent with the language in **§**11-60.1-76(a)(7)

The added language in **§11-60.1-83(h)** is to clarify that a covered source permit for a new covered source or a significant modification can only be approved if the CAB determines that the proposed source demonstrates it will not interfere with attainment or maintenance of the National Ambient Air Quality Standards. This addition does not change what was already required by the CAB.

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§11-60.1-90 Permit content. The director shall consider and incorporate the following elements into all covered source permits, as applicable:

* * *

(10) General provisions including:

* * *

(L) Certification requirements pursuant to section 11-60.1-4;[~~and~~]

(M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and

(N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

Justification:

The proposed language ensures that the requirement for the proper operation and maintenance (O&M) of a permitted source is expressly placed into the permit itself. Although a number of the federal rules and statutes incorporated into the HAR have explicit requirements for proper O&M, there appears to be nothing requiring proper O&M explicitly listed in the HAR. Placing a specific requirement for proper O&M into a permit will ensure that in any future equipment failure, the lack of a specific written requirement for proper O&M in the permit will not be an issue for determining a violation.

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§11-60.1-92 Covered source general permits. (a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-99, issue a covered source general permit for similar nonmajor covered sources. The general covered source permit expiration date shall apply to all sources covered under this permit.

* * *

(c) The owner or operator of a nonmajor covered source requesting coverage for some or all of its emission units under the terms and conditions of the covered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to evaluate the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

(6) Citation and description of all applicable requirements and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

Justification:

The change to **§11-60.1-92(c)(6)** is made to be consistent with the language in **§**11-60.1-76(a)(7)

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§11-60.1-100 Public petitions. (a) [~~Upon program approval, persons~~]A person may object to the issuance of any proposed covered source permit by petitioning the Administrator pursuant to 40 CFR Section 70.8(d).

(b) [~~Upon program approval, if~~]If the Administrator objects to the proposed covered source permit as a result of a public petition, the director shall not issue the permit until the Administrator's objection has been resolved. However, a permit that was issued after the end of the forty-five-day review period and prior to the Administrator's objection, and except as provided in subsection (h), shall remain in effect at least until the objection is resolved. [~~Upon program approval, if~~]If the Administrator amends or terminates the permit based on the public petition, the director may issue only an amended permit that satisfies the Administrator's objection. If an amended permit is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

Justification:

These revisions improve clarity.

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§11-60.1-104 Applications for significant modifications. (a) Every application for a significant modification to a covered source is subject to the same requirements as for an initial covered source permit application pursuant to §11-60.1-83 as it pertains to the proposed significant modification. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

* * *

(8) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

Justification:

The change to **§11-60.1-104(a)(8)** is made to be consistent with the language in **§**11-60.1-76(a)(7)

6. Amendments to Subchapter 6 Fees For Covered Sources, Noncovered Sources, And Agricultural Burning

§11-60.1-111 Definitions. As used in this subchapter:

* * *

[~~"Nonmajor modification" means any physical change in or change in method of operation of a major stationary source that is not classified as a major modification.~~]

Justification:
The definition is no longer needed.

---

§11-60.1-112 General fee provisions for covered sources. (a) Every applicant for a covered source permit shall pay an application fee as set forth in section 11-60.1-113.

* * *

(g) The department shall reevaluate the provisions of this subchapter at least every three years to ensure that adequate fees are being generated to cover the direct and indirect costs to develop, support, and administer the air permit program. [~~Notwithstanding the~~]If fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS. Any fee adjustments pursuant to section 11-60.1-114(j), and fee waivers allowed in subsection (h) below, [~~if fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS~~]shall not require that the director afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS.

(h) With EPA's approval, the director may waive annual fees due from owners or operators of covered sources for the following calendar year, provided that funds in excess of $6 million will exist in the Clean Air Special Fund-COV account as of the end of the current calendar year. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements, such as annual emissions reporting. The owner or operator of a covered source shall continue to report the source's actual emissions of regulated air pollutants, including toxic pollutants, in tons per year. For greenhouse gases, biogenic CO_2 emissions shall be identified separately; and actual emissions shall be reported in both mass tons and CO2e tons of each greenhouse gas emitted (e.g., carbon dioxide, nitrous oxide, methane, hydroflurocarbons, perflurocarbons, and sulfur hexafluoride), and the resulting total mass tons and CO_2e tons emitted. The emissions report shall show the method, assumptions, emissions factors, and calculations used to obtain the tons per year emissions of each regulated air pollutant, including the CO_2e tons of GHGs. The reporting of annual emissions shall be submitted within the time frame specified in the applicable permit.

Justification:

The amendment improves clarity without changing the meaning.

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§11-60.1-115 Basis of annual fees for covered sources. (a) For purposes of calculating annual fees for covered sources under section 11-60.1-114, the covered source actual emissions in tons and CO_2e tons per year shall be determined by using the following parameters:

(1) Data from continuous emission monitoring (CEMS) or predictive emission monitoring (PEM) that shall always be used if available. The PEM data shall not be used if CEMS data is available;

[~~(1)~~](2) An emission factor derived from the actual rate of emissions as substantiated through stack test reports, continuous emissions monitoring data, or any other certified record as deemed acceptable by the director;

[~~(2)~~](3) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the covered source during the prior calendar year the annual fee is due. Other operating parameters of the covered source may be used in the fee calculation if approved by the director; and

[~~(3)~~](4) If not already included in the emission factor identified in paragraph (1), a percentage reduction factor based upon the efficiency of the air pollution control equipment, as provided by AP-42 or any verifiable documentation demonstrating the actual performance of the air pollution control equipment.

(b) If an actual rate of emissions referenced in paragraph (a)(1) cannot be substantiated, the allowable emission rate shall be used to calculate the total annual tonnage of pollutants emitted. If an allowable emission rate is not specified in an air permit or an applicable requirement, the appropriate permit application or AP-42 air pollutant emission factor; 40 CFR Part 98, Mandatory GHG Reporting methodology or emission factor shall be used. If the owner or operator of a covered source cannot provide verifiable documentation on the parameters referenced in paragraph (a)(2), the maximum allowable production, operating hours, amount of material processed or stored, or fuel usage shall be used in calculating the total annual tonnage or CO_2e tonnage of regulated air pollutants emitted from the covered source. For GHG emissions, results, methodologies, and emission factors used in complying with 40 CFR Part 98, Mandatory GHG Reporting, are acceptable for reporting actual emissions for the individual emission units, provided appropriate unit conversions are made, and verifiable documentation is provided for any on-site measured parameter used in the calculation. Any fraction of a ton or CO_2e ton calculated shall be disregarded for fee purposes. Only the annual tonnage in whole tons of each regulated air pollutant or whole CO_2e ton for GHGs shall constitute the basis of annual fees.

(c) The annual fee shall be calculated on fee worksheets furnished by the director. If a fee worksheet is not available for a particular covered source, the owner or operator of a covered source shall provide their own worksheet showing the method, assumptions, emission factors, and calculations used to obtain the total annual emissions in tons and CO2e tons per year, for each regulated air pollutant emitted, as applicable.

Justification:

Site-specific CEMS data provides a detailed record of emissions over time and is expected to provide the most accurate estimate of a source's actual emissions. Since emissions are not directly measured on a continuous basis by PEM over the period of interest, use of the PEM data is not preferred for estimating emissions if CEMS data is available.

7. Amendments to Subchapter 7 Prevention Of Significant Deterioration Review

§11-60.1-131 Definitions. All of the definitions in 40 CFR 52.21(b) as they existed on [~~November 19, 2013~~] January 1, 2021 are hereby incorporated by reference. This section incorporates these definitions to support the implementation of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality. Selected definitions are included here for convenience. If a conflict is found, the definition in 40 CFR Section 52.21 shall apply.

* * *

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase as defined in 40 CFR 52.21(b)(40) of a regulated NSR pollutant, and a significant net emissions increase as defined in 40 CFR 52.21(b)(3) of that pollutant from the major stationary source. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order pursuant to Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or any superseding legislation or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which:

  (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited pursuant to any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or to regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166; or

  (B) The source is approved to use under any permit issued pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Section 51.166;

(6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166;

(7) Any change in ownership at a stationary source;

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project as defined in 40 CFR 52.21(b)(36), provided the project complies with:

  (A) Hawaii state implementation plan; and

(B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

(9) The installation or operation of a permanent clean coal technology demonstration project as defined in 40 CFR 52.21(b)(34-35) that constitutes repowering as defined in 40 CFR 52.21(b)(37), provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(10) The reactivation of a very clean coal-fired electric utility steam generating unit as defined in 40 CFR 52.21(b)(38);

This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 40 CFR Paragraph 52.21[~~(a)(a)~~](aa) for a Plant Applicability Limitation (PAL) for that pollutant. Instead, the definition at 40 CFR Paragraph 52.21[~~(a)(a)~~](aa)(2)(viii) shall apply.

* * *

"Major stationary source" means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant other than the pollutant greenhouse gases:

* * *

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants:

(1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:

(A) Carbon monoxide: one hundred tpy;

(B) Nitrogen oxides: forty tpy;

(C) Sulfur dioxide: forty tpy;

(D) Particulate matter: twenty-five tpy of particulate matter emissions;

(E) PM_{10}: fifteen tpy

(F) $PM_{2.5}$: ten tpy of direct $PM_{2.5}$emissions; forty tpy of sulfur dioxide emissions; forty tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$precursor under 40 CFR 52.21(b)(50);

(G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides

(H) Lead: 0.6 tpy

(I) Fluorides: three tpy

(J) Sulfuric acid mist: seven tpy

(K) Hydrogen sulfide (H_2S): ten tpy

(L) Total reduced sulfur (including H_2S): ten tpy

(M) Reduced sulfur compounds (including H_2S): ten tpy

(N) Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tpy)

(O) Municipal waste combustor metals (measured as particulate matter): fourteen megagrams per year (fifteen tpy)

(P) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): thirty-six megagrams per year (forty tpy)

(Q) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): forty-five megagrams per year (50 tpy)

(R) Greenhouse gases: 75,000 tpy CO_2e, as specified in section (3) under the definition of "Subject to Regulation" of this subchapter.

* * *

"Subject to Regulation" means for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in Title 40 CFR Chapter I, Subchapter C, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR Subsection 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (4) to (5) of this definition and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of paragraphs 40 CFR 52.21(aa)(1) through (15), and complies with the PAL permit containing the GHG PAL.

(2) For purposes of paragraphs (3) ~~[through]~~to ~~[(5)]~~(4), the term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR Part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (2)(A) above for each gas to compute a tpy CO_2e.

(3) The term "emissions increase" as used in ~~[paragraphs]~~paragraph (4)~~[and (5)]~~ of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

~~[(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:~~

~~(A) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or~~

~~(B) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,~~

~~(5) Beginning July 1, 2011, in addition to the provisions in paragraph (4) of this definition, the pollutant GHGs shall also be subject to regulation at:~~

~~(A) A new stationary source that will emit or have the potential to emit 100,000 tpy or more CO_2e; or~~

~~(B) An existing stationary source that emits or has the potential to emit 100,000 tpy or more CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.~~]

(4) GHGs are subject to regulation for major stationary source prevention of significant deterioration permits as follows:

(A) For existing stationary sources, GHGs are subject to regulation (GHG BACT analysis) only if:

(i) the stationary source is major due to the potential to emit of a non-GHG pollutant;

(ii) the project would cause both a significant increase and significant net increase for a non-GHG pollutant; and

(iii) the project would cause both CO_2e increase and CO_2e net increase equal to or greater than 75,000 tpy.

(B) For new stationary sources, GHGs are subject to regulation (BACT analysis for GHGs) only if the stationary source:

(i) is major due to the potential to emit another pollutant; and

(ii) would have the potential to emit equal to or greater than 75,000 tpy of CO_2e emissions.

(5) If there is a change in federal law or EPA guidance that supersedes how GHGs are to be regulated in accordance with the federal definition of "subject to regulation," the regulation of GHG emissions under this section shall be in accordance with that specified in the revised law and/or guidance.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in State v. Tengan, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these instant amended HAR chapter 11-60.1 rules from November 19, 2013 to January 1, 2021.

We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.

The proposed change to **"Major modification"** is to correct a typographical error.

The definition of "**Major stationary source**" was revised to align with changes made to federal GHG regulations and guidance documents that came into effect subsequent to the last HAR revision. The revision clarifies that greenhouse gases are not included in the 100 tpy major source threshold.

The definition of "**Significant**" was revised to reference section (3) under the definition of "Subject to Regulation." Section (3) defines 75,000 tpy as the significant level for CO_2e instead of applying the value in 40 CFR 52.21(b)(23(ii).

The definition for "**subject to regulation**" was amended in order to align with current and future federal guidance for addressing PSD. A recent Supreme Court ruling has invalidated a portion of the federal Tailoring Rule which incorporated the first standards for Greenhouse Gases. This definition is being amended for PSD sources to align with current and future federal guidance for regulating GHGs. Current federal guidance for regulating GHGs is provided in EPA's December 19, 2014 Memorandum, Subject: Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements.

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§11-60.1-132 Source applicability. (a) This subchapter incorporates by reference, provisions of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality, as it existed on [~~November 19, 2013~~] January 1, 2021 and applies to owners or operators planning to construct a major stationary source or to make a major modification to such a stationary source. Provisions of 40 CFR Section 52.21 are additional requirements for considering an application for a covered source permit required by subchapter 5.

(b) No stationary source or modification to which the requirements of this subchapter apply shall begin actual construction without a covered source permit which states that the stationary source or modification would meet the requirements of 40 CFR Section 52.21.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in State v. Tengan, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these instant amended HAR chapter 11-60.1 rules from November 19, 2013 to January 1, 2021.

We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.

8. Amendments to Subchapter 8 Standards Of Performance For Stationary Sources

§11-60.1-161 New source performance standards. (a) This section applies to an owner or operator subject to a promulgated federal standard of performance for new stationary sources. An owner or operator of an affected facility shall comply with all applicable provisions of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources," as adopted and incorporated into these rules, including the following subparts:

* * *

(13) Subpart Ja, Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007;

[~~(13)~~](14) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978;

[~~(14)~~](15) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984;

[~~(15)~~](16) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984;

[~~(16)~~](17) Subpart O, Standards of Performance for Sewage Treatment Plants;

[~~(17)~~](18) Subpart Y, Standards of Performance for Coal Preparation Plants;

[~~(18)~~](19) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983;

[~~(19)~~](20) Subpart AAa, Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;

[~~(20)~~](21) Subpart GG, Standards of Performance for Stationary Gas Turbines;

(22) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;

[~~(21)~~](23) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006;

(24) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;

[~~(22)~~](25) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;

[~~(23)~~](26) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;

[~~(24)~~](27) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006;

(28) Subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;

[~~(25)~~](29) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;

[~~(26)~~](30) Subpart NNN, Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;

[~~(27)~~](31) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;

[~~(28)~~](32) Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;

[~~(29)~~](33) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities;

[~~(30)~~](34) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;

(35) Subpart XXX - Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014;

[~~(31)~~](36) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction Commenced After June 6, 2001; [~~and~~]

[~~(32)~~](37) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units [~~for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.~~];

(38) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006;

(39) Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;

(40) Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines;

(41) Subpart KKKK, Standards of Performance for Stationary Combustion Turbines;

(42) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units; and

(43) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.

(b) [~~Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting requirements by an applicable federal standard, any~~]Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to an applicable federal standard which requires the affected facility to obtain a Title V permit is subject to the application and permitting requirements of subchapter 5. If there is a conflict between the

application deadlines in subchapter 5 and the applicable federal standard, the earlier deadline shall apply. If there is a conflict between an applicable requirement of subchapter 5, or any other subchapter of these rules, and the applicable federal standard, the most stringent requirement shall apply. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4.

Justification:

This action updates Chapter **11-60.1-161** by adding new CFR subparts applicable to air permitting.

The proposed changes to **§11-60.1-161(b)** and the addition of new **§11-60.1-161 (c)** clarify that Title V permitting is required for sources not exempted from Title V by the federal regulations and that noncovered source permitting is required for sources exempt from Title V, but not exempt from the noncovered source permitting.

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§11-60.1-163 Federal plans. (a) This section applies to an owner or operator subject to a promulgated federal plan for designated or affected facilities, where the facility is not covered by an EPA approved state plan. "State plan" as used in this subsection means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR Part 60, subpart B that implements and enforces 40 CFR Part 60, subpart C.

* * *

(c) [~~Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from~~]Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Title V permitting [~~by~~]as specified in an applicable federal plan[~~, any owner or operator of a designated or affected facility~~] is subject to the application and permitting requirements of subchapter 5.

(d) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4.

Justification:

The proposed changes clarify that Title V permitting is required for sources not exempted from Title V by the federal regulations and that noncovered source permitting is required for sources exempt from Title V, but not exempt from the noncovered source permitting.

9. Amendments to Subchapter 9 Hazardous Air Pollutant Sources

§11-60.1-171 Definitions. As used in this subchapter:

* * *

"TLV book" means the "Documentation of the Threshold Limit Value and Biological Exposure Indices," [~~sixth~~]seventh edition, published by the American Conference of Governmental Industrial Hygienists, Inc.

Justification:
This amendment updates the proper reference.

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§11-60.1-174 Maximum achievable control technology (MACT) emission standards. (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have affected source(s) in a category or subcategory subject to a promulgated MACT emission standard. An owner or operator of an affected source shall comply with all applicable provisions of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories," including the following subparts:

* * *

(4) Subpart M, National [~~Perchloroethlylene~~] Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

* * *

(23) Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

[~~(23)~~](24) Subpart VV, National Emission Standards for Oil-Water Separators and Organic Water Separators;

(25) Subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2;

[~~(24)~~](26) Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins;

[~~(25)~~](27) Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;

[~~(26)~~](28) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;

(29) Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills;

[~~(27)~~](30) Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production;[~~and~~]

[~~(28)~~](31) Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing[~~.~~];

(32) Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines;

(33) Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines;

(34) Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters;

(35) Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

(36) Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units;

(37) Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(38) Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities;

(39) Subpart HHHHHH, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and

(40) Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(b) [~~Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.~~]Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to Title V permitting by an applicable MACT emission standard is subject to the application and permitting requirements of subchapter 5.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4.

[~~(c)~~](d) The deadlines for submitting the required initial notification, and applying for or obtaining a noncovered or covered source permit to address the MACT emission standard are as follows:

(1) The owner or operator of a new affected source subject to noncovered or covered source permitting shall submit a complete noncovered or covered source permit application for and obtain a noncovered or covered source permit prior to commencing construction or reconstruction of an affected source, except as provided below.

(2) The owner or operator of a new major affected source for which construction or reconstruction had commenced, and initial startup had not occurred before the standard's effective date, shall submit a complete and timely covered source permit application within sixty calendar days after the standard's effective date. The covered source permit application may be used to fulfill the initial notification requirements of 40 CFR §63.9(b).

(3) The owner or operator of:

(A) an existing affected source;
(B) a new nonmajor affected source for which construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date; or
(C) a new affected source for which construction or reconstruction had commenced and initial startup had occurred before the standard's effective date;

shall submit written notification to the director of being subject to the MACT emission standard within 120 calendar days after the effective date of the applicable standard or within 120 calendar days after the source becomes subject to the applicable standard. The owner or operator may submit an initial notification later than the deadline required above, if the applicable MACT standard sets a later deadline. Notification shall be provided pursuant to 40 CFR §63.9(b)(2). The owner or operator shall also submit a complete and timely noncovered or covered source permit application, as applicable, within twelve months after the effective date of the standard, or within twelve months after the source becomes subject to the standard.

[~~(d)~~](e) In addressing the MACT emission standard, the owner or operator of an affected source shall provide as part of the noncovered or covered source permit application, any other additional information listed in 40 CFR 63.5(d)(1)(ii), (2), and (3).

Justification:

This action updates Chapter **11-60.1-174** by adding new CFR subparts applicable to air permitting.

The proposed change to **§11-60.1-174(b) and (c)** clarifies that Title V permitting is required for sources not exempted from Title V by the federal regulations and that noncovered source permitting is required for sources exempt from Title V, but not exempt from the noncovered source permitting.

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§11-60.1-180 National emission standards for hazardous air pollutants. (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have source(s) that emit designated hazardous air pollutants listed in 40 CFR Part 61. An owner or operator of a stationary source shall comply with all applicable provisions of 40 CFR Part 61, entitled National Emission Standards for Hazardous Air Pollutants, including the following subparts:

(1) Subpart A, General Provisions;
(2) Subpart C, National Emission Standard for Beryllium;
(3) Subpart D, National Emission Standard for Beryllium Rocket Motor Firing;
(4) Subpart E, National Emission Standard for Mercury;
(5) Subpart J, National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene;
(6) Subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources);

(7) Subpart Y, National Emission Standard for Benzene Emissions From Benzene Storage Vessels;

(8) Subpart BB, National Emission Standard for Benzene Emissions from Benzene Transfer Operations; and

(9) Subpart FF, National Emission Standard for Benzene Waste Operations.

(b) [~~Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.~~]Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to Title V permitting by an applicable emission standard is subject to the application and permitting requirements of subchapter 5.

c) Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4.

Justification:

The proposed changes clarify that Title V permitting is required for sources not exempted from Title V by the federal regulations and that noncovered source permitting is required for sources exempt from Title V, but not exempt from the noncovered source permitting.

10. Amendments to Subchapter 10 Field Citations

§11-60.1-192 Offer to settle; penalties. (a) A field citation is an offer to settle an administrative case. In lieu of issuing a formal notice and finding of violation and order, the director may, at the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to a person who:

(1) Causes or permits visible fugitive dust to become airborne without taking reasonable precautions, in violation of subsection 11-60.1-33(a);

(2) Causes or permits the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates, in violation of subsection 11-60.1-33(b);

(3) Cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period, as determined by using EPA 40 CFR 51 Appendix M, Method 203B, in violation of subsection 11-60.1-33(c);

[~~(3)~~](4) Causes or allows open burning in violation of subsection 11-60.1-52(a);

[~~(4) Fails to submit timely location change information for the permittee's temporary noncovered or covered source permit, in violation of subsection 11-60.1-69(c) or 11-60.1-91(f), respectively;~~]

(5) Fails to comply with the notification requirement for fires found in subsection 11-60.1-52(c);

(6) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(d);

(7) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(e) and allowed under subsections 11-60.1-52(f) and 11-60.1-55;

(8) Fails to comply with any condition found in a permittee's agricultural burning permit, in violation of the specific condition found in the permittee's applicable agricultural burning permit;

(9) Fails to comply with any condition or requirement found in a permittee's noncovered source permit, in violation of the specific condition or requirement found in the permittee's applicable noncovered source permit;

(10) Fails to comply with any condition or requirement found in a permittee's covered source permit, in violation of the specific condition or requirement found in the permittee's applicable covered source permit;

[~~(5)~~](11) Fails to obtain a noncovered source permit, in violation of subsection 11-60.1-62(a); or

[~~(6)~~](12) Fails to obtain a covered source permit, in violation of subsection 11-60.1-82(a).

(b) The notice of citation shall assess the following penalties for the violations in subsection (a):

(1) Any person who violates paragraph (a)(1) shall be fined $300 for a first violation, and $500 for a subsequent violation.

(2) Any person who violates paragraph (a)(2) shall be fined $500 for a first violation, and $1000 for a subsequent violation.

(3) Any person who violates paragraph (a)(3) shall be fined $200 for a first violation, and $400 for a subsequent violation.

[~~(3)~~](4) Any person who violates paragraph (a)[~~(3)~~](4) shall be fined $100 for a first violation, and $300 for a subsequent violation.

[~~(4) Any person who violates paragraph (a)(4) shall be fined $500 for a first violation, and $1000 for a subsequent violation.~~]

(5) Any person who violates paragraph (a)(5) shall be fined $250 for a first violation, and $500 for a subsequent violation.

(6) Any person who violates paragraph (a)(6) shall be fined $250 for a first violation, and $500 for a subsequent violation.

(7) Any person who violates paragraph (a)(7) shall be fined $250 for a first violation, and $500 for a subsequent violation.

(8) Any person who violates paragraph (a)(8) shall be fined $250 for a first violation, and $500 for a subsequent violation.

(9) Any person who violates paragraph (a)(9) shall be fined $500 for a first violation, and $1,000 for a subsequent violation.

(10) Any person who violates paragraph (a)(10) shall be fined $750 for a first violation, and $1,500 for a subsequent violation.

[~~(5)~~](11) Any person who violates paragraph (a)[~~(5)~~](11) shall be fined $750 for a first violation, and $1500 for a subsequent violation.

[~~(6)~~](12) Any person who violates paragraph (a)[~~(6)~~](12) shall be fined $1000 for a first violation, and $2000 for a subsequent violation.

Justification:

Field citations were created as an intermediate option to CAB issuing an informal Notice of Violation and a formal Notice and Finding of Violation and Order. An Informal Notice of Violation carries no monetary penalty and can be ineffective. Processing and issuing a formal Notice and Finding of Violation and Order can be a lengthy, time consuming and resource intensive process, especially if the violation is challenged. It may also involve negotiating a Consent Order if the violation(s) cannot be settled, or may include legal hearings, a final decision by the Director, and appeals to the Circuit and Supreme Court if the violation(s) is contested. A formal Notice of Violation and Order will also most likely entail a higher penalty amount for a Violator. In comparison, a field citation is an admission of guilt by the Violator, has a set fine amount that is generally less than a penalty for a formal Notice and Finding of Violation and Order, and allows both the Violator and CAB to settle the violation in an expedited manner with much less time and cost involved. A violation of any field citation category may be upgraded to a formal Notice and Finding of Violation and Order by CAB if the circumstances warrant it. By having the option of an expedited settlement through the issuance of a field citation, the CAB is better equipped to bring a source into compliance in a more efficient manner. A field citation provides a measured and reasonable fine amount that is more substantial than an Informal Notice of Violation, yet not as time consuming and costly for all parties as filing a Formal Notice of Violation and Order.

When the field citations were first codified in 2001, CAB intentionally limited their applicability to just four (4) specific violations, then added a few more in subsequent years. This amendment proposes to add seven (7) violation categories in §11-60.1-192(a). The proposed **§11-60.1-192(a)(3)** category, relates to violations of the newly added subsection 11-60.1-33(c) on fugitive dust. The **proposed §11-60.1-192(a)(5), (6), and (7**) categories are for violations of fires which require notification and approval by the Director found in subsection 11-60.1-52(c), (d) and (e). The proposed **§11-60.1-192(a)(8), (9), and (10)** categories are for violations of a

permittee's agricultural burning, noncovered and/or covered source permit, respectively. The existing §11-60.1-192(a)(4), which applies to one requirement of a temporary noncovered or covered source permit, is being removed because this will be more broadly covered by the newly proposed §11-60.1-192(a)(6) and (7). The amendment also sets forth additional monetary penalties for each of the new violation categories found in §11-60.1-192(b).

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§11-60.1-193 Acceptance or withdrawal of citation. (a) To accept the director's offer to settle, the person to whom a field citation was issued must, within twenty days of its issuance, correct the violations, sign the settlement agreement, and deliver the signed agreement with payment of the penalty by check or money order to the State of Hawaii. The director, on the director's own initiative, or upon request from the person to whom a field citation was issued, may extend the deadline to accept the offer to settle if the director determines that reasonable justification exists for the extension.

(b) By signing the settlement agreement, the person to whom a field citation was issued agrees to:

(1) waive the person's right to a contested case hearing pursuant to chapter 91, HRS;
(2) waive any challenge to the field citation;
(3) pay the penalty assessed;
(4) correct the violation; and
(5) enter into the settlement agreement.

(c) The settlement agreement is not effective until it is signed by both the person to whom the field citation was issued and by the director. Approval by the director shall be at the director's sole discretion.

(d) The director may withdraw the field citation if the person to whom it is issued:

(1) declines to accept the director's offer to settle;
(2) fails to satisfactorily meet any of the conditions set forth in subsection 11-60.1-193(a); or
(3) fails to satisfactorily meet any of the conditions set forth in §11-60.1-193(b), in which case the director may bring a formal administrative action under HRS, §342B-42 and pursue any remedies available under this chapter, HRS, chapter 342B, or any other law.

Justification:

The proposed amendments are for consistency and clarification.

11. Amendments to Subchapter 11 Greenhouse Gas Emissions

§11-60.1-204 Greenhouse gas emission reduction plan. (a) This section applies to an owner or operator of a permitted covered source, except for municipal waste combustion operations, with the potential to emit GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 tons per year CO_2e. Each owner or operator of an affected source shall submit a GHG emission reduction plan for the director's approval within twelve (12) months of the effective date of this section. An owner or operator may submit a written request for an extension 30 days prior to the deadline.

* * *

(c) Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable pursuant to the GHG control assessment described in subsection 11-60.1-204(d), each GHG emission reduction plan shall establish a minimum facility-wide GHG emissions cap in tons per year CO_2e, to be achieved by 2020 and maintained thereafter. The minimum facility-wide GHG emissions cap shall be sixteen percent (16%) below the facility's total baseline GHG emission levels less biogenic CO_2 emissions, as follows:

Facility-wide cap = (tpy CO_2e)	(1 – 0.25)) (1-0.16) X	Facility Total Baseline Emissions (tpy CO_2e)	-	Facility Baseline Biogenic CO_2 Emissions

Where:
Facility Total Baseline Emissions (tpy CO_2e) =
Baseline[Biogenic [~~CO_2~~-]+ Non-Biogenic GHG Emissions]

Calendar year 2010 shall be used as the baseline year, unless the owner or operator can provide records for the director's approval demonstrating another year or an average of other years to be more representative of normal operations. Newly permitted sources without an operating history, shall estimate normal operations for the director's approval in establishing the facility-wide GHG emissions cap.

Justification:
Subchapter 11 was promulgated on June 30, 2014 to establish the Greenhouse Gas (GHG) program. The text to be deleted in the note below the equation was mistakenly included in the 2014 action.

§11-60.1-206 Public petitions. (a) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a draft GHG emission reduction plan, may petition the department for a contested case hearing by submitting a written request to the director.

(b) The petition shall be based solely upon objections to the draft GHG emission reduction plan, that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(c) Any petitioner shall file a petition for a contested case hearing within ninety days of the date of the department's approval or disapproval of the proposed draft GHG emission reduction plan.

(d) Notwithstanding the provisions of subsection (b), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(e) Except as provided in subsection (f), any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing. If a draft GHG emission reduction plan is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(f) The effective date of draft GHG emission reduction plan shall be as specified for permits in 40 CFR Part 124.15 as it existed on [~~November 19, 2013~~]January 1, 2021.

(g) Any person may petition for a contested case hearing for the director's failure to take final action on an application for draft GHG emission reduction plan, within the time required for permits by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft GHG emission reduction.

(h) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order.

Justification:

The federal law that will apply in the HAR chapter 11-60.1 rules will always be the federal law as it existed at the time when the new/amended rules are officially promulgated, or that existed on a certain date that is noted in the amended HAR chapter 11-60.1 rules. Any future amended federal law will not be applicable through the HAR chapter 11-60.1 rules, unless and until the rules are amended and adopted again in the future, specifically incorporating the amended federal laws. Otherwise, to allow any federal law that has been incorporated into the HAR chapter 11-60.1 rules to be automatically updated in the rules, by future amendments of the law by the federal government, without the DOH (State), specifically incorporating the future amended federal law into new rules, would be an improper delegation of legislative authority, as proscribed by the Hawaii Supreme Court in State v. Tengan, 67 Haw. 451, 691 P.2d 365.

In this case, because of the delay in finalizing the amended rules, the DOH-CAB is changing the date of the existing federal law to be incorporated by reference by these instant amended HAR chapter 11-60.1 rules from November 19, 2013 to January 1, 2021.

We are changing the incorporation date of the federal laws to the latest date possible so that we incorporate by reference the latest, most recent version of the federal laws.

DEPARTMENT OF HEALTH
Rules Amending Title 11
Hawaii Administrative Rules

1. Chapter 60.1 of Title 11, Hawaii Administrative Rules, entitled "Air Pollution Control" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 60.1

AIR POLLUTION CONTROL

Subchapter 1 General Requirements

Subchapter 9 Hazardous Air Pollutant Sources

Subchapter 10 Field Citations

Subchapter 11 Greenhouse Gas Emissions

Historical note: This chapter is based substantially upon chapter 11-60. [Eff 11/29/82; am and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

SUBCHAPTER 1

GENERAL REQUIREMENTS

§11-60.1-1 Definitions. As used in this chapter, unless otherwise defined for purposes of a particular subchapter or section of this chapter:

"$\mu g/m^3$" means micrograms per cubic meter.

"Act" means the Clean Air Act, as amended, 42 United States Code Section 7401, et seq.

"Administrative permit amendment" means a permit amendment which:

(1) Corrects typographical errors;

(2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(3) Requires more frequent monitoring or reporting by the permittee;

(4) Consolidates the terms and conditions of two or more noncovered source permits into one noncovered source permit for a facility;

(5) Consolidates the terms and conditions of two or more covered source permits into one covered source permit for a facility;

(6) Incorporates applicable requirements for any insignificant activity listed in section 11-60.1-82(f) or (g), provided the activity is not by itself subject to subchapters 8 or 9, does not cause a noncovered stationary source to become a major source, and does not cause the stationary source to become subject to provisions of subchapters 7, 8, or 9; or

(7) Allows for a change in ownership or operational control of a source provided the department has determined that no other change in the permit is necessary, and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability

between the current and new permittees has been submitted to the director.

"Administrator" means the Administrator of the EPA or the Administrator's designee.

"Agricultural burning permit" means written authorization from the director to engage in agricultural burning.

"Air pollutant" has the same meaning as in chapter 342B, HRS.

"Air pollution" means the presence in the outdoor air of substances in quantities and for durations which may endanger human health or welfare, plant or animal life, or property or which may unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards.

"Air pollution control equipment" means equipment or a facility of a type intended to eliminate, prevent, reduce, or control the emissions of any regulated or hazardous air pollutant to the atmosphere.

"Allowable emissions" means the emissions of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate, capacity, or hours of operations, or any combination of these, and the most stringent of the following:

(1) The applicable standards set forth in the Standards of Performance for New Stationary Sources or the National Emissions Standards for Hazardous Air Pollutants;

(2) Any Hawaii state implementation plan emission limitation, including those with a future compliance date; and

(3) The emission rates specified as a federally enforceable permit condition, including those with a future compliance date.

"Applicant" means any person who submits an application for a permit.

"Authority to construct" means the permit issued by the director pursuant to repealed chapter 11-60 giving approval or conditional approval to an owner or operator to construct an air pollution source.

"Best available control technology" means an emissions limitation including a visible emission standard based on the maximum degree of reduction for each regulated air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard promulgated pursuant to 40 CFR Parts 60, 61, and 63. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

"Biogenic CO_2 emissions" mean CO_2 emissions from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of biogenic CO_2 emissions include, but are not limited to: CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;

CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes; CO_2 from fermentation during ethanol production or other industrial fermentation processes; CO_2 from combustion of the biological fraction of municipal solid waste or biosolids; CO_2 from combustion of the biological fraction of tire-derived fuel; and CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

"Biomass fuel burning boilers" means fuel burning equipment in which the actual heat input of biomass fuel exceeds the actual heat input of fossil fuels, calculated on an annual basis.

"BTU" means British thermal unit.

"Carbon dioxide" means a gas emitted naturally or from human activities such as the burning of fossil fuels and biomass, land-use changes, and industrial processes. It is the principal anthropogenic greenhouse gas that affects the Earth's radiative balance. It is the reference gas against which other greenhouses gases are measured and therefore has a global warming potential of one.

"CFR" means the Code of Federal Regulations.

"CO_2" means carbon dioxide.

"CO_2 equivalent emissions" means the amount of greenhouse gases emitted as computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs, by the gases' associated global warming potential values published at 40 CFR Part 98, Subpart A, Table A-1, and summing the resultant values of each gas to compute a TPY CO_2 equivalent.

"CO_2e" means carbon dioxide equivalent emissions.

"Commenced" as applied to construction of or modification to a stationary source means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin a continuous program of actual operation or on-site construction of the source; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual operation or construction of the source.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary to begin and reasonably complete processing the application.

"Compliance plan" means a plan which includes a description of how a source will comply with all applicable requirements, and includes a schedule of compliance under which the owner or operator will submit progress reports to the director no less frequently than every six months.

"Construction" means a physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit which would result in a change in actual emissions.

"Covered source" means:

(1) Any major source;

(2) Any source subject to a standard or other requirement under Section 111 of the Act;

(3) Any source subject to an emissions standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Act; and

(4) Any source subject to the rules for prevention of significant deterioration of air quality as established in subchapter 7.

Exemptions from the requirement to obtain a covered source permit are identified in 11-60.1-82(d).

"Covered source permit" means a permit or group of permits covering a covered source that is issued, renewed, or amended pursuant to this chapter. A covered source permit generally is synonymous with a

"Title V," "operating," or "part 70" permit as referred to in federal regulations or standards.

"Credible evidence" means various kinds of information other than reference test data, much of which is already available and utilized for other purposes, that may be used to determine compliance or noncompliance with emission standards.

"Department" means the department of health of the State of Hawaii.

"Director" means the director of health of the State of Hawaii or an authorized agent, officer, or inspector.

"Draft permit" means the version of a permit for which the director offers public notice, including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 11-60.1-99.

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error, and shall not include an exceedance of a health-based emission limitation.

"Emission" means the act of releasing or discharging air pollutants into the ambient air from any source or an air pollutant which is released or discharged into the ambient air from any source.

"Emission limitation" means a requirement established by the director or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications,

or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated or hazardous air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Existing covered source" means a stationary covered source that has received an authority to construct permit, commenced construction or modification, or was in operation prior to the effective date of this chapter.

"Existing noncovered source" means a stationary noncovered source that has received an authority to construct permit, commenced construction or modification, or was in operation prior to the effective date of this chapter.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the Hawaii State implementation plan; or any permit requirements established pursuant to 40 CFR Part 52.21 or all permit terms and conditions in a covered source permit except those specifically designated as not federally enforceable or regulations approved pursuant to 40 CFR Part 51 Subpart I, including operating permits issued under an EPA-approved program that is incorporated into this subchapter and expressly requires adherence to any permit issued under such program.

"Fossil fuel" means a hydrocarbon deposit, such as petroleum, coal, or natural gas, derived from the accumulated remains of plants and animals of a previous geologic time and used for fuel.

"Fuel burning equipment" means a furnace, boiler, internal combustion engine, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power.

"Fugitive dust" means the emission of solid airborne particulate matter from any source other than combustion.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Gas-tight" means no detectable gaseous emissions.

"Global warming potential" means the relative scale of how much a given mass of greenhouse gas is estimated to heat up the atmosphere in comparison to carbon dioxide having a global warming potential of one.

"Greenhouse gases" means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydroflurocarbons, perflurocarbons, and sulfur hexafluoride.

"GHG or GHGs" means greenhouse gas or greenhouse gases.

"Hazardous air pollutants" means those hazardous air pollutants listed pursuant to Section 112(b) of the Act and any other hazardous air pollutants listed in section 11-60.1-172.

"HRS" means the Hawaii Revised Statutes.

"Major source" means:

(1) For hazardous air pollutants, a source or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of the same person (or persons under common control) and that emits or has the potential to emit considering controls and fugitive emissions, any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more of a single pollutant or twenty-five tons per year or more of any combination of pollutants; or

(2) For any other pollutant, a source, or a group of stationary sources that is located on one or more contiguous or adjacent properties, and is under common control of

the same person (or persons under common control) belonging to a single major industrial grouping (i.e., all having the same two-digit Standard Industrial Classification Code)] and that emits or has the potential to emit, considering controls, one hundred tons per year or more of any air pollutant subject to regulation other than the pollutant greenhouse gases. Fugitive emissions from the stationary source shall be considered in determining whether the stationary source is major, if it belongs to one of the following categories of stationary sources:

(A) Coal cleaning plants (with thermal dryers);
(B) Kraft pulp mills;
(C) Portland cement plants;
(D) Primary zinc smelters;
(E) Iron and steel mills;
(F) Primary aluminum ore reduction plants;
(G) Primary copper smelters;
(H) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
(I) Hydrofluoric, sulfuric, or nitric acid plants;
(J) Petroleum refineries;
(K) Lime plants;
(L) Phosphate rock processing plants;
(M) Coke oven batteries;
(N) Sulfur recovery plants;
(O) Carbon black plants (furnace process);
(P) Primary lead smelters;
(Q) Fuel conversion plants;
(R) Sintering plants;
(S) Secondary metal production plants;
(T) Chemical process plants – the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural

fermentation included in NAICS codes 325193 or 312140;

(U) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and

(AA) Any other stationary source which as of August 7, 1980 is being regulated by a standard promulgated pursuant to Section 111 or 112 of the Act.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation shall not be considered malfunctions.

"Maximum achievable control technology" means the maximum degree of reduction in emissions of the hazardous air pollutants, on a case-by-case basis, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, that is deemed achievable.

"Monitoring device" means the total equipment, required under the monitoring of operations sections in all applicable subparts, used to measure and record (if applicable) process parameters. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed.

"Month" means a calendar month.

"NAICS" means the North American Industry Classification System used by business and government to classify business establishments according to type of economic activity (process of production) in the United States, Canada, and Mexico. The NAICS numbering system employs a six-digit code at the most detailed industry level. The first two digits designate the largest business sector, the third digit designates the subsector, the fourth digit designates the industry group, and the fifth digit designates particular industries. The last digit designates national industry types.

"NAAQS" means the National Ambient Air Quality Standards contained in 40 CFR Part 50.

"National Emission Standards for Hazardous Air Pollutants" means the federal emission standards contained in 40 CFR Parts 61 and 63.

"Necessary preconstruction approvals or permits" means those permits or approvals required pursuant to federal air quality control laws and regulations, chapter 342B, HRS, and air quality control rules adopted pursuant to chapter 342B.

"New covered source" means a covered source that commenced construction or modification on or after the effective date of this chapter.

"New noncovered source" means a noncovered source that commenced construction or modification on or after the effective date of this chapter.

"No detectable emissions" means less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR Part 60.

"Noncovered source" means a stationary source constructed, modified, or relocated after March 20, 1972, that is not a covered source.

"Nonroad engine" means:

(1) Except as discussed in paragraph (2) of this definition, an internal combustion engine that meets any of the following criteria:

(A) It is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling

itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).

(B) It is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).

(C) By itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if it meets any of the following criteria:

(A) The engine is used to propel a motor vehicle, an aircraft, or equipment used solely for competition.

(B) The engine is regulated under 40 CFR Part 60, (or otherwise regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411)).

(C) The engine otherwise included in subparagraph (1)(C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that

remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. See 40 CFR Section 1068.31 for provisions that apply if the engine is removed from the location.

"Opacity" means a condition which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view.

"Owner or operator" means a person who owns, leases, operates, controls, or supervises a stationary source.

"Particulate matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

"Permit" means written authorization from the director to construct, modify, relocate, or operate any regulated or hazardous air pollutant source. A permit authorizes the owner or operator to proceed with the construction, modification, relocation, or operation of a regulated or hazardous air pollutant source, and to cause or allow the emission of such air pollutants in a specified manner or amount, or to do any act not forbidden by chapter 342B, HRS, the Act, rules adopted pursuant to chapter 342B, or regulations promulgated pursuant to the Act, but requiring review by the department.

"Permit renewal" means the process by which a permit is reissued at the end of its term.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, federal government agency, state, county, commission, political subdivision of the State, or, to the extent they are subject to this chapter, the United States or any interstate body.

"$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

"Potential annual heat input" means the product of the maximum rated heat input capacity (megawatts or million BTU per hour) times 8760 hours per year.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator and the director.

"PSD" means prevention of significant deterioration.

"Reconstruction" means the replacement of components at an existing stationary source to such an extent that the fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable entirely new stationary source.

"Regulated air pollutant" means:

(1) Nitrogen oxides or any volatile organic compound;
(2) Greenhouse gases;
(3) Any air pollutant for which a national or state ambient air quality standard has been promulgated;
(4) Any air pollutant that is subject to any standard adopted pursuant to chapter 342B, HRS, or promulgated pursuant to Section 111 of the Act;

(5) Any Class I or II substance subject to a standard promulgated pursuant to or established by Title VI of the Act; or

(6) Any air pollutant subject to a standard promulgated pursuant to Section 112 or other requirements established pursuant to Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including:

(A) Any air pollutant subject to requirements of Section 112(j) of the Act. If the Administrator does not promulgate a standard by the date established pursuant to Section 112(e) of the Act, any air pollutant for which a subject source would be major shall be considered a regulated air pollutant on the date eighteen months after the applicable date established pursuant to Section 112(e) of the Act; and

(B) Any air pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirements.

"Responsible official" means:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or an authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding

$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the director;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency: a principal executive officer, ranking elected official, or an authorized representative as approved by the director. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

"Risk assessment" means the process of determining the potential adverse health effects of human exposure to environmental hazards. The process includes hazard identification, dose-response assessment, exposure assessment, and risk characterization by quantifying the magnitude of the public health problem that results from the hazard.

"SICC" means Standard Industrial Classification Code.

"Significant" means in reference to a net emissions increase or the potential of a source to emit:

(1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:

(A) Carbon monoxide: one hundred tpy;

(B) Nitrogen oxides: forty tpy;

(C) Sulfur dioxide: forty tpy;

(D) Particulate matter: a total of twenty-five tpy of particulate matter of all sizes;

(E) PM_{10}: fifteen tpy;

(F) $PM_{2.5}$: ten tpy of direct $PM_{2.5}$, forty tpy of sulfur dioxide, forty tpy of nitrogen oxide;

(G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides;

(H) Greenhouse Gases: forty thousand tpy CO_2e[~~(mass biogenic CO_2 emissions accounted for as provided in the "subject to regulation" definition)~~]; or

(I) Lead: 0.6 tpy.

"Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

"Source" means property, real or personal, which emits or may emit any air pollutant.

"Stack" means a point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standard Industrial Classification Code" means Major Group Number, Industry Group Number, or Industry Number as described in the Standard Industrial Classification Manual, 1987.

"Standards of Performance for New Stationary Sources" means the federal emission standards contained in 40 CFR Part 60.

"Stationary source" means any piece of equipment or any activity at a building, structure, facility, or installation that emits or may emit any air pollutant.

"Subject to regulation" means for any pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in 40 CFR Subchapter C of Chapter I, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. ~~Except that~~ [~~GHG emissions shall be subject to regulation from a stationary source emitting or having the potential to emit 100,000 tpy or more of CO_2 equivalent emissions and GHGs that equal~~

~~or exceed 100 tpy on a mass basis for Title V or thresholds specified in Subchapter 7 for PSD.~~]

"Submerged fill pipe" means a fill pipe the discharged opening of which is entirely submerged when the liquid level is six inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean a fill pipe the discharge opening of which is eighteen inches above the bottom of the tank.

"Tpy" means tons per year.

"Upon program approval" means the date the State of Hawaii covered source permit program is granted full or interim approval by the Administrator pursuant to 40 CFR Part 70 and thereafter.

"Valid covered source permit" or "valid noncovered source permit" means a covered or noncovered source permit that has not been canceled pursuant to section 11-60.1-9, has not been terminated or suspended pursuant to section 11-60.1-10, and has not expired or which remains in effect pursuant to subsection 11-60.1-82(b), or 11-60.1-62(b).

"Volatile organic compound" means a compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than those determined to have negligible photochemical reactivity as listed in the definition of "volatile organic compound" in 40 CFR §51.100.

"Volatile organic compound water separator" means a tank, box, sump, or other container which is primarily designed to separate and recover volatile organic compounds from water. Petroleum storage tanks from which water incidental to the process is periodically removed are not considered volatile organic compound water separators. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS

§§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52

§11-60.1-2 Prohibition of air pollution. No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing approval in writing from the director. The written approval from the director shall not release any person from compliance with any other applicable statutes, local laws, regulations, or ordinances. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-2 is based substantially upon §11-60-2. [Eff 11/29/82; am, ren §11-60-2 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-2.5 Credible evidence. Nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence information, relevant to whether a source would have been in compliance with any applicable requirements if the appropriate performance or compliance test or procedure had been performed. [Eff and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

§11-60.1-3 General conditions for considering applications. The director shall approve an application for a noncovered or covered source permit if the applicant can show to the satisfaction of the

director that all applicable provisions of this chapter will be complied with, including, as applicable:

(1) The maintenance and attainment of any NAAQS and any state ambient air quality standard;
(2) General prohibitions pursuant to subchapter 2;
(3) Requirements for noncovered and covered sources pursuant to subchapters 4 and 5;
(4) Applicable Standards of Performance for New Stationary Sources (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), National Emission Standards for Hazardous Air Pollutants for Source Categories (40 CFR Part 63), or any other federal standard or other requirement established pursuant to the Act.
(5) Prevention of significant deterioration review requirements pursuant to subchapter 7;
(6) Applicable standards of performance for stationary sources pursuant to subchapter 8; and
(7) Requirements for stationary sources of hazardous air pollutants and greenhouse gases pursuant to subchapters 9 and 11, respectively. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-4 Certification. Every application form, report, compliance plan, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required pursuant to this chapter shall state that, based on information and

belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-5 Permit conditions. In addition to the conditions authorized in sections 11-60.1-68 and 11-60.1-90, the director may impose more restrictive conditions in a noncovered or covered source permit to further limit the air pollutants and operation of the source. In determining whether to impose more restrictive conditions, the director shall consider the relevant circumstances of each individual case, including the availability of a reasonable control technology, cleaner fuels, or a less polluting operating process; the consideration of the existing air quality and the resulting degradation; the protection of the public health, welfare and safety; and any information, assumptions, limitations, or statements made in conjunction with a permit application. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-5 is based substantially upon §11-60-47. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-6 Holding of permit. (a) Each noncovered or covered source permit, or a copy thereof, shall be maintained at or near the stationary source for which the noncovered or covered source permit was issued and shall be made available for inspection upon the director's request.

(b) No person shall willfully deface, alter, forge, counterfeit, or falsify a noncovered or covered source permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-6 is based substantially upon §11-60-49. [Eff 11/29/82; am, ren §11-60-49 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-7 Transfer of permit. (a) Except as provided in sections 11-60.1-69 and 11-60.1-91, all noncovered and covered source permits issued pursuant to this chapter shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

(b) All noncovered and covered source permits issued pursuant to this chapter shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the director. A request for transfer from one person to another shall be made on a permit transfer application form furnished by the director. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-7 is based substantially upon §11-60-50. [Eff 11/29/82; am, ren §11-60-50 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-8 Reporting discontinuance. Within thirty days of permanent discontinuance of the construction, modification, relocation, or operation of any noncovered or covered source, the discontinuance shall be reported in writing to the

director by a responsible official of the source. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-8 is based substantially upon §11-60-54. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-9 Cancellation of a noncovered or covered source permit. (a) If construction authorized by a noncovered source permit is not commenced within twelve months after the noncovered source permit takes effect, is discontinued for a period of twelve months or more, or is not completed within a reasonable time, the noncovered source permit shall become invalid with respect to the authorized construction.

(b) If construction authorized by a covered source permit is not commenced within eighteen months after the covered source permit takes effect, is discontinued for a period of eighteen months or more, or is not completed within a reasonable time, the covered source permit shall become invalid with respect to the authorized construction.

(c) Subsections (a) and (b) shall not apply to phased construction projects. Instead, each phase shall commence construction within eighteen months for a covered source, or twelve months for a noncovered source, of the projected and approved commencement dates in the permit.

(d) The director may extend the specified periods upon a satisfactory showing that an extension is justified. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-9 is based substantially upon §11-60-52. [Eff 11/29/82; am, ren §11-60-52 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-10 Permit termination, suspension, reopening, and amendment. (a) The director, at the director's sole discretion or on the petition of any person, may terminate, suspend, reopen, or amend any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, HRS, the director determines that:

(1) The permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;
(2) Permit action is required to assure compliance with the requirements of the Act; chapter 342B, HRS; and this chapter;
(3) Permit action is required to address additional requirements of the Act; chapter 342B, HRS; and this chapter;
(4) There is a violation of any condition of the permit;
(5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
(6) The source is constructed or operated not in accordance with the application for the noncovered or covered source permit and any information submitted as part of the application;
(7) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
(8) More frequent monitoring or reporting by the permittee is required; or
(9) Such is in the public interest, as determined pursuant to section 342B-27, HRS.

(b) The provisions of this section are supplemental to the provisions of sections 11-60.1-72 and 11-60.1-98. [Eff 11/26/93; comp 10/26/98; am and

comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-10 is based substantially upon §11-60-53. [Eff 11/29/82; am, ren §11-60-53 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-11 Sampling, testing, and reporting methods. (a) All sampling and testing shall be made and the results calculated in accordance with the reference methods specified by EPA, or in the absence of an EPA reference method, test procedures approved by the director. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.

(b) The department may conduct tests of emissions of air pollutants from any source. Upon request of the director, an owner or operator of a stationary source may be required to conduct tests of emissions of air pollutants at the owner or operator's expense. The owner or operator of the stationary source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emissions of air pollutants.

(c) The director may require the owner or operator of any stationary source to maintain files on information concerning pertinent process and material flow, fuels used, nature and amount and time periods or durations of emissions, or any other information as may be deemed necessary by the director to determine whether the stationary source complies with applicable emission limitations, NAAQS, any state ambient air quality standard, or other provisions of this chapter in a permanent form suitable for inspection or in a manner authorized by the director.

(d) The information recorded shall be summarized and reported to the director as specified in the permit and in accordance with any requirement of this chapter. Recording periods shall be January 1 to June 30 and July 1 to December 31, or any other period specified by the director, except the initial recording period shall commence on the date the director issues the notification of the recordkeeping requirements. The director may require the owner or operator to submit any reported summary to the Administrator.

(e) Information recorded by the owner or operator of a stationary source and copies of the summarizing reports submitted to the director shall be retained by the owner or operator for a specified time period from the date on which the information is recorded or the pertinent report is submitted. The specified time period shall be as required in sections 11-60.1-68(5)(F) or 11-60.1-90(7)(H) or as identified within an applicable requirement [~~of~~]for the stationary source.

(f) Owners or operators of stationary sources shall correlate applicable emission limitations and other requirements within the report. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-11 is based substantially upon §11-60-15. [Eff 11/29/82; am and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-12 Air quality models. (a) All required estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W.

(b) Where an air quality model specified in [~~Appendix A of~~] 40 CFR Part 51, Appendix W is inappropriate, the model may be modified or another

model substituted on written request to and written approval from the director. The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment, on all proposed modifications or substitutions of an air quality model. Written approval from the director, and EPA through the director shall be obtained for any modification or substitution. Guidelines identified in 40 CFR Part 51, Appendix W for substituting or using alternate models shall be used in determining the acceptability of a substitute or alternate model. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-12 is based substantially upon §11-60-17. [Eff and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-13 Operations of monitoring stations. The EPA monitoring requirements of [~~Appendix B~~] Appendices A, C, D and E to 40 CFR Part 58, "Ambient Air Quality Surveillance," shall be met as a minimum during the operation of any monitoring stations required by the director or this chapter. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-13 is based substantially upon §11-60-18. [Eff and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-14 Public access to information. (a) Except as provided in subsection (b), the following information shall be considered government records and

as such shall be available for public inspection pursuant to chapter 92F, HRS, unless access is restricted or closed by law:

(1) All permit applications;
(2) All supporting information for permit applications;
(3) Compliance plans and schedules;
(4) Reports and results associated with performance tests and continuous emission monitors;
(5) Ambient air monitoring data and emissions inventory data;
(6) Certifications;
(7) Any other information submitted to the department pursuant to the noncovered and covered source permit program;
(8) Proposed GHG emission reduction plans;
(9) Permits; and
(10) Public comments or testimonies received during any public comment period or public hearing.

(b) Any owner or operator of an existing or proposed noncovered or covered source may request confidential treatment of specific information, including information concerning secret processes or methods of manufacture, by submitting a written request to the director at the time of submission, and clearly identifying the specific information that is to be accorded confidential treatment. With respect to each item of confidential information, the owner or operator requesting that it be designated as confidential shall provide the following documentation:

(1) How each item of information concerns secret processes, secret methods of manufacture, or is determined to be confidential pursuant to chapter 92F, HRS;
(2) Who has access to each item of information;
(3) What steps have been taken to protect the secrecy of each item of information; and
(4) Why it is believed each item of information must be accorded confidential treatment and

the anticipated prejudice should disclosure be made.

(c) Any information submitted to the department without a request for confidentiality in accordance with this section shall be considered a public record.

(d) Upon a satisfactory showing to the director by any owner or operator that records, reports, or information, or particular part thereof, to which the director has access pursuant to this chapter, contain information of a confidential nature, including information concerning secret processes or methods of manufacture, these records, reports, or information shall be kept confidential except that such records, reports, or information may be disclosed to other state and federal officers or employees concerned with carrying out this chapter or when relevant in any proceeding pursuant to this chapter. If required by EPA, all records, reports, and information determined by the owner or operator to be confidential shall be submitted directly to EPA. Neither the contents of the permit nor emissions data shall be entitled to confidentiality protection.

(e) Records, reports, or information for which confidentiality has been claimed may be disclosed only after the requirements of section 342B-31(d), HRS, have been met and the person requesting confidentiality has had an opportunity to obtain judicial review pursuant to subsection (f).

(f) Any person who has claimed confidentiality for records, reports, or other information and whose claim was denied by the director may obtain administrative review and subsequent judicial review of the denial pursuant to chapter 91, HRS. Records which are the subject of a judicial review shall not be released until the judicial review is complete and only if the court authorizes such release.

(g) All requests for public records shall be in writing, shall be addressed to the director, and shall identify or describe the character of the requested record. Upon approval by the director, the requested public record shall be available to the requestor for inspection and copying during established office

hours. The director shall charge the requester a reasonable cost for reproduction of any public record, but not less than twenty-five cents per page, sheet, or fraction thereof. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-15 Reporting of equipment shutdown. (a) In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the director at least twenty-four hours prior to the planned shutdown. The prior notice shall include:

(1) Identification of the specific equipment to be taken out of service as well as its location and permit number;

(2) The expected length of time that the air pollution control equipment will be out of service;

(3) The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period;

(4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period; and

(5) The reasons why it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) The submittal of the notice shall not be a defense to an enforcement action. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-15 is based substantially upon §11-60-14. [Eff 11/29/82; am, ren §11-60-14 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-16 Prompt reporting of deviations. (a) Except for emergencies which result in noncompliance with any technology-based emission limitation pursuant to section 11-60.1-16.5, in the event any emission unit, air pollution control equipment, or related equipment malfunctions or breaks down in such a manner as to cause the emission of air pollutants in violation of this chapter or a permit, the owner or operator shall immediately notify the department of the malfunction or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the malfunction or breakdown and makes such notification infeasible. In the latter case, the notice shall be provided as soon as practicable.

(b) The owner or operator shall provide the following information in writing within five working days of the notification:

(1) Identification of each affected emission point and each emission limit exceeded;
(2) Magnitude of each excess emission;
(3) Time and duration of each excess emission;
(4) Identity of the process or control equipment causing each excess emission;
(5) Cause and nature of each excess emission;
(6) Description of the steps taken to remedy the situation, prevent a recurrence, limit the excessive emissions, and assure that the malfunction or breakdown does not interfere with the attainment and maintenance of the NAAQS and state ambient air quality standards;
(7) Documentation that the equipment or process was at all times maintained and operated in a manner consistent with good practice for minimizing emissions; and
(8) A statement that the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(c) The submittal of the notice shall not be a defense to an enforcement action. [Eff 11/26/93; comp

10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-16.5 Emergency provision. (a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the director through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and the owner or operator of the source can identify the cause or causes of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency, the owner or operator of the source took all reasonable steps to minimize emission levels that exceeded the emission limitations or other requirements in the covered or noncovered source permit; and

(4) The owner or operator of the source submitted written notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency, provided that the notice contained a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(b) In any proceedings for enforcement action, the owner or operator of the source seeking to establish the occurrence of an emergency has the burden of proof.

(c) This emergency provision is in addition to any emergency or upset provision in any applicable requirement. [Eff and comp 9/15/01; comp 11/14/03, comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416,

7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

Historical note: §11-60.1-16.5 is based substantially upon §11-60.1-97. [Eff 11/26/93; comp 10/26/98; R 9/15/01]

§11-60.1-17 Prevention of air pollution emergency episodes. (a) This section is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of any emergency due to the effects of these contaminants on the public health.

(b) Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the director shall be guided by the criteria set forth in subsections (c) to (g).

(c) If the national weather service issues an atmospheric stagnation advisory or if an equivalent local forecast of stagnant atmospheric conditions is issued, the department shall survey its monitoring stations to determine whether alert, warning, or emergency levels have occurred or are likely to occur.

(d) The alert level is that concentration of pollutants at which first stage control action is to begin. An alert shall be declared, health advisories issued, and source activities curtailed as ordered by the director when any one of the following levels is reached:

(1) SO_2 - eight hundred $\mu g/m^3$ (0.3 ppm), twenty-four-hour average;
(2) PM_{10} - three hundred fifty $\mu g/m^3$, twenty-four-hour average;
(3) SO_2 and particulate matter combined - product of SO_2, $\mu g/m^3$, twenty-four-hour average and

particulate matter, $\mu g/m^3$, twenty-four-hour average equal to 65 X 10^3;

(4) CO - seventeen mg/m^3 (fifteen ppm), eight-hour average;

(5) Ozone - four hundred $\mu g/m^3$ (0.2 ppm), one-hour average; or

(6) NO_2 - one thousand one hundred thirty $\mu g/m^3$ (0.6 ppm), one-hour average; two hundred eighty-two $\mu g/m^3$ (0.15 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(e) The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. A warning shall be declared, health advisories issued, and source activities curtailed or terminated as ordered by the director when any one of the following levels is reached:

(1) SO_2 - one thousand six hundred $\mu g/m^3$ (0.6 ppm), twenty-four-hour average;

(2) PM_{10} - four hundred twenty $\mu g/m^3$, twenty-four-hour average;

(3) SO_2 and particulate matter combined - product of SO_2, $\mu g/m^3$, twenty-four-hour average and particulate matter, $\mu g/m^3$, twenty-four-hour average equal to 261 X 10^3;

(4) CO - thirty-four mg/m^3 (thirty ppm), eight-hour average;

(5) Ozone - eight hundred $\mu g/m^3$ (0.4 ppm), one-hour average; or

(6) NO_2 - two thousand two hundred sixty $\mu g/m^3$ (1.2 ppm), one-hour average; five hundred sixty-five $\mu g/m^3$ (0.3 ppm), twenty-four-hour average;

and meteorological conditions are such that this condition can be expected to continue for twelve or more hours.

(f) The emergency level indicates that air quality may have an impact on public health. An emergency shall be declared, health advisories issued, source activities terminated as ordered by the

director, and the public evacuated from the affected area if so recommended by the director, civil defense, or the police department when the warning level for a pollutant has been exceeded and:

(1) The concentrations of the pollutant are continuing to increase;

(2) The director determines that, because of meteorological or other facts, the concentrations will continue to increase; or

(3) When one of the following levels is reached:

(A) SO_2 - two thousand one hundred $\mu g/m^3$ (0.8 ppm), twenty-four-hour average;

(B) PM_{10} - five hundred $\mu g/m^3$, twenty-four-hour average; or

(C) SO_2 and particulate matter combined - product of SO_2, $\mu g/m^3$, twenty-four-hour average and particulate matter, $\mu g/m^3$, twenty-four-hour average equal to 393 X 10^3;

(D) CO - forty-six mg/m^3 (forty ppm), eight-hour average;

(E) Ozone - one thousand $\mu g/m^3$ (0.5 ppm), one-hour average; or

(F) NO_2 - three thousand $\mu g/m^3$ (1.6 ppm), one-hour average; seven hundred fifty $\mu g/m^3$ (0.4 ppm), twenty-four-hour average.

(g) Once declared, any episode level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time, the next lower episode level shall be assumed. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-17 is based substantially upon §11-60-19. [Eff 11/29/82; am, ren §11-60-19 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-18 Variances. (a) Variances and variance applications shall comply with section 342B-14, HRS, except that no variance shall prevent or interfere with the maintenance or attainment of NAAQS. Any application for a variance shall include a calculation and description of any change in emissions and the expected ambient air quality concentrations.

(b) Under no circumstances shall a variance from any federal regulations or covered source federally enforceable permit terms and conditions be granted. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-18 is based substantially upon §11-60-20. [Eff 11/29/82; am, ren §11-60-20 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-19 Penalties and remedies. Any person who violates any provision of this chapter, any term or condition of a permit, or any term or condition of an agricultural burning permit shall be subject to the penalties and remedies provided for in sections 342B-42, 342B-44, 342B-47, and 342B-48, HRS. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-19 is based substantially upon §11-60-21. [Eff 11/29/82; am, ren §11-60-21 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-20 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected

thereby. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-20 is based substantially upon §11-60-22. [Eff 11/29/82; am, ren §11-60-22 and comp 4/14/86; comp 6/29/92; R 11/26/93]

SUBCHAPTER 2

GENERAL PROHIBITIONS

§11-60.1-31 Applicability. (a) All owners or operators of an air pollution source are subject to the requirements of this subchapter, whether or not the source is required to obtain a noncovered or covered source permit.

(b) In the event any federal or state laws, rules, or regulations are in conflict with the provisions of this subchapter, the most stringent requirement shall apply.

(c) This section shall apply to all federal and state laws, rules or regulations implemented through this chapter. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-32 Visible emissions. (a) Visible emission restrictions for stationary sources which commenced construction or were in operation before March 21, 1972, shall be as follows:

(1) No person shall cause or permit the emission of visible air pollutants of a density equal

to or darker than forty per cent opacity, except as provided in paragraph (2);

(2) During start-up, shutdown, or when [~~breakdown~~] a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(b) Visible emission restrictions for stationary sources which commenced construction, modification, or relocation after March 20, 1972, shall be as follows:

(1) No person shall cause or permit the emission of visible air pollutants of a density equal to or darker than twenty per cent opacity, except as provided in paragraph (2);

(2) During start-up, shutdown, or when [~~breakdown~~] a malfunction of equipment occurs, a person may discharge into the atmosphere from any single source of emission, for a period aggregating not more than six minutes in any sixty minutes, air pollutants of a density not darker than sixty per cent opacity.

(c) Compliance with visible emission requirements shall be determined by evaluating opacity of emissions pursuant to 40 CFR Part 60, Appendix A, Method 9[~~and~~], other EPA approved methods, or any other credible evidence.

(d) Emissions of uncombined water, such as water vapor, are exempt from the provisions of subsections (a) and (b), and do not constitute a violation of this section. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-32 is based substantially upon §11-60-3. [Eff 11/29/82; am, ren §11-60-3 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-33 Fugitive dust. (a) No person shall cause or permit visible fugitive dust to become airborne without taking reasonable precautions. Examples of reasonable precautions are:

(1) Use of water or suitable chemicals for control of fugitive dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

(2) Application of asphalt, water, or suitable chemicals on roads, material stockpiles, and other surfaces which may result in fugitive dust;

(3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Reasonable containment methods shall be employed during sandblasting or other similar operations;

(4) Covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;

(5) Conducting agricultural operations, such as tilling of land and the application of fertilizers, in such manner as to reasonably minimize fugitive dust;

(6) Maintenance of roadways in a clean manner; and

(7) Prompt removal of earth or other materials from paved streets which have been transported there by trucking, earth-moving equipment, erosion, or other means.

(b) Except for persons engaged in agricultural operations or persons who [~~can demonstrate to the director that~~] are implementing the best practical operation or treatment [~~is being implemented~~], no person shall cause or permit the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates.

(c) Except for persons engaged in agricultural operations, no person shall cause or permit visible

fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period. Opacity observations shall be conducted in accordance with EPA 40 CFR 51 Appendix M, Method 203B, "Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations." This rule shall be in addition to complying with paragraphs (a) and (b), including when reasonable precautions are applied and shall be applicable in all circumstances.

[Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-33 is based substantially upon §11-60-5. [Eff 11/29/82; am, ren §11-60-5 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-34 Motor vehicles. (a) No person shall operate a gasoline-powered motor vehicle which emits visible smoke while upon streets, roads, or highways.

(b) No person shall operate a diesel-powered motor vehicle which emits visible smoke for a period of more than five consecutive seconds while upon streets, roads, or highways.

(c) No person shall cause, suffer, or allow any engine to be in operation while the motor vehicle is stationary at a loading zone, parking or servicing area, route terminal, or other off street areas, except:

(1) During adjustment or repair of the engine at a garage or similar place of repair;

(2) During operation of ready-mix trucks, cranes, hoists, and certain bulk carriers, or other auxiliary equipment built onto the vehicle or equipment that require power take-off from the engine, provided that

there is no visible discharge of smoke and the equipment is being used and operated for the purposes as originally designed and intended. This exception shall not apply to operations of air conditioning equipment or systems;

(3) During the loading or unloading of passengers, not to exceed three minutes; and

(4) During the buildup of pressure at the start-up and cooling down at the closing down of the engine for a period of not more than three minutes.

(d) No person shall remove, dismantle, fail to maintain, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle as required by the provisions of the Act except as permitted or authorized by law. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-34 is based substantially upon §11-60-4. [Eff 11/29/82; am, ren §11-60-4 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-35 Incineration. (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

~~[(b)]~~(c) All required emission tests shall be conducted at the maximum burning capacity of the incinerator[~~ or at other capacities, as approved by the director~~].

~~[(c)]~~(d) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate[~~ or such other rate as may be determined by the director~~].

~~[(d)]~~(e) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-35 is based substantially upon §11-60-6. [Eff 11/29/82; am, ren §11-60-6 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-36 Biomass fuel burning boilers. (a) No person shall cause or permit the emissions of particulate matter from each biomass burning boiler and its drier or driers in excess of 0.40 pounds per one hundred pounds (four grams per kilogram) of biomass as burned.

(b) Compliance with particulate matter emissions requirements shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-36 is based substantially upon §11-60-7. [Eff 11/29/82; am, ren §11-60-7 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-37 Process industries. (a) No person shall cause or permit the emission of particulate matter in any one hour from any stack or stacks,

except for incinerators and biomass fuel burning boilers, in excess of the amount determined by the equation $E = 4.10\ p^{0.67}$, where E = rate of emission in pounds per hour and p = process weight rate in tons per hour, except that no rate of emissions shall exceed forty pounds per hour regardless of the process weight rate.

(b) Rate of emissions shall be determined by evaluating particulate matter emissions pursuant to 40 CFR Part 60, Appendix A-3, Method 5 or other EPA approved methods.

[~~(b)~~] (c) Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter through any stack or stacks. Solid fuels charged shall be considered as part of the process weight, but liquid and gaseous fuels and combustion air shall not. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, including any time during which the equipment is idle. For a continuous operation, the process weight per hour shall be derived for a typical period of time by the number of hours of the period.

[~~(c)~~] (d) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation, the interpretation that results in the minimum value for the allowable emission shall apply.

[~~(d)~~] (e) For purposes of this section, a process is any method, reaction, or operation whereby materials introduced into the process undergo physical or chemical change. A specific process is one which includes all of the equipment and facilities necessary for the completion of the transformation of the materials to produce a physical or chemical change. There may be several specific processes in series necessary to the manufacture of a product. However, where there are parallel series of specific processes, the similar parallel specific processes shall be

considered as a single specific process. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-37 is based substantially upon §11-60-8. [Eff 11/29/82; am, ren §11-60-8 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-38 Sulfur oxides from fuel combustion. (a) No person shall burn any fuel containing in excess of two [~~per cent~~] percent sulfur by weight[~~, except for fuel used in ocean-going vessels~~].

(b) No person shall burn any fuel containing in excess of 0.50 [~~per cent~~] percent sulfur by weight in any fossil fuel fired power and steam generating unit having a power generating output in excess of twenty-five megawatts or a heat input greater than two hundred fifty million BTU per hour.

(c) Compliance with sulfur by weight requirements shall be determined by evaluating sulfur by weight pursuant to *American Society for Testing and Materials (ASTM)* Methods.

(1) For liquid fuels: ASTM D129-00(2005) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); D2622-05 Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry; D4294-03 Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry; D5453-05 Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; or other EPA approved methods.

(2) For gaseous fuels: ASTM D1072-90(1999) Standard Test Method for Total Sulfur in Fuel Gases; D3246-05 Standard Test Method

for Sulfur in Petroleum Gas by Oxidative Microcoulometry; D4810-88(1999) Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length-of-Stain Detector Tubes; D6228-98(2003), D6667-01 or Gas Processors Association Standard 2377-86 Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length-of-Stain Tubes; or other EPA approved methods.

~~[(c)]~~(d) The use of fuels prohibited in subsections (a) and (b) may be allowed at the director's sole discretion if it can be demonstrated that the use of these fuels will result in equivalent or lower emission rates of oxides of sulfur.

(1) Compliance with oxides of sulfur emissions requirements shall be determined by evaluating oxides of sulfur emissions pursuant to 40 CFR Part 60, Appendix A-4, Method 8 or other EPA approved methods.

[Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-38 is based substantially upon §11-60-9. [Eff 11/29/82; am, ren §11-60-9 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-39 Storage of volatile organic compounds. (a) Except as provided in subsection (c), no person shall place, store, or hold in any stationary tank, reservoir, or other container of more than a forty thousand-gallon (one hundred fifty thousand-liter) capacity any volatile organic compound which, as stored, has a true vapor pressure equal to or greater than 1.5 pounds per square inch absolute unless the tank, reservoir, or other container is pressurized and capable of maintaining working pressures sufficient at all times to prevent vapor or

gas loss to the atmosphere or is designed and equipped with one of the following vapor loss control devices:

(1) A floating roof, consisting of a pontoon type roof, double deck type roof or internal floating cover roof, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. This control equipment shall not be permitted if the volatile organic compounds have a vapor pressure of eleven pounds per square inch absolute (five hundred sixty-eight millimeters of mercury) or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;

(2) A vapor recovery system, consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place; or

(3) Other equipment or means of equal efficiency for purposes of air pollution control [~~as~~] may be approved by the director[~~.~~] after demonstrating equivalence to the director by one of the following methods:

(A) an actual emission test in a full size or scale sealed tank facility which accurately collects and measures all hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or

(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with true vapor pressure requirements shall be determined by evaluating vapor pressure pursuant to ASTM Method D323-82 or other EPA approved methods.

[~~(b)~~] (c) No person shall place, store, or hold in any new stationary storage tank, reservoir, or other container of more than a two hundred fifty-gallon (nine hundred fifty-liter) capacity any volatile organic compound unless such tank, reservoir, or other container is equipped with a permanent submerged fill pipe, is a pressure tank as described in subsection (a), or is fitted with a vapor recovery system as described in subsection (a)(2).

[~~(c)~~] (d) Underground tanks shall be exempted from the requirements of subsection (a) if the total volume of volatile organic compounds added to and taken from a tank annually does not exceed twice the volume of the tank. Any person claiming this exemption shall be responsible for maintaining records which substantiate this claim and make them available to the director upon request. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-39 is based substantially upon §11-60-10. [Eff 11/29/82; am, ren §11-60-10 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-40 Volatile organic compound water separation. (a) No person shall use any single or multiple compartment volatile organic compound water separator which receives effluent water containing two hundred gallons (seven hundred sixty liters) or more of any volatile organic compound a day from any

equipment that is processing, refining, treating, storing, or handling volatile organic compounds having a Reid vapor pressure of 0.5 pounds per square inch or greater unless such compartment is equipped with a properly installed vapor loss control device described as follows and which is in good working order, and in operation:

(1) A container having all openings sealed which totally encloses the liquid content. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

(2) A container equipped with a floating roof, consisting of a pontoon type roof, double deck-type roof, or internal floating cover roof, which will rest on the surface of the liquid contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

(3) A container equipped with a vapor recovery system consisting of a vapor gathering system capable of collecting the volatile organic compound vapors and gases discharged, and a vapor disposal system capable of processing such volatile organic compound vapors and gases to prevent their emission to the atmosphere. All container gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place; or

(4) A container having other equipment of equal efficiency for purposes of air pollution control [~~as~~] may be approved by the director[~~.~~] after demonstrating equivalence to the director by one of the following methods:

(A) an actual emission test in a full size or scale sealed tank facility which accurately collects and measures all

hydrocarbon emissions associated with a given closure device, and which accurately simulates other emission variables, such as temperature, barometric pressure and wind. The test facility shall be subject to prior approval by the director, or

(B) a pressure leak test, engineering evaluation or other means where the director determines that the same is an accurate method of determining equivalence.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-40 is based substantially upon §11-60-11. [Eff 11/29/82; am, ren §11-60-11 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-41 Pump and compressor requirements. (a) All pumps and compressors handling volatile organic compounds having a Reid vapor pressure of 1.5 pounds per square inch or greater which can be fitted with mechanical seals shall have mechanical seals or other equipment of equal efficiency for purposes of air pollution control as may be approved by the director. Pumps and compressors not capable of being fitted with mechanical seals, such as reciprocating pumps, shall be fitted with the best sealing system available for air pollution control given the particular design of pump or compressor as may be approved by the director. In either case, all pumps and compressors shall be vapor tight where the reading on a portable hydrocarbon meter is less than 500 parts

per million (ppm), expressed as methane, above background.

(b) Compliance with Reid vapor pressure requirements shall be determined by evaluating Reid vapor pressure pursuant to ASTM Method D323-99 or other EPA approved methods.

(c) Compliance with vapor tight requirements shall be determined by evaluating vapor tightness pursuant to EPA Method 21 or other EPA approved methods. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-41 is based substantially upon §11-60-12. [Eff 11/29/82; am, ren §11-60-12 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-42 Waste gas disposal. (a) No person shall cause or permit the emissions of gas streams containing volatile organic compounds from a vapor blowdown system unless these gases are burned by smokeless flares, or abated by an equally effective control device as approved by the director.

(b) Compliance with smokeless flare or equally effective control device requirements shall be in accordance with §11-60.1-32. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-42 is based substantially upon §11-60-13. [Eff 11/29/82; am, ren §11-60-13 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-43 All operation and maintenance of permitted source. Permittees shall, at all times, operate and maintain their permitted source, including

air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions, at a minimum, to the levels required by their permits.

Determination of whether such operation and maintenance procedures are being used will be based on information available to the director, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. [Eff and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

SUBCHAPTER 3

OPEN BURNING

§11-60.1-51 Definitions. As used in this subchapter:

"Agricultural burning" means the use of open burning in agricultural operations, forest management, or range improvements.

"Agricultural operation" means a bona fide agricultural, silvicultural, or aquacultural activity for the purpose of making a profit by raising, harvesting and selling crops, or by raising and selling livestock or poultry, or produce thereof. Agricultural operation also means activities conducted by non-profit agricultural research organizations and by educational institutions for the purpose of providing agricultural instruction. The burning of animal carcasses is not an agricultural operation.

"Attended" means to be physically present at the immediate location of the fire, to actively and physically look after, or to actively and physically take charge of.

"Auxiliary fuels" means butane, propane, pipeline quality natural gas, liquefied petroleum gas, or a petroleum liquid having an American Petroleum Institute gravity of at least 30.

"Aquacultural" means dealing with the cultivation of the natural produce of water.

"Clearing of land" means the removal of non-agricultural waste or vegetation from land not currently being utilized for agricultural operations, or not associated with forest management or range improvement.

"Cooking fuel" means any fuel that is processed, marketed, and sold by commercial establishments specifically for the cooking of food.

"District" means a geographic area, as designated by the director, to distinguish appropriate air basins for the purpose of smoke management.

"Forest management" means wildland vegetation management using prescribed burning procedures which have been approved by the forestry division or responsible federal agency prior to the commencement of any burn and which are being conducted by a public agency or through a cooperative agreement involving a public agency. The fire department may be consulted for advice and guidance as part of the prescribed burning procedure.

"Forestry division" means the division of forestry and wildlife of the department of land and natural resources of the State of Hawaii.

"No-burn period" means any period in which agricultural burning or conditionally allowed open burning in subsection 11-60.1-52(e) is prohibited by the director as provided in section 11-60.1-55.

"Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.

"Range" means an extensive area of open land on which domestic livestock or wild animals wander and graze.

"Range improvement" means physical modification or treatment of rangeland which is designed to: improve production of forages; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; and otherwise restore, protect, and improve the conditions of the rangeland ecosystems to benefit livestock, horses, and fish and wildlife.

"Silvicultural" means dealing with the cultivation of forest trees; forestry. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-34; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-34; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52)

§11-60.1-52 General provisions. (a) Except as provided in subsections (b), (c), (d), (e) and section 11-60.1-53, no person shall cause, permit, or maintain any open burning. Any open burning is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the open burning is occurring. Subsections (b), (c), (d), (e) and section 11-60.1-53 shall not apply to the open burning of human remains or animal carcasses unless the activities fall under the exemptions found in paragraph (d)(2).

(b) Subsection (a) shall not apply to attended fires for the cooking of food provided that:

(1) Only untreated dry wood, charcoal, natural or synthetic natural gas, butane, propane, or cooking fuel is used, and

(2) If visible smoke enters any residence, business or public area, best practical measures to eliminate the smoke, including extinguishing the fire, are taken.

(c) Subsection (a) shall not apply to the following, provided that notification is given to the director prior to the commencement of any burn:

(1) Fires set to a building, structure or simulated aircraft for training personnel in firefighting methods.

(d) Subsection (a) shall not apply to the following, provided that the burning is approved by the director:

(1) [~~Fires for recreational, decorative, or ceremonial purposes~~] Outdoor fires for recreational, religious, ceremonial or decorative purposes including, but not limited to, campfires, bonfires, pottery curing fires, that are burning dry untreated wood, charcoal, or auxiliary fuels;

(2) Fires for the disposal of human remains and animal carcasses and debris generated from a natural disaster or catastrophic event, where there is no reasonable alternative method of disposal;[~~and~~]

(3) [~~Other fires as approved by the director~~] Outdoor fires set for cultural or traditional purposes and fires within cultural or traditional structures including sweat houses or lodges; and

(4) Fires set by any county, state or federal law enforcement agency to dispose of illegal drugs.

(e) Subsection (a) shall not apply to the following, provided that the burning is both approved by the director, and that the burning is allowed under either section 11-60.1-55 or 11-60.1-52(f):

(1) Fires to abate a fire hazard, provided that the hazard is so declared by the fire department, forestry division, or federal agency having jurisdiction, and that a prescribed burning plan, if applicable, has been submitted to and approved by the jurisdictional agency;

(2) Fires for prevention or control of disease or pests; and

(3) Fires for the disposal of dangerous materials, where there is no alternate method of disposal;

(f) The director may provide a waiver to the section 11-60.1-55 "no-burn" period for any exemption to open burning found under subsection 11-60.1-52(e).

(g) Subsections (b), (c), (d), or (e) shall not exempt any activity from the application of any rules or requirements in any other section or chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-52 is based substantially upon §11-60-31. [Eff 11/29/82; am, ren §11-60-31 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-53 Agricultural burning: permit applicability. No person engaged in any agricultural operation, forest management, or range improvement shall cause or allow agricultural burning without first obtaining an agricultural burning permit from the director. Any person who fails to comply with the terms and conditions of the permit or this chapter shall be subject to the penalties and remedies provided for in sections 342B-42, 342B-44, 342B-47, and 342B-48, HRS, including the invalidation of the permit. No agricultural permit shall be granted for, or be construed to permit:

(1) The open burning of trash, waste, or by-products generated outside the permitted property;

(2) The open burning of trash or other waste that has been handled or processed by factory operations, not including material from the field; or

(3) The open burning of any waste for the clearing of land. [Eff 11/26/93; comp

10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-53 is based substantially upon §11-60-32. [Eff 11/29/82; am, ren §11-60-32 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-54 Agricultural burning permit application. (a) Application for an agricultural burning permit shall be made on forms furnished by the director. The application shall include the following:

(1) Business license information or commercial agricultural activity general excise tax license, if applicable;

(2) Maps of areas to be burned showing fields by appropriate numbers and acreage, direction of prevailing winds, location of residential, school, and commercial establishments, public buildings, airports, and public utilities;

(3) The designation of fields to be burned under specified wind conditions; and

(4) Any other information as required and deemed necessary by the director to make a decision on the application.

(b) To be eligible for an agricultural burning permit, the applicant must currently be involved in agricultural operations, forest management, or range improvements at the property where burning will occur, and must have legal right, title, or possession to the property, and if not the owner, must have the written authorization of the owner or owner's representative to burn on the property.

(c) Each application shall be signed by the applicant as being true and accurate and shall constitute an agreement that the applicant shall comply with all the terms and conditions of the permit and this chapter.

(d) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required or requested pursuant to subsection (a) has been submitted;

(2) All documents in subsection (a) have been signed by the applicant; and

(3) All applicable fees have been submitted.

(e) The application will be deemed complete sixty days after received unless the director requests the applicant to provide additional information. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-54 is based substantially upon §11-60-33. [Eff 11/29/82; am, ren §11-60-33 and comp 4/14/86; comp 6/29/92; R 11/26/93]

§11-60.1-55 Agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e): "no-burn" periods. (a) Except as provided in subsection (d), no person, with or without an agricultural burning permit, shall cause or allow agricultural burning or conditionally allowed open burning from subsection 11-60.1-52(e) [~~under the following conditions:~~] when a "no-burn" period has been declared by the director.

[~~(b) Notices of "no-burn" periods for the specified islands or districts may be provided by~~

~~radio broadcast and shall apply for a specified "no burn" period.]~~

(b) "No-burn" periods shall be determined by current and forecasted weather conditions which inhibit the dispersion of air pollutants. A no-burn period may be declared if unfavorable meteorological conditions such as high winds, temperature inversions and air stagnation are existing and forecasted to continue or deteriorate. If forecasting is unavailable, "no-burn" periods shall be determined based on visibility.

~~[(c) Verification that widespread haze exists in any district may be accomplished by consultation with personnel in the appropriate district fire or police stations.~~]

(c) Visibility shall be used as the basis for determining "no-burn" periods when forecasting is not possible or not available. A "no-burn" call based on visibility shall be made under the following conditions:

(1) When the director determines that meteorological conditions have resulted in widespread haze on any island or in any district on the island and that these meteorological conditions will continue or deteriorate. For the purposes of this section, widespread haze shall be considered to exist when all visible ridges:
   (A) Within five to ten miles have a "smoky" or bluish appearance and colors are subdued; and
   (B) Beyond ten miles have a blurred appearance; [~~or~~]

(2) When a "no-burn" period has been declared in a district and smoke from any adjacent district, as determined by the director, may impact on the affected district, the "no-burn" period shall apply to both districts[~~.~~]; or

(3) On the island of Oahu either when the condition specified in paragraph (1) or (2) occurs or when meteorological conditions

have resulted in a rise of the carbon monoxide level exceeding five mg/m^3 for an eight-hour average or the PM_{10} level exceeding one hundred thirty five µg/m^3 for twenty-four hours and when the director determines that these meteorological conditions will continue or deteriorate.

(d) Verification that widespread haze exists in any district may be accomplished by consultation with department personnel in the appropriate district.

(e) Notices of "no-burn" periods for the specified islands or districts may be posted on a department web page and shall apply to a specified "no burn" period.

[~~(d)~~] (f) In a district where a long-term "no burn" declaration is in effect, the director may provide a waiver during an agricultural "no burn" period for the control of plant diseases or infestations when burning is determined to be the [~~sole~~] best available method of control. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-43; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-43; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-55 is based substantially upon §11-60-34. [Eff 11/29/82; am, ren §11-60-34 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-56 Agricultural burning: recordkeeping and monitoring. Each permittee shall monitor and maintain records in accordance with the agricultural burning permit issued by the director. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-28; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52)

(Imp: HRS §§342B-3, 342B-12, 342B-28; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-56 is based substantially upon §11-60-35. [Eff 11/29/82; am, ren §11-60-35 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-57 Agricultural burning: action on application. (a) The director shall act on a complete application within a reasonable time, but not to exceed ninety calendar days from the date the complete application is received, and shall notify the applicant in writing of the approval or denial of the application. If the director has not acted on an application within the ninety calendar-day period, the application shall be deemed to have been approved.

(b) If an application is denied, the applicant may request in writing, a re-evaluation of the application to the director.

(c) If the application is denied after the re-evaluation, the applicant may request a hearing in accordance with chapter 91, HRS.

(d) The permit may be granted for a period of up to one year from the date of issuance.

(e) At the director's sole discretion or the application of any person, the director may terminate, suspend, reopen, or amend a permit if, after affording the applicant a hearing in accordance with chapter 91, HRS, it is determined that:

(1) Any condition of the permit has been violated;

(2) Any provision of this chapter has been violated;

(3) Any provision of chapter 342B, HRS, has been violated;

(4) The maintenance or attainment of NAAQS and state ambient air quality standards will be interfered with; or

(5) The action is in the public interest.

(f) The permit shall not be transferable whether by operation of law or otherwise or from one person to

another. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-21, 342B-24, 342B-27; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21, 342B-24, 342B-27; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

Historical note: §11-60.1-57 is based substantially upon §11-60-36. [Eff 11/29/82; am, ren §11-60-36 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-58 Agricultural burning: permit content. The director shall consider and incorporate the following elements into an agricultural burning permit, as applicable:

(1) Notification of appropriate authorities prior to each burn;
(2) The type and amount of material allowed to be burned and the time period(s) when burning is allowed;
(3) Proper fire and safety control measures;
(4) Operator or permittee must allow the director or an authorized representative, upon presentation of credentials, to enter the burn location and inspect, all facilities, practices, and operations, or records covered under the terms and conditions of the permit; and
(5) Any other provision to assure compliance with all applicable requirements of HAR Chapter 11-60.1. [Eff and comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-21, 342B-22, 342B-24, 342B-27, 342B-28; 42 U.S.C. §§7407, 7410, 7416; 40 C.F.R. Parts 50, 51, and 52) (Imp: HRS §§342B-3, 342B-12, 342B-21, 342B-21, 342B-24, 342B-27, 342B-28; 42 U.S.C. §§7407, 7416; 40 C.F.R. Parts 50, 51, and 52)

SUBCHAPTER 4

NONCOVERED SOURCES

§11-60.1-61 Definitions. As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a noncovered source:

(1) Any NAAQS or state ambient air quality standard;

(2) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);

(3) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r)(7) of the Act;

[~~(2)~~] (4) The application of best available control technology to control a regulated air pollutant, but only as best available control technology would apply to new noncovered sources and modifications to noncovered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the noncovered source to emit a pollutant; and

[~~(3)~~] (5) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

"General permit" means a noncovered source permit covering numerous similar sources that meets the requirements of section 11-60.1-70.

"Modification" means a physical change in or a change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted; or every significant change in existing monitoring requirements, and every relaxation of, or significant change in reporting or recordkeeping requirements. Routine maintenance, repair, and replacement of parts shall not be considered a modification.

"Temporary noncovered source" means a noncovered source that is intended to be operated at multiple locations for a designated period of time at each location. The operation of the source shall be temporary and involve at least one change of location during the term of a noncovered source permit.

"Timely application" means:

(1) An initial application for a noncovered source permit which is submitted to the director in accordance with the schedule for application submittal specified in section 11-60.1-66; or

(2) An application for a noncovered source permit renewal which is submitted to the director at least sixty days prior to the date of permit expiration. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-62 Applicability. (a) Except as provided in subsections (d) and (g) and section 11-60.1-66, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any noncovered source

without first obtaining a noncovered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a noncovered source holds a valid noncovered source permit. An owner or operator of a grandfathered noncovered source, one constructed, modified, or relocated on or prior to March 20, 1972, may be required by the director to obtain a noncovered source permit if the source is found to operate in violation of an applicable requirement, or is found to have improper or inadequate air pollution controls.

(b) The noncovered source permit shall remain valid past the expiration date and the noncovered source shall not be in violation for failing to have a noncovered source permit, until the director has issued or denied a renewal of the noncovered source permit provided:

(1) Prior to permit expiration, a timely and complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and

(2) The owner or operator has submitted to the director within the specified deadlines all requested additional information deemed necessary to evaluate or take final action on the renewal application, as described in section 11-60.1-74(e).

(c) A noncovered source permit shall not constitute, nor be construed to be an approval of the design of a noncovered source. Noncovered source permits shall be issued in accordance with this chapter and it is the responsibility of the applicants to [~~insure~~] ensure compliance with all applicable requirements in the construction and operation of any noncovered source.

(d) The following are exempt from the requirements of subsection (a), provided that no

exemption interferes with the imposition of any requirement of subchapter 5 or the determination of whether a stationary source is subject to any requirement of this chapter. Sources or activities exempt from the requirements of subsection (a) shall not relieve the owner or operator from complying with any other applicable requirement, including provisions of subchapter 2. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director shall reserve the right to disallow any exemption and impose the requirements of subsection (a), if the source or activity requires additional controls or monitoring to ensure compliance with the applicable requirements.

(1) Stationary sources with potential emissions of less than:
    (A) 500 pounds per year for each hazardous air pollutant, except lead;
    (B) 300 pounds per year for lead;
    (C) five tons per year of carbon monoxide;
    (D) 3,500 tons per year CO_2e for greenhouse gases; and
    (E) two tons per year of each regulated air pollutant not already identified above;
(2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;
(3) Any storage tank, reservoir, or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Act;
(4) Gasoline service stations;
(5) Other than smoke house generators and gasoline fired industrial equipment, fuel burning equipment with a heat input capacity less than one million BTU per hour, or a

combination of fuel burning equipment operated simultaneously as a single unit having a total combined heat input capacity of less than one million BTU per hour;

(6) Steam generators, steam superheaters, water boilers, or water heaters, all of which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with one of the following:
   (A) Natural or synthetic gas;
   (B) Liquified petroleum gas; or
   (C) A combination of natural, synthetic, or liquified petroleum gas;

(7) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of ten million BTU per hour or less;

(8) Standby generators used exclusively to provide electricity, standby sewage pump drives, and other emergency equipment used to protect the health and welfare of personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and which:
   (A) Are fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D; and
   (B) Do not trigger a PSD or covered source review, based on their potential to emit regulated or hazardous air pollutants;

(9) Landfills, except for operating municipal waste landfills with a design capacity equal to or greater than 1,500,000 metric tons;

(10) Paint spray booths, except for paint spray booths subject to any standard or other requirement pursuant to Section 112(d) of the Act;

(11) Welding booths;

(12) Diesel fired portable industrial equipment less than 200 horsepower in size which is used during power outages or periodically for the equipment's maintenance and repair;
(13) Gasoline fired portable industrial equipment less than:
    (A) 25 horsepower; or
    (B) 200 horsepower in size which is used during power outages or periodically for the equipment's maintenance and repair;
(14) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic art work, precision parts, leather, metals, plastics, fiber board, masonry, carbon, glass, or wood, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;
(15) Laboratory equipment used exclusively for chemical and physical analyses;
(16) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;
(17) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less;
(18) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;
(19) Fire water system pump engines dedicated for fire-fighting and maintaining fire water

system pressure, which are operated only during fire fighting and periodically for engine maintenance, and fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel No. 1D or No. 2D;

(20) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;

(21) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;

(22) Nonroad engines. Owners of nonroad engines, except for those exempt engines listed in subsection (d) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:

(A) Owner's Name;

(B) Engine Manufacturer and Model;

(C) Engine Serial Number;

(D) Engine Date of Manufacture; and

(E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;

[~~(22)~~] (23) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up;

[~~(23)~~] (24) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing

process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;

[~~(24)~~] (25) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;

[~~(25)~~] (26) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;

[~~(26)~~] (27) Stacks or vents to prevent escape of sewer gases through plumbing traps;

[~~(27)~~] (28) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from equipment, and that do not involve the open release or venting of CFC's into the atmosphere;

[~~(28)~~] (29) Woodworking shops with a sawdust collection system; and

[~~(29)~~] (30) Other sources as may be approved by the director.

(e) An owner or operator of a stationary source that is not subject to the requirements of subchapter 4, and that becomes subject to the requirements of subchapter 4 because of a new or amended regulation in HRS chapter 342B or this chapter shall submit a complete and timely noncovered source permit application. For purposes of this subsection, "timely" means within six months after the effective date of the new or amended regulation or such other time as approved by the director. The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a noncovered source permit only if the owner or operator has submitted to the director a complete and timely noncovered source permit application, and any additional information necessary for the processing of the application, including additional information

required pursuant to sections 11-60.1-63(d) and 11-60.1-64.

(f) An owner or operator of a stationary source that becomes subject to the requirements of subchapter 5 pursuant to a new or amended regulation under [~~section~~]Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

(1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or

(2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

(g) The director, upon written request and submittal of adequate support information from the owner or operator of a noncovered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a noncovered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

(1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a

noncovered source permit or amendment to a noncovered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the noncovered source shall submit with the written request, a complete noncovered source permit application to install and operate the air pollution control device.

(2) Test burns. The director may allow an owner or operator of a noncovered source to test alternate fuels not allowed by permit if the following conditions are met:

(A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;

(B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing noncovered source facility, or as an investigative measure to research the operational characteristics of a fuel;

(C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;

(D) The owner or operator of the noncovered source provides emission estimates of the test burn and if requested by the director, an ambient air quality impact assessment to demonstrate that no violation of the NAAQS and state ambient air quality standards will occur;

(E) The owner or operator of the noncovered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and

(F) If a performance test or monitoring is required, the owner or operator of the noncovered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the noncovered source at the time of the test burn, and any other significant factors that affected the test or monitoring results.

If the director approves the test burn, the director may set operational limitations or other conditions for the test burn. Deviations from those limits or conditions shall be considered a violation of this chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-63 Initial noncovered source permit application. (a) Every application for an initial noncovered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

(1) Name, address, and phone number of:

(A) The company;

(B) The facility, if different from the company;
(C) The owner and owner's agent; and
(D) The plant site manager or other contact;

(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; a description of all processes and products; and, if reasonably anticipated, a detailed description of alternative operating scenarios;

(3) If available, maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;

(4) Identification and description of all points of emissions, including stack parameters;

(5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the noncovered source, and to the extent of available information, an estimate of emissions before and after controls;

(6) Current operational limitations or work practices, or for noncovered sources that have not yet begun operation, such limitations or practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

[~~(7)~~] (8) A schedule for construction or modification of the noncovered source, if applicable;

[~~(8)~~] (9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;

[~~(9)~~] (10) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

[~~(10)~~] (11) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;

[~~(11)~~] (12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

[~~(12)~~] (13) If requested by the director, information on other available control technologies;

[~~(13)~~] (14) An explanation of all proposed exemptions from any applicable requirement;

[~~(14)~~] (15) A compliance plan in accordance with section 11-60.1-65; and

[~~(15)~~] (16) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required or requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) The director, in writing, shall approve, conditionally approve, or deny an application for a noncovered source permit within six months after receipt of a complete application. A noncovered source permit application for a new noncovered source or a modification shall be approved only if the director determines that the construction or operation of the new noncovered source or modification will be

in compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-64 Duty to supplement or correct permit applications. Any applicant for a noncovered source permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application, but prior to the issuance of the noncovered source permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-65 Compliance plan. (a) A compliance plan shall be submitted with every initial application for a noncovered source, temporary noncovered source, and general noncovered source permit, application for a noncovered source permit renewal, and application for a modification to a noncovered source, and at such other times as requested by the director.

(b) The owner or operator of a noncovered source shall submit to the director for approval a compliance plan which includes at a minimum the following information:

(1) A description of the compliance status of the existing noncovered source or proposed source with respect to all the applicable requirements; and

(2) The following statement or description and compliance schedule, as applicable:

(A) For applicable requirements with which the source is in compliance, a statement that the source is in compliance and will continue to comply with such requirements;

(B) For applicable requirements which become applicable during the permit term, a statement that the source on a timely basis will meet all such applicable requirements and a detailed schedule if required by the applicable requirement. The statement shall include documentation on the proposed method the owner or operator plans to initiate to obtain compliance; and a compliance schedule demonstrating that the source will meet such applicable requirement by the date specified in the applicable requirement; or

(C) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance with all such applicable requirements; and a detailed compliance schedule containing specific milestones of remedial measures to obtain compliance, allowing for an enforceable sequence of actions. Any compliance schedule shall resemble and shall be at least as stringent as any judicial consent decree or administrative order that applies to the source. The schedule shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(c) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 11-60.1-4 shall be submitted to the director

no less frequently than every six months and shall include:

(1) Dates for achieving the activities, milestones, or compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-66 Transition into the noncovered source permit program. (a) The owner or operator of an existing noncovered source with a permit to operate, issued pursuant to repealed chapter 11-60, shall submit a complete initial noncovered source permit application at least sixty days prior to the expiration of the permit to operate. The owner or operator shall continue to operate according to the provisions of the permit to operate and in accordance with any applicable laws, regulations, and rules in effect at the time the permit to operate was issued, until the noncovered source permit is issued.

(b) The owner or operator of a noncovered source who has applied for but has not received an initial permit to operate or a renewal for a permit to operate pursuant to repealed chapter 11-60 shall submit to the director in a timely manner, not to exceed sixty days from the effective date of this chapter, a complete initial noncovered source permit application (less any permit to operate application fee previously submitted). The owner or operator shall continue to operate according to the provisions of the authority to construct or permit to operate, whichever is applicable, and in accordance with any applicable laws, regulations, and rules in effect at the time the

authority to construct or permit to operate was issued, until the noncovered source permit is issued.

(c) The owner or operator of a noncovered source with an authority to construct permit, issued pursuant to repealed chapter 11-60, shall submit to the director a complete initial noncovered source permit application at least sixty days prior to the expiration of the authority to construct permit or the planned date of construction completion, whichever is earlier. The owner or operator may continue construction or operation provided construction or operation is performed in accordance with the provisions of the authority to construct permit and in accordance with any applicable laws, regulations, and rules in effect at the time the authority to construct permit was issued, until the noncovered source permit is issued.

(d) The owner or operator of a noncovered source who has applied for but has not received an authority to construct permit pursuant to repealed chapter 11-60 shall submit to the director in a timely manner a complete initial noncovered source permit application (less any authority to construct application fee previously submitted). A noncovered source permit for the emission unit subject to the authority to construct permit application must be obtained prior to commencement of construction, modification, relocation, or operation.

(e) In the event an authority to construct or permit to operate expires prior to the issuance of the noncovered source permit, the owner or operator may continue to construct or operate only if the owner or operator has submitted to the director a complete noncovered source permit application, and any additional information necessary for the processing of the application. The authority to construct or permit to operate shall continue to be in effect until the noncovered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate and any applicable laws, regulations, and rules in effect at the time of the authority to

construct or permit to operate issuance. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(f) All noncovered source permit applications, compliance plans and filing fees shall be submitted in accordance with sections 11-60.1-63 and 11-60.1-65, and subchapter 6. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-67 Permit term. (a) A noncovered source permit shall not be issued for any term exceeding five years.

(b) A noncovered source permit may be renewed for any term not to exceed five years. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

Historical note: §11-60.1-67 is based substantially upon §11-60-48. [Eff 11/29/82; am, ren §11-60-47 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-68 Permit content. The director shall consider and incorporate the following elements into a noncovered source permit as applicable:

(1) Emission limitations and standards, including operational requirements and limitations to assure compliance with all applicable requirements at the time of permit issuance;
(2) Permit term pursuant to section 11-60.1-67;
(3) Requirements for the installation of devices, at the expense of the owner or operator, for the measurement or analysis of

source emissions or ambient concentrations of air pollutants;

(4) The requirement for source emissions tests or alternative methodology to determine compliance with the terms and conditions of the noncovered source permit and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;

(5) Monitoring and related recordkeeping and reporting requirements to assure compliance with all the terms and conditions of the permit, including:

(A) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;

(B) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;

(C) Appropriate monitoring methods;

(D) Monitoring records including:

(i) Place as defined in the permit, date, and time of sampling or measurements;

(ii) Dates the analyses were performed;

(iii) The name and address of the company or entity that performed the analyses;

(iv) Analytical techniques or methods used;

(v) Analyses results; and

(vi) Operating conditions during the time of sampling or measurement;

(E) Other records including support information, such as calibration and maintenance records, original

stripchart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the director;

(F) A requirement for the retention of records of all required monitoring data and support information for a period of at least three years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit; and

(G) Provisions for the owner or operator to annually report in writing emissions of hazardous air pollutants;

(6) Terms and conditions for reasonably anticipated operating scenarios identified by the source in the noncovered source permit application as approved by the director. Such terms and conditions shall include:

(A) A requirement that the owner or operator, contemporaneously with making a change from one operating scenario to another, record in a log at the permitted facility the scenario under which it is operating and, if required by the director, submit written notification to the director; and

(B) Provisions to ensure that the terms and conditions under each alternative scenario meet all applicable requirements;

(7) General provisions including:

(A) A statement that the owner or operator shall comply with all terms and conditions of the noncovered source permit and that any permit

noncompliance constitutes a violation of this chapter, and is grounds for enforcement action; for permit termination, suspension, reopening, or amendment; or for denial of a permit renewal application;

(B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

(C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;

(D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to sections 11-60.1-10 and 11-60.1-72, and section 342B-27, HRS. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

(F) A provision that, if construction is not commenced, continued, or completed in accordance with section 11-60.1-9, the noncovered source permit for the subject emission unit shall become invalid;

(G) A provision that the owner or operator shall notify the director in writing of the anticipated date of initial start-up for each emission unit of a new noncovered source or modification to

the source not more than sixty days or less than thirty days prior to such date. The director shall also be notified in writing of the actual date of construction commencement and start-up within fifteen days after such dates;

(H) A requirement pursuant to sections 11-60.1-15 and 11-60.1-16 for reporting of equipment shutdown and malfunction;

(I) A statement that the owner or operator shall furnish in a timely manner any information or records requested in writing by the department to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish such records to the department with a claim of confidentiality;

(J) A provision for the designation of confidentiality of any records pursuant to section 11-60.1-14;

(K) A requirement that the owner or operator shall submit fees in accordance with subchapter 6;

(L) Certification requirements pursuant to section 11-60.1-4;[~~and~~]

(M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must

be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and

(N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(8) Compliance plan submittal requirements pursuant to section 11-60.1-65; and

(9) Any other provision to assure compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C.

§§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-69 Temporary noncovered source permits. (a) An owner or operator of a temporary noncovered source may apply for a temporary noncovered source permit. The owner or operator of the temporary noncovered source shall certify its intention to operate at various locations with the same equipment and similar operational methods.

(b) The application and issuance of a temporary noncovered source permit is subject to the same procedures and requirements for an initial application and issuance of a noncovered source permit, including requirements of section 11-60.1-63. The initial location of the source shall be specified.

(c) Upon issuance of the temporary noncovered source permit, the owner or operator shall submit all succeeding location changes to the director for approval at least thirty days or such lesser time as designated and approved by the director, prior to the change in location. The owner or operator shall submit sufficient information to enable the director to assess the air quality impact the temporary noncovered source may have at the new location. Information submitted shall include:

(1) Name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;
(2) Temporary noncovered source permit identification number and expiration date;
(3) Location map of the new temporary location, identifying the surrounding commercial, industrial, and residential developments;
(4) Projected dates of operation at the new location;

(5) Identification of any other air pollution source at the new location; and

(6) Certification that no modification will be made to the equipment, and operational methods will remain similar as permitted under the temporary noncovered source permit at the new location.

(d) The director shall not continue to act upon or consider a location change request, unless the following have been submitted:

(1) All required information as identified in subsection (c);

(2) Any additional information as requested by the director; and

(3) Any applicable fee.

(e) Prior to any relocation, the director shall approve, conditionally approve, or deny in writing each location change. If the director denies a location change, the applicant may appeal the decision pursuant to chapter 91, HRS.

(f) With the exception of the initial location, if a source remains in any one location for longer than twelve consecutive months, the director may request an ambient air quality impact assessment of the source.

(g) At each of the authorized locations, the owner or operator shall operate in accordance with the temporary noncovered source permit and all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-70 Noncovered source general permits. (a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-73, issue a noncovered source general permit for similar noncovered sources. The general

noncovered source permit expiration date shall apply to all sources covered under this permit.

(b) The director shall establish criteria and conditional requirements in the noncovered source general permit by which noncovered sources may qualify for the general permit. Noncovered sources qualifying for a noncovered source general permit shall, at a minimum, have the same Standard Industrial Classification Code, similar equipment design and air pollution controls, and the same applicable requirements. Under no circumstances shall a general permit be considered for noncovered sources requiring a case-by-case determination for air pollution control requirements (e.g. Best Available Control Technology Determination). The owner or operator of a noncovered source shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(c) The owner or operator of a noncovered source requesting coverage for some or all of its emission units under the terms and conditions of the noncovered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

(1) Name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;

(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source

and plant layout; and a description of all processes and products;

(3) If available, maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;

(4) Identification and description of all points of emissions including stack parameters;

(5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of emissions before and after controls;

(6) Current operational limitations or work practices, or for noncovered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

(7) A schedule for construction of the noncovered source, if applicable;

(8) All calculations and assumptions on which the information in paragraphs (2), (4), (5), and (6) is based;

(9) If requested by the director, an assessment of the ambient air quality impact of the noncovered source. The assessment shall

include all supporting data, calculations, and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

(10) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source to the surrounding environment;

(11) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

(12) If requested by the director, information on other available control technologies;

(13) An explanation of all proposed exemptions from any applicable requirement;

(14) A compliance plan in accordance with section 11-60.1-65; and

(15) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(d) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (c) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(e) The director shall notify the applicant in writing whether the application is complete. Unless

the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(f) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for coverage under a noncovered source general permit within six months after receipt of a complete application.

(h) The director may approve an application for coverage under a noncovered source general permit without repeating the public participation procedures. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-71 Transmission of information to the administrator. (a) The director may at any time require the owner or operator of a noncovered source to submit to the Administrator a copy of any noncovered source permit application, including applications for permit renewal and permit amendment reflecting a proposed modification, compliance plan, or records required to be kept under the noncovered source permit.

(b) The department shall maintain records on all noncovered source permit applications, compliance plans, final permits, and other relevant information for a minimum of five years. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-72 Permit reopening. (a) The director shall reopen and amend a noncovered source permit if the director determines that any one of the following circumstances exist:

(1) The director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(2) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(b) Procedures to reopen and amend a noncovered source permit shall be the same as procedures which apply to initial permit issuance in accordance with section 11-60.1-63 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) The director shall provide written notification to the permittee on the reopening of the permit indicating the basis for reopening at least thirty days prior to the reopening date, except that the director may provide a shorter time period if it is determined that immediate action on the reopening of the permit is required to prevent an imminent peril to public health and safety or the environment.

(d) If requested by the director, the owner or operator of a noncovered source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension for the application submittal may be granted by the director if the owner or operator can provide adequate written justification for such an extension. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-73 Public participation. (a) Except for administrative permit amendments, in considering any application for a noncovered source permit, the director, at the director's sole discretion, may provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment if the director is of the opinion that public comment would aid in the director's decision. If a public comment period is provided, any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public comment period, a public hearing, or both shall indicate the interest of the person filing the request and the reasons why a public comment period or hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
   (A) Information on the subject matter;
   (B) Information submitted by the applicant, except for that determined to be confidential pursuant to section 11-60.1-14;
   (C) The department's analysis and proposed action; and
   (D) Other information and documents determined to be appropriate by the department;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
   (A) The subject matter;

(B) The application;
(C) The department's analysis;
(D) The proposed actions; and
(E) Other considerations as determined to be appropriate by the department;

(4) Notification of a public comment period or a public hearing shall be made:
(A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
(B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
(C) If necessary by other means to assure adequate notice to the affected public;

(5) Notice of public comment and public hearing shall identify:
(A) The affected facility;
(B) The name and address of the permittee;
(C) The name and address of the agency of the department processing the permit;
(D) The activity or activities involved in the permit action;
(E) The emissions change involved in any permit amendment reflecting a modification to the noncovered source;
(F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan and monitoring reports, and all other materials available to the department that are relevant to the permit decision, except for information that is determined to be confidential pursuant to section 11-60.1-14;

(G) A brief description of the comment procedures;
(H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
(I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and

(6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request.

[Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-74 Noncovered source permit renewal applications. (a) Every application for a noncovered source permit renewal is subject to the same requirements for an initial application of a noncovered source permit including the requirements of section 11-60.1-63. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

(1) Name, address, and phone number of:
(A) The company;
(B) The facility, if different from the company;
(C) The owner and owner's agent; and
(D) The plant site manager or other contact;

(2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent noncovered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures;

(3) A compliance plan in accordance with section 11-60.1-65; and

(4) Other information as may be necessary:

(A) [~~necessary by~~] for the director to make a decision on the application; and

(B) [~~As may be necessary~~]to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) Each application for permit renewal shall be submitted to the director a minimum of sixty days prior to the date of permit expiration.

(c) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(d) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(e) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response. As set forth in section 11-60.1-62, the noncovered source's ability to operate and the validity of the noncovered source permit shall continue beyond the permit expiration date, until the final permit is issued or denied, provided the applicant submits all additional information within the reasonable deadline specified by the director.

(f) The director, in writing, shall approve, conditionally approve, or deny an application for renewal of a noncovered source permit, including an application for renewal requesting coverage under a noncovered source general permit, within six months after receipt of a complete application. If the application for renewal has not been approved or denied within six months after a complete application is received, the noncovered source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-75 Administrative permit amendment.

(a) The director, at the director's sole discretion or upon written request from the owner or operator of a noncovered source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more noncovered source permits into one or to change ownership or operational control, an owner or operator requesting an administrative permit amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the director shall take final action on the request and may amend the permit without providing notice to the public. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-76 Applications for modifications. (a) Every application for a modification to a noncovered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include:

(1) The name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;
(2) A description of the modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions, or any monitoring, recordkeeping, and reporting procedures;
(3) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions of any proposed addition or modification of any source of emissions; specifications and drawings showing the design of the source and plant layout; a description of all processes and products; and, if reasonably anticipated, a detailed

description of alternative operating scenarios;

(4) If available, maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For greenhouse gases, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;

(5) Identification and description of all points of emissions including stack parameters;

(6) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the noncovered source or modification, and to the extent of available information, an estimate of emissions before and after controls;

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

[~~(7)~~] (8) Operational limitations or work practices which the owner or operator of the noncovered source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

[~~(8)~~] (9) A schedule for construction or modification of the noncovered source;

[~~(9)~~] (10) All calculations and assumptions on which the information in paragraphs (3), (5), (6), and (7) is based;

[~~(10)~~] (11) If requested by the director, an assessment of the ambient air quality impact of the noncovered source or modification. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the national and state ambient air quality standards;

[~~(11)~~] (12) If requested by the director, a risk assessment of the air quality related impacts caused by the noncovered source or modification to the surrounding environment;

[~~(12)~~] (13) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

[~~(13)~~] (14) If requested by the director, information on other available control technologies;

[~~(14)~~] (15) An explanation of all proposed exemptions from any applicable requirement;

[~~(15)~~] (16) A compliance plan in accordance with section 11-60.1-65; and

[~~(16)~~] (17) Other information:

(A) As requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;
(3) All applicable fees have been submitted; and
(4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) The director, in writing, shall approve, conditionally approve, or deny an application for modification to a noncovered source within six months after receipt of a complete application. An application for modification shall be approved only if the director determines that the modification will be in compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

SUBCHAPTER 5

COVERED SOURCES

§11-60.1-81 Definitions. As used in this subchapter, unless otherwise defined for purposes of a particular section or subsection of this subchapter:

"Applicable requirement" means all of the following as they apply to emissions units in a covered source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the state implementation plan approved or promulgated by EPA;

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking pursuant to Title I, including Part C of the Act;

(3) Any standard or other requirement approved pursuant to Section 111 of the Act, including Section 111(d);

(4) Any standard or other requirement approved pursuant to Section 112 of the Act, including any requirement concerning accident prevention approved pursuant to Section 112(r)(7) of the Act;

(5) Any requirement approved pursuant to Section 504(b) or 114(a)(3) of the Act;

(6) Any standard or other requirement governing solid waste incineration approved pursuant to Section 129 of the Act;

(7) Any standard or other requirement for consumer and commercial products, approved pursuant to Section 183(e) of the Act;

(8) Any standard or other requirement for tank vessels approved pursuant to Section 183(f) of the Act;

(9) Any standard or other requirement of the program to control air pollution from outer continental shelf sources approved pursuant to Section 328 of the Act;

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone approved pursuant to Title VI of the Act, unless the Administrator has determined that such

requirements need not be contained in a Title V permit;

(11) Any NAAQS or increment or visibility requirement approved pursuant to Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(12) Any NAAQS or state ambient air quality standard;

(13) Any standard or other requirement approved pursuant to Title I, including Part C of the Act;

(14) The application of best available control technology to control regulated air pollutants, but only as best available control technology would apply to new covered sources and significant modifications to covered sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the director, on the covered source to emit a pollutant; and

(15) Any standard or other requirement provided for in chapter 342B, HRS; this chapter; or chapter 11-59.

"Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Final covered source permit" means the version of a covered source permit issued by the director that has completed all review procedures required by 40 CFR Parts 70.7 and 70.8.

"General permit" means a covered source permit covering numerous similar sources that meets the requirements of section 11-60.1-92.

"Minor modification" means a modification which:

(1) Does not increase the emissions of any air pollutant above the permitted emission limits;
(2) Does not result in or increase the emissions of any air pollutant not limited by permit to levels equal to or above:
    (A) 500 pounds per year of a hazardous air pollutant, except lead;
    (B) 300 pounds per year of lead;
    (C) twenty-five percent of significant amounts of emission as defined in section 11-60.1-1, paragraph (1) in the definition of "significant"; or
    (D) two tons per year of each regulated air pollutant not already identified above;
(3) Does not violate any applicable requirement;
(4) Does not involve significant changes to existing monitoring requirements or any relaxation or significant change to existing reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
(5) Does not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
(6) Does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
    (A) A federally enforceable emissions cap assumed to avoid classification as a modification pursuant to any provision

of Title I of the Act or subchapter 7; and

(B) An alternative emissions limit approved pursuant to regulations promulgated pursuant to Section 112(i)(5) of the Act or subchapter 9; and

(7) Is not a modification pursuant to any provision of Title I of the Act.

"Modification" means a physical change in or a change in the method of operation of a stationary source which requires a change to a permit. Modification includes minor and significant modifications. Routine maintenance, repair, and replacement of parts shall not be considered a modification.

"Nonmajor covered source" means any covered source that is not a major covered source.

"Proposed covered source permit" means the version of a permit that the director proposes to issue, and forwards to EPA for review pursuant to section 11-60.1-95.

"Section 502(b)(10) changes" means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Significant modification" means a modification which does not qualify as a minor modification or administrative amendment. A significant modification shall include every significant change in existing monitoring requirements, and every relaxation of, or significant change to the existing reporting or recordkeeping requirements. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

"Temporary covered source" means a nonmajor covered source that is intended to be operated at multiple locations for a designated period of time at

each location. The operation of the source shall be temporary and involve at least one change of location during the term of a covered source permit.

"Timely application" means:

(1) An initial application for a covered source permit filed during the transition period, in accordance with the submittal schedule in section 11-60.1-87; or

(2) An application for a covered source permit renewal which is submitted to the director no fewer than twelve months and no more than eighteen months prior to the permit expiration date, or the deadline as approved by the director pursuant to subsection 11-60.1-101(b).

"Transition period" means the three years following the effective date of this chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-1, 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-1, 342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-82 Applicability. (a) Except as provided in subsections (d), (e), and (k) and section 11-60.1-87, no person shall burn used or waste oil or begin construction, reconstruction, modification, relocation, or operation of an emission unit or air pollution control equipment of any covered source without first obtaining a covered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a covered source holds a valid covered source permit.

(b) The covered source permit shall remain valid past the expiration date and the covered source shall not be in violation for failing to have a covered source permit, until the director has issued or denied the renewal of the covered source permit, provided:

(1) Prior to permit expiration, a timely and complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and

(2) The owner or operator has submitted to the director within the specified deadlines, all requested additional information deemed necessary to evaluate or take final action on the renewal application, as described in section 11-60.1-101(e).

(c) The covered source permit shall not constitute, nor be construed to be an approval of the design of the covered source. The covered source permit shall be issued in accordance with this chapter and it is the responsibility of the applicant to [~~insure~~] ensure compliance with all applicable requirements in the construction and operation of any covered source.

(d) The following are exempt from the requirements of subsection (a):

(1) All sources listed in the definition of Covered Source in Subchapter 1 that are not:
(A) major sources;
(B) affected sources; or
(C) solid waste incineration units,
and that are required to obtain a permit pursuant to Section 129(e) of the Act, unless required to obtain a Title V permit under rules promulgated by the Administrator.

[~~(1)~~] (2) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards of Performance for New Residential Wood Heaters," 40 CFR Section 60.530 et seq.;

[~~(2)~~] (3) All sources and source categories that would be required to obtain a permit solely because they are subject to the "Standards

for Demolition and Renovation" pursuant to the "National Emission Standard for Asbestos," 40 CFR Section 61.145;

[~~(3)~~] (4) Ocean-going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources, pursuant to 40 CFR Part 55;

[~~(4)~~] (5) Internal combustion engines propelling mobile sources such as automobiles, trucks, cranes, forklifts, front-end loaders, graders, trains, helicopters, and airplanes;

(6) Nonroad Engines. Owners of nonroad engines, except for those exempt engines listed in subsections (f) and (g) of this section, must maintain a Nonroad Engine Location Log to demonstrate the engine meets subparagraph (1)(C) of the nonroad engine definition of Subchapter 1. The Nonroad Engine Location Log shall include:

(A) Owner's Name;

(B) Engine Manufacturer and Model;

(C) Engine Serial Number;

(D) Engine Date of Manufacture; and

(E) For each location to which the engine is moved, the location of the engine, initial date at the location, and the date moved off the location;

[~~(5)~~] (7) Diesel fired portable ground support equipment used exclusively to start aircraft or provide temporary power or support service to aircraft prior to start-up; and

[~~(6)~~] (8) Air-conditioning or ventilating systems that do not contain more than 50 pounds of any Class I or Class II ozone depleting substance regulated under Title VI of the Act and are not designed to remove air pollutants generated by or released from equipment.

(e) The owner or operator of any insignificant activity identified in subsections (f) and (g) may begin construction, reconstruction, modification, or

operation of the activity without first obtaining a covered source permit, provided:

(1) The insignificant activity is not by itself subject to[~~subchapters 8 or 9~~] Covered Source permitting requirements;

(2) The insignificant activity does not cause a noncovered stationary source to become a major source;

(3) The insignificant activity does not cause the stationary source to become subject to provisions of[~~subchapters~~] subchapter 7[~~, 8, or 9~~]; and

(4) The owner or operator can demonstrate to the director's satisfaction that each activity meets the size, emission level, or production rate criteria contained in subsections (f) and (g).

The insignificant activities listed in subsection (f) shall be identified in the covered source permit application. The insignificant activities listed in subsection (g) need not be identified in the covered source permit application, unless subject to an applicable requirement. Any fuel burning equipment identified shall not include equipment burning off-spec used oil or fuel classified as hazardous waste. The director may request additional information on any insignificant activity to determine the applicability of, or to impose, any applicable requirement. Action to incorporate applicable requirements for insignificant activities into a covered source permit shall be in accordance with section 11-60.1-88.5.

(f) Insignificant activities based on size, emission level, or production rate, are as follows:

(1) Any storage tank, reservoir, or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Act;

(2) Other than smoke house generators and gasoline fired industrial equipment, fuel

burning equipment with a heat input capacity less than one million BTU per hour, or a combination of fuel burning equipment operated simultaneously as a single unit having a total combined heat input capacity of less than one million BTU per hour;

(3) Steam generators, steam superheaters, water boilers, or water heaters, all of which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with one of the following:
   (A) Natural or synthetic gas;
   (B) Liquified petroleum gas; or
   (C) A combination of natural, synthetic, or liquified petroleum gas;

(4) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of five million BTU per hour or less;

(5) Standby generators used exclusively to provide electricity, standby sewage pump drives, and other emergency equipment used to protect the health and welfare of personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and which:
   (A) Are fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D; and
   (B) Do not trigger a Prevention of Significant Deterioration (PSD) or covered source review, based on their potential to emit regulated or hazardous air pollutants;

(6) Paint spray booths that emit less than emission levels specified in paragraph 7 below, except for paint spray booths subject to any standard or other requirement pursuant to Section 112(d) of the Act; and

(7) Other activities which emit less than:
(A) 500 pounds per year of a hazardous air pollutant, except lead;
(B) 300 pounds per year of lead;
(C) five tons per year of carbon monoxide;
(D) 3,500 tons per year CO2e of greenhouses gases; and
(E) two tons per year of each regulated air pollutant not already identified above;
and which the director determines to be insignificant on a case-by-case basis.

(g) Insignificant activities in addition to those listed in subsection (f) are:
(1) Welding booths;
(2) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, or turning of ceramic art work, precision parts, leather, metals, plastics, fiber board, masonry, carbon, glass, or wood, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;
(3) Laboratory equipment used exclusively for chemical and physical analyses;
(4) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;
(5) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less;
(6) Fire water system pump engines dedicated for fire-fighting and maintaining fire water system pressure, which are operated only during fire fighting and periodically for

engine maintenance, and fired exclusively by natural or synthetic gas; or liquified petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel No. 1D or No. 2D;

(7) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;

(8) Gasoline fired portable industrial equipment less than 25 horsepower in size;

(9) Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), including equipment used to conduct these activities, provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and are not otherwise subject to an applicable requirement triggering a permit modification;

(10) Fuel burning equipment which is used in a private dwelling or for space heating, other than internal combustion engines, boilers, or hot furnaces;

(11) Ovens, stoves, and grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;

(12) Stacks or vents to prevent escape of sewer gases through plumbing traps;

(13) Consumer use of office equipment and products; and

(14) Woodworking shops with a sawdust collection system.

(h) The prevention of significant deterioration review requirements of subchapter 7 for new major stationary sources and major modifications are additional requirements for considering an application for a covered source permit. In the event any requirement of subchapter 7 is in conflict with the

requirements of this subchapter, the most stringent requirement shall apply.

(i) Any covered source permit, including temporary and general covered source permits, permit renewals, or permit amendments for a modification may be issued only if all of the following conditions are met:

(1) The owner or operator has submitted a complete covered source permit application;

(2) Except for minor modifications and administrative amendments, the director has provided for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit in accordance with section 11-60.1-99;

(3) The permit provides for compliance with all applicable requirements and contains the applicable terms and conditions pursuant to 11-60.1-90; and

(4) The requirements for transmission of information to EPA and EPA oversight have been satisfied pursuant to sections 11-60.1-94 and 11-60.1-95.

(j) An owner or operator of a stationary source that is not subject to the requirements of subchapter 5 and that becomes subject to the requirements of subchapter 5, or becomes subject to additional requirements of subchapter 5, pursuant to a new or amended regulation under Section 111 or 112 of the Act, HRS chapter 342B, or this chapter shall submit a complete and timely covered source permit application to address the new requirements. For purposes of this subsection, "timely" means:

(1) by the date required under subchapter 8 or 9 of this chapter, or the applicable federal regulation, whichever deadline is earlier; or

(2) within twelve months after the effective date of the new or amended regulation, if not specified in the applicable regulation.

The owner or operator of the source may continue to construct or operate and shall not be in violation for failing to have a covered source permit addressing the new requirements only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information that the director deems necessary to evaluate or take final action on the application, including additional information required pursuant to sections 11-60.1-83(d) and 11-60.1-84.

(k) The director, upon written request and submittal of adequate support information from the owner or operator of a covered source, may provide written approval of the following activities to proceed without prior issuance or amendment of a covered source permit. Under no circumstances will these activities be approved if the activity interferes with the imposition of any applicable requirement or the determination of whether a stationary source is subject to any applicable requirement.

(1) Installation and operation of air pollution control devices. The director may allow the installation and operation of an air pollution control device prior to issuing a covered source permit or amendment to a covered source permit if the owner or operator of the source can demonstrate that the control device reduces the amount of emissions previously emitted, does not emit any new air pollutants, and does not adversely affect the ambient air quality impact assessment. The owner or operator of the covered source shall submit with the written request, a complete covered source permit application to install and operate the air pollution control device. The application shall include the proposed operating parameters, including any parametric monitoring to ensure that the control device is operating properly.

(2) Test burns. The director may allow an owner or operator of a covered source to test alternate fuels not allowed by permit if the following conditions are met:

(A) The test burn period does not exceed one week, unless the director, upon reasonable justification, approves a longer period, not to exceed three months;

(B) The purpose of the test burn is to establish emission rates, to determine if alternate fuels are feasible with the existing covered source facility, or as an investigative measure to research the operational characteristics of a fuel;

(C) A stack performance test, a pre-approved monitoring program, or both, if requested by the director, are conducted during the test burn to record and verify emissions;

(D) The owner or operator of the covered source provides emission estimates of the test burn and demonstrates that no violation of the NAAQS and state ambient air quality standards will occur;

(E) The owner or operator of the covered source demonstrates that the use of the alternate fuel is allowed or not restricted by any applicable requirement, other than the permit condition(s) restricting the alternate fuel use; and

(F) If a performance test or monitoring is required, the owner or operator of the covered source provides written test or monitoring results within sixty days of the completion of the test burn or such other time as approved by the director. The results shall include the operational parameters of the covered

source at the time of the test burn, and any other significant factors that affected the test or monitoring results.

If the director approves the test burn, the director may set operational limitations or other conditions for the test burn. Deviations from those limits or conditions shall be considered a violation of this chapter. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-22, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-22; 42 U.S.C. §§7407, 7416, 7661A, 7661B; 40 C.F.R. Part 70)

§11-60.1-83 Initial covered source permit application. (a) Every application for an initial covered source permit shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

(1) Name, address, and phone number of:
  (A) The company;
  (B) The facility, if different from the company;
  (C) The owner and owner's agent; and
  (D) The plant site manager or other contact;
(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules and capacities to the extent needed to determine or regulate emissions;

specifications and drawings showing the design of the source and plant layout; a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171); reasonably anticipated alternative operating scenarios, and processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) associated with each alternative operating scenario;

(3) Information to define permit terms and conditions for any proposed emissions trading within the facility pursuant to section 11-60.1-96;

(4) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;

(5) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations developed pursuant to Section 123 of the Act shall also be provided;

(6) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address, telephone number, and relevant specifications and drawings;

(7) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

(8) Current operational limitations or work practices, or for covered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source. For sources subject to an Equivalent Maximum Achievable Control Technology limitation pursuant to section 11-60.1-175, a proposed emission limitation consistent with the requirements set forth in section 11-60.1-175;

(9) All calculations and assumptions on which the information in paragraphs (2), (4), (5), (6), and (8) is based;

(10) A detailed schedule for construction or reconstruction of the source or modification, if applicable;

(11) For existing covered sources, an assessment of the ambient air quality impact of the covered source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

(12) For new covered sources, and significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the covered source or significant modification, with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

(13) For new covered sources or significant modifications subject to the requirements of subchapter 7, all analyses, assessments, monitoring, and other application requirements of subchapter 7;

(14) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source or significant modification to the surrounding environment;

(15) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

(16) If requested by the director, information on other available control technologies and associated analysis;

(17) An explanation of all proposed exemptions from any applicable requirement;

(18) A list of insignificant activities pursuant to section 11-60.1-82(e) to (g);

(19) A compliance plan in accordance with section 11-60.1-85;

(20) A source compliance certification in accordance with section 11-60.1-86; and

(21) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider any incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required or requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete:

(1) For the requirements of subchapter 7, thirty days after receipt of the application; and

(2) For the requirements of subchapter 5, sixty days after receipt of the application. For purposes of this paragraph, the date of receipt of an application for a new covered source or significant modification subject to the requirements of subchapter 7 shall be the date the application is determined to be complete for the requirements of subchapter 7.

Unless the director requests additional information or notifies the applicant of incompleteness within sixty days after receipt of an application pursuant to paragraph (c)(2), the application shall be deemed complete for the requirements of subchapter 5.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) Except as provided in section 11-60.1-88 and subsections (f) and (g), the director, in writing, shall approve, conditionally approve, or deny an application for a covered source permit within eighteen months after receipt of a complete application.

(f) The director, in writing, shall approve, conditionally approve, or deny an application containing an early reduction demonstration pursuant to section 112(i)(5) of the Act, and upon program approval, within nine months after receipt of a complete application.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application.

(h) A covered source permit application for a new covered source or a significant modification shall be approved only if the director determines that the construction or operation of the new covered source or significant modification will be in compliance with all applicable requirements and will not interfere with attainment or maintenance of a NAAQS.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application and proposed covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

(Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

§11-60.1-84 Duty to supplement or correct permit applications. Any applicant for a covered source permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the release of a draft permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-85 Compliance plan. (a) A compliance plan shall be submitted with every initial application for a covered source, temporary covered source, and general covered source permit, application for a covered source permit renewal, and application for a significant modification to a covered source, and at such other times as requested by the director.

(b) The owner or operator of a covered source shall submit to the director for approval a compliance plan which includes at a minimum the following information:

(1) A description of the compliance status of the existing covered source or proposed source with respect to all the applicable requirements; and

(2) The following statement or description and compliance schedule, as applicable:

(A) For applicable requirements with which the source is in compliance, a statement that the source is in compliance and will continue to comply with such requirements;

(B) For applicable requirements which become applicable during the permit term, a statement that the source on a timely basis will meet all such applicable requirements. The statement shall include documentation on the proposed method the owner or operator plans to initiate to obtain compliance; and a compliance schedule demonstrating that the source will meet such applicable requirement by the date specified in the applicable requirement. A detailed schedule shall be provided if required by the applicable requirement; or

(C) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance with all such applicable requirements; and a detailed compliance schedule containing specific milestones of remedial measures to obtain compliance, allowing for an enforceable sequence of actions. Any compliance schedule shall resemble and shall be at least as stringent as any judicial consent decree or administrative order that applies to the source. The schedule shall supplement and shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(c) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 11-60.1-4 shall be submitted to the director

no less frequently than every six months and shall include:

(1) Dates for achieving the activities, milestones, or compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-23; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

§11-60.1-86 Compliance certification of covered sources. (a) A compliance certification shall be submitted with every initial application for a covered source, temporary covered source, and general covered source permit, application for any covered source permit renewal, and application for a significant modification to a covered source, and at such other times as requested by the director. The responsible official of a covered source shall submit to the director and the Administrator a compliance certification which includes at a minimum the following information:

(1) A detailed description of the methods to be used in determining compliance with all applicable requirements, including any monitoring, recordkeeping, and reporting requirements and test methods;

(2) A schedule for submission of compliance certifications during the permit term; and

(3) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements, including the requirements of Section 114(a)(3) of the Act

or any applicable monitoring and analysis provisions of Section 504(b) of the Act.

(b) During the permit term, the responsible official of a covered source shall also submit to the director and the Administrator at least annually, or more frequently as set by any applicable requirement, a compliance certification which includes at a minimum the following information:

(1) The identification of each term or condition of the permit that is the basis of the certification;

(2) The compliance status;

(3) Whether compliance was continuous or intermittent;

(4) The methods used for determining the compliance status of the source currently and over the reporting period;

(5) Any additional information indicating the source's compliance status with any applicable enhanced monitoring and compliance certification including the requirements of Section 114(a)(3) of the Act or any applicable monitoring and analysis provisions of Section 504(b) of the Act; and

(6) Any additional information as required by the director including information to determine compliance.

(c) The responsible official, in submitting a compliance certification for insignificant activities, may certify compliance if:

(1) There were no observed, documented, or known instances of noncompliance during the reporting period where a permit does not require testing, monitoring, recordkeeping, or reporting; or

(2) The testing, monitoring, or recordkeeping required by permit revealed no violations, and there were no observed, documented, or known instances of noncompliance during the reporting period.

(d) The compliance certification may reference information contained in a previous compliance

certification submittal to the director, provided such referenced information has been certified as being current and still applicable.

(e) Notwithstanding the provisions of subsection (b), a compliance certification may be submitted once per year, or more frequently as set by any applicable requirement, if allowed by state statute. Other than the change in the submission period, this subsection does not affect any other requirement of subsection (b). [Eff 11/26/93; comp 10/26/98; comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

§11-60.1-87 Transition period. (a) During the transition period, all owners or operators of an existing covered source shall submit to the director a complete initial covered source permit application according to the submission schedule in subsection (f).

(b) During the transition period, the owner or operator of a covered source who has applied for but has not received an authority to construct permit pursuant to repealed chapter 11-60 shall submit to the director a complete and timely covered source permit application (less any authority to construct application fee previously submitted). A covered source permit for the emission unit subject to the authority to construct permit application must be obtained prior to commencement of construction, modification, relocation, or operation.

(c) During the transition period, the owner or operator of a covered source in existence prior to March 21, 1972, or a covered source that has been exempt pursuant to repealed chapter 11-60, may continue to operate and shall not be in violation for failing to have a covered source permit, only if the owner or operator has submitted to the director a

complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d). The owner or operator shall continue to operate in accordance with any applicable laws, regulations, or rules until the covered source permit is issued or denied.

(d) Except as provided in subsection (e), if an authority to construct or permit to operate expires prior to the issuance of the covered source permit, the owner or operator may continue to construct or operate only if the owner or operator has submitted to the director a complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d). The authority to construct or permit to operate shall continue to be in effect until the covered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(e) In the event an authority to construct or permit to operate expires prior to the required submission date for the initial application:

(1) The owner or operator may continue construction or operation for the submittal period, provided the owner or operator constructs or operates in accordance with the expired authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate; and

(2) The owner or operator of the covered source may continue to construct or operate after the required submission date, provided the owner or operator meets the requirements of section 11-60.1-9 and has submitted to the director a complete and timely covered source permit application, and any additional information necessary for the processing of the application, including the additional information specified in section 11-60.1-83(d).

The authority to construct or permit to operate shall continue to be in effect until the covered source permit is issued or denied, provided the owner or operator constructs or operates in accordance with the authority to construct or permit to operate, section 11-60.1-9, and any applicable laws, regulations, or rules in effect at the time of issuance of the authority to construct or permit to operate. Noncompliance with any condition of the authority to construct or permit to operate is considered a violation of this chapter.

(f) All existing covered sources shall submit an initial covered source permit application according to the following submission schedule:

SICC	Type of Covered Source	Number of months from effective date of this chapter when submission is due
14	Mining and quarrying of nonmetallic minerals, except fuels	Four months
32	Manufacturing stone, clay, glass, and concrete products	Four months
2951	Asphalt paving mixtures and blocks	Four months

2952	Asphalt felts and coatings	Four months
01	Agricultural production	Six months
07	Agricultural services	Six months
49	Electric, gas, and sanitary services	Eight months
	All others	Ten months

The director, upon written request from the owner or operator of a covered source, may extend the application submittal deadline if the director determines that reasonable justification exists for the extension. The written request for an extension shall be submitted at least thirty days prior to the required submission date and shall include the following information:

(1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the preparation of the application;

(2) Description of the problems being encountered and the reasons for any delays in meeting the application submittal deadline;

(3) The current status of the covered source permit application; and

(4) The projected completion date of the covered source application.

If the director disapproves an extension for initial application submittal, the owner or operator shall meet the scheduled submission date. Under no circumstances shall the deadline for submitting an initial covered source application be extended beyond twelve months from the effective date of this chapter.

(g) All covered source permit applications, compliance plans, compliance certifications, and filing fees shall be submitted in accordance with sections 11-60.1-83, 11-60.1-85, and 11-60.1-86 and

subchapter 6. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

§11-60.1-88 Action on applications submitted within one year of the effective date of this chapter. Except for applications for a new covered source or significant modification subject to the requirements of subchapter 7, during the transition period, the director shall approve, conditionally approve, or deny, annually, at least one-third of all complete covered source permit applications submitted within one year from the effective date of this chapter. The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application. The director may prioritize the action on the applications submitted. At a minimum, the director shall provide for reasonable procedures and resources to assign priority to applications for any new construction or significant modification of a covered source. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

§11-60.1-88.5 Permit action on insignificant activities. The director shall incorporate applicable requirements (if not already incorporated) for insignificant activities into the covered source permit as follows:

(1) For insignificant activities already identified in a covered source permit application as of the effective date of this section, the director shall incorporate all applicable requirements for insignificant activities at the time of permit renewal;
(2) For insignificant activities identified in a covered source permit application (e.g. for an initial permit, a minor or significant modification, or permit renewal) on or after the effective date of this section, the director shall incorporate the applicable requirements for insignificant activities at the time of permit issuance; or
(3) For insignificant activities identified separately as an addendum to a covered source permit application on or after the effective date of this section, the director may incorporate the applicable requirements for insignificant activities by administrative permit amendment, or at the earliest date a permit action for either a minor or significant modification, or permit renewal is required. [Eff and comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 40 C.F.R. Part 70) (Imp: §§342B-3, 342B-12; 40 C.F.R. Part 70)

§11-60.1-89 Permit term. (a) A covered source permit shall be issued for a fixed term of five years unless the owner or operator of the covered source requests a shorter term.

(b) A covered source permit shall be renewed for a fixed term of five years unless the owner or operator of the covered source requests a shorter term. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-21, 342B-25; 42 U.S.C. §§7407, 7416, 7661a; 42 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-

21, 342B-25; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

Historical note: §11-60.1-89 is based substantially upon §11-60-48. [Eff 11/29/82; am, ren §11-60-36 and comp 4/14/86; am and comp 6/29/92; R 11/26/93]

§11-60.1-90 Permit content. The director shall consider and incorporate the following elements into all covered source permits, as applicable:

(1) Emission limitations and standards, including operational requirements and limitations to assure compliance with all applicable requirements at the time of permit issuance;

(2) Requirements regarding fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of "major source";

(3) The origin of and authority for each term or condition and any differences in form as compared to the applicable requirement upon which the term or condition is based;

(4) Permit term pursuant to section 11-60.1-89;

(5) Requirements for the installation of devices, at the expense of the owner or operator, for the measurement or analysis of source emissions or ambient concentrations of air pollutants;

(6) The requirement for source emissions tests or alternative methodology to determine compliance with the terms and conditions of the covered source permit, and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;

(7) All monitoring and related recordkeeping and reporting requirements to assure compliance with all terms and conditions of the permit.

Each covered source permit shall address the following with respect to monitoring, recordkeeping, and reporting:

(A) All reporting, emissions monitoring and analysis procedures, or test methods, required pursuant to the applicable requirements, including any procedures or methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

(B) If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit. Use of terms, test methods, units, averaging periods, and other statistical conventions used for these requirements shall be consistent with applicable requirements;

(C) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;

(D) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;

(E) Appropriate monitoring methods;

(F) Monitoring records including:

(i) Place as defined in the permit, date, and time of sampling or measurements;

(ii) Dates the analyses were performed;

(iii) The name and address of the company or entity that performed the analyses;

(iv) Analytical techniques or methods used;
(v) Analyses results; and
(vi) Operating conditions during the time of sampling or measurement;

(G) Other records including support information, such as calibration and maintenance records, original stripchart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the director;

(H) A requirement for the retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(I) A requirement for submission of reports of any required monitoring at least every six months. Deviations from the permit requirements shall be clearly identified and addressed in these reports;

(J) A requirement for prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The term "prompt" shall be delineated on a permit-by-permit basis in relation to the degree and type of deviation likely to occur and the applicable requirements; and

(K) Provisions for the owner or operator to annually report in writing, emissions of hazardous air pollutants;

(8) If requested by the owner or operator of a covered source, terms and conditions to allow emissions trading within the facility pursuant to section 11-60.1-96, including provisions to insure compliance with all applicable requirements, and requiring the owner or operator to provide a minimum seven-day advance written notification to the Administrator and director prior to any proposed emissions trading;

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in the covered source permit application as approved by the director. Such terms and conditions shall include:

(A) A requirement that the owner or operator, contemporaneously with making a change from one operating scenario to another, record in a log at the permitted facility the scenario under which it is operating and, if required by any applicable requirement or the director, submit written notification to the director; and

(B) Provisions to ensure that the terms and conditions under each alternative scenario meet all applicable requirements;

(10) General provisions including:

(A) A statement that the owner or operator shall comply with all the terms and conditions of the covered source permit and that any permit noncompliance constitutes a violation of this chapter and the Act and is grounds for enforcement action; for permit termination, suspension, reopening, or amendment; or for denial of a permit renewal application;

(B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

(C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;

(D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to sections 11-60.1-10 and 11-60.1-98, and section 342B-27, HRS. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

(F) A provision that, if construction is not commenced, continued or completed in accordance with section 11-60.1-9, the covered source permit for the subject emission unit shall become invalid;

(G) A provision that the owner or operator shall notify the director in writing of the anticipated date of initial start-up for each emission unit of a new covered source or significant modification not more than sixty days or less than thirty days prior to such date. The director shall also be notified in writing of the actual date of construction commencement and start-

up within fifteen days after these dates;

(H) A statement that the owner or operator shall furnish in a timely manner any information or records requested in writing by the department to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit. For information claimed to be confidential, the director may require the permittee to furnish such records not only to the department but also directly to the Administrator along with a claim of confidentiality;

(I) A requirement that a copy of applicable correspondence or records submitted to the department be provided to the Administrator;

(J) A provision for the designation of confidentiality of any records pursuant to section 11-60.1-14;

(K) A requirement that the owner or operator shall submit fees in accordance with subchapter 6;

(L) Certification requirements pursuant to section 11-60.1-4;[~~and~~]

(M) A requirement that the owner or operator allow the director or an authorized representative, upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at

reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements; and

(N) A requirement that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the director which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(11) Compliance plan and compliance certification submittal requirements pursuant to sections 11-60.1-85 and 11-60.1-86; and

(12) Any other provision to assure compliance with all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-28, 342B-29, 342B-31, 342B-33, 342B-41; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c; 40

C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-28, 342B-29, 342B-31, 342B-33, 342B-41; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c; 40 C.F.R. Part 70)

§11-60.1-91 Temporary covered source permits. (a) An owner or operator of a temporary covered source may apply for a temporary covered source permit. The owner or operator of the temporary covered source shall certify its intention to operate at various locations with the same equipment and similar operational methods.

(b) The application and issuance of a temporary covered source permit is subject to the same procedures and requirements for an initial application and issuance of a covered source permit, including the requirements of section 11-60.1-83. The initial location of the source shall be specified.

(c) On the draft temporary covered source permit, the director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-99. Each notification shall identify the intent to operate at various locations.

(d) The director shall provide a statement that sets forth the legal and factual bases for the draft temporary covered source permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(e) Each application and proposed temporary covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95.

(f) Upon issuance of the temporary covered source permit, the owner or operator shall submit all succeeding location changes to the director for approval at least thirty days or such lesser time as designated and approved by the director, prior to the change in location. The owner or operator shall submit sufficient information to enable the director to assess the air quality impact the temporary covered

source may have at the new location. Information submitted shall include:

(1) Name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;
(2) Temporary covered source permit identification number and expiration date;
(3) Location map of the new temporary location, identifying the surrounding commercial, industrial, and residential developments;
(4) Projected dates of operation at the new location;
(5) Identification of any other air pollution source at the new location; and
(6) Certification that no modification will be made to the equipment, and operational methods will remain similar as permitted under the temporary covered source permit at the new location.

(g) The director shall not continue to act upon or consider a location change request, unless the following have been submitted:

(1) All required information as identified in subsection (f);
(2) Any additional information as requested by the director; and
(3) Any applicable fee.

(h) Prior to any relocation, the director shall approve, conditionally approve, or deny in writing each location change. If the director denies a location change, the applicant may appeal the decision pursuant to chapter 91, HRS.

(i) With the exception of the initial location, if a source remains in any one location for longer than twelve consecutive months, the director may request an ambient air quality impact assessment of the source.

(j) At each of the authorized locations, the owner or operator shall operate in accordance with the temporary covered source permit and all applicable requirements. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29; 42 U.S.C. §§7407, 7416, 7661a, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29; 42 U.S.C. §§7407, 7416, 7661a, 7661c, 7661d; 40 C.F.R. Part 70

§11-60.1-92 Covered source general permits. (a) The director, at the director's sole discretion may, after providing for public notice, including the method by which a hearing can be requested, and an opportunity for public comment in accordance with section 11-60.1-99, issue a covered source general permit for similar nonmajor covered sources. The general covered source permit expiration date shall apply to all sources covered under this permit.

(b) The director shall establish criteria and conditional requirements in the covered source general permit by which nonmajor covered sources may qualify for the general permit. Nonmajor covered sources qualifying for a covered source general permit shall, at a minimum, have the same Standard Industrial Classification Code, similar equipment design and air pollution controls, and the same applicable requirements. Under no circumstances shall a general permit be considered for nonmajor covered sources requiring a case-by-case determination for air pollution control requirements (e.g. Best Available Control Technology Determination). The owner or operator of a covered source shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(c) The owner or operator of a nonmajor covered source requesting coverage for some or all of its emission units under the terms and conditions of the

covered source general permit must submit an application to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to evaluate the fee requirements specified in subchapter 6. Information submitted shall include:

(1) Name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;

(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules and capacities to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171);

(3) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants from each emissions unit. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;

(4) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations developed pursuant to Section 123 of the Act shall also be provided;

(5) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address, telephone number, and relevant specifications and drawings;

(6) Citation and description of all applicable requirements and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

(7) Current operational limitations or work practices, or for covered sources that have not yet begun operation, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

(8) All calculations and assumptions on which the information in paragraphs (2), (3), (4), (5), and (7) is based;

(9) A detailed schedule for construction or reconstruction of the covered source, if applicable;

(10) If requested by the director, an assessment of the ambient air quality impact of the covered source. The assessment shall include all supporting data, calculations

and assumptions, and a comparison with the NAAQS and state ambient air quality standards;

(11) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source to the surrounding environment;

(12) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;

(13) If requested by the director, information on other available control technologies and associated analysis;

(14) An explanation of all proposed exemptions from any applicable requirement;

(15) A list of insignificant activities pursuant to section 11-60.1-82(e) to (g);

(16) A compliance plan in accordance with section 11-60.1-85;

(17) A source compliance certification in accordance with section 11-60.1-86; and

(18) Other information:

(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(d) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (c) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(e) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(f) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(g) The director, in writing, shall approve or deny an application for coverage under a covered source general permit within six months after receipt of a complete application. An application for coverage under a general permit shall be approved only if the director determines that the source seeking coverage meets the criteria and conditional requirements established in the covered source general permit and will be in compliance with all the applicable requirements.

(h) The director may approve an application for coverage under a covered source general permit without repeating the public participation procedures, but such approval shall not be considered the final permit action for purposes of administrative and judicial review pursuant to section 11-60.1-100.

(i) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(j) Each application and proposed covered source general permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29, 342B-33,

342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-26, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70)

§11-60.1-93 Federally-enforceable permit terms and conditions. Terms and conditions included in a covered source permit, including any provision designed to limit a source's potential to emit, are federally enforceable unless such terms, conditions, or requirements are specifically designated as not federally enforceable. Those terms and conditions left undesignated shall become federally enforceable upon permit issuance provided the Administrator does not object during the forty-five-day review pursuant to section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-94 Transmission of information to the Administrator. (a) Except as provided in subsection (c), the director shall submit to the Administrator a copy of each proposed covered source permit and each final covered source permit.

(b) Except as provided in subsection (c), the owner or operator shall simultaneously submit to the Administrator a copy of all covered source permit applications, including any applications for a covered source permit renewal and permit amendment reflecting a proposed minor or significant modification submitted to the director.

(c) By agreement with the Administrator or pursuant to federal regulation, the director may waive the requirements of subsections (a) and (b), or submit summaries for specific categories of nonmajor covered sources.

(d) The department shall maintain records on all covered source permit applications, compliance plans, proposed and final permits, and other relevant information for a minimum of five years. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§11-60.1-95 EPA oversight. (a) Upon program approval, the director shall not issue a covered source permit, permit renewal, or permit amendment for minor and significant modifications, if the Administrator objects to its issuance in writing within forty-five days of receipt of the proposed covered source permit and all necessary supporting information.

(b) Upon program approval, the director shall submit to the Administrator an amended proposed covered source permit within ninety days after receipt of any written objection from the Administrator. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-24; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§11-60.1-96 Operational flexibility. (a) The director shall allow emissions trading and Section 502(b)(10) changes within a permitted facility without requiring a permit amendment, provided:

(1) The emissions trading or Section 502(b)(10) changes are not modifications pursuant to any provision of Title I of the Act;

(2) The emissions trading or Section 502(b)(10) changes do not exceed the emissions allowable under the permit;
(3) The owner or operator of the covered source provides the Administrator and director a seven-day minimum advance written notification of the proposed emissions trading or Section 502(b)(10) changes; and
(4) The following criteria are exclusively met for emissions trading within the permitted facility:
(A) An applicable requirement provides for the trading of emissions, or the trading of emissions is solely for the purpose of complying with a federally-enforceable emission cap that is established in the covered source permit independent of otherwise applicable requirements;
(B) The applicant requests such emissions trading provisions and includes in the covered source permit application the proposed replicable procedures and permit terms and conditions that ensure the emission trades are quantifiable and enforceable;
(C) The director has determined that the provisions for emissions trading ensure that emissions from each emission unit are quantifiable and enforceable; and
(D) Any emissions trading is in compliance with all applicable requirements.

(b) The seven-day advance written notification of any proposed emissions trading shall include, at a minimum, the date on which the change will occur, a description of the changes in emissions that will result, the permit requirements with which the source will comply, and how the source will comply with the terms and conditions of the permit and the applicable requirements authorizing the trade.

(c) The seven-day advance written notification of any Section 502(b)(10) changes shall include, at a

minimum, a brief description of the proposed change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that will no longer be applicable as a result of the change.

(d) The owner or operator of a covered source and the director shall attach all written notifications of proposed emissions trading and Section 502(b)(10) changes to their copy of the relevant permit. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-97 REPEALED. [R 9/15/01]

§11-60.1-98 Permit reopening. (a) The director shall reopen and amend a covered source permit if the director determines that any one of the following circumstances exists:

(1) Additional applicable requirements pursuant to the Act or this chapter become applicable to a major covered source with a remaining permit term of three or more years. Such permit reopening shall be completed not later than eighteen months after promulgation or adoption of the applicable requirement. No such permit reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the expiration date of the original permit or any of its terms and conditions has been extended pursuant to section 11-60.1-101;

(2) The permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(3) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(b) Procedures to reopen and amend a covered source permit shall be the same as procedures which apply to initial permit issuance in accordance with section 11-60.1-83 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(c) The director shall provide written notification to the permittee on the reopening of the permit indicating the basis for reopening at least thirty days prior to the reopening date, except that the director may provide a shorter time period if it is determined that immediate action on the reopening of the permit is required to prevent an imminent peril to public health and safety or the environment.

(d) If requested by the director, the owner or operator of a covered source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension for the application submittal may be granted by the director if the owner or operator can provide adequate written justification for such an extension.

(e) Upon program approval, if the Administrator notifies the director of any cause to terminate, suspend, reopen, or amend a permit, the director shall submit to the Administrator within ninety days of receipt of such written notification, or within such other times as required by the Administrator, a proposed determination of termination, suspension, reopening, or amendment as appropriate.

(f) Upon program approval, if the Administrator objects to the director's proposed determination, the director shall terminate, suspend, reopen, or amend the permit in accordance with the Administrator's objection within ninety days from receipt of a written objection. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14;

comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§**11-60.1-99 Public participation.** (a) Except for administrative permit amendments and permit amendments reflecting minor modifications, the director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft covered source permits for initial issuance, for permit renewal, or for the significant modification of a covered source. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
   (A) Information on the subject matter;
   (B) Information submitted by the applicant, except for that determined to be confidential pursuant to section 11-60.1-14;
   (C) The department's analysis and proposed action; and
   (D) Other information and documents determined to be appropriate by the department;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested

persons may submit to the department written comments on:

(A) The subject matter;
(B) The application;
(C) The department's analysis;
(D) The proposed actions; and
(E) Other considerations as determined to be appropriate by the department;

(4) Notification of a public comment period or a public hearing shall be made:
(A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
(B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
(C) If necessary by other means to assure adequate notice to the affected public;

(5) Notice of public comment and public hearing shall identify:
(A) The affected facility;
(B) The name and address of the permittee;
(C) The name and address of the agency of the department processing the permit;
(D) The activity or activities involved in the permit action;
(E) The emissions change involved in any permit amendment reflecting a modification to the covered source;
(F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other materials available to the department that are relevant to the

permit decision, except for information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;

(G) A brief description of the comment procedures;

(H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and

(I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and

(6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§92F-11, 92F-12, 342B-3, 342B-12, 342B-13, 342B-31; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70) (Imp: HRS §§92F-11, 92F-12 342B-3, 342B-12, 342B-13, 342B-31; 42 U.S.C. §§7407, 7416, 7661a, 7661b; 40 C.F.R. Part 70)

§11-60.1-100 Public petitions. (a) [~~Upon program approval, persons~~]A person may object to the issuance of any proposed covered source permit by petitioning the Administrator pursuant to 40 CFR Section 70.8(d).

(b) [~~Upon program approval, if~~]If the Administrator objects to the proposed covered source permit as a result of a public petition, the director shall not issue the permit until the Administrator's objection has been resolved. However, a permit that was issued after the end of the forty-five-day review

period and prior to the Administrator's objection, and except as provided in subsection (h), shall remain in effect at least until the objection is resolved. [~~Upon program approval, if~~] If the Administrator amends or terminates the permit based on the public petition, the director may issue only an amended permit that satisfies the Administrator's objection. If an amended permit is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(c) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a covered source permit or permit amendment may petition the department for a contested case hearing by submitting a written request to the director.

(d) The petition shall be based solely upon objections to the covered source permit that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(e) Any petitioner shall file a petition for a contested case hearing within ninety days of the date of the department's approval or disapproval of the proposed draft permit.

(f) Notwithstanding the provisions of subsection (e), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(g) Except as provided in subsection (h), any covered source permit that has been issued shall not be invalidated by a petition for a contested case hearing. If an amended covered source permit is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(h) The effective date of a covered source permit for a new covered source or significant modification subject to the requirements of subchapter 7 shall be as specified in 40 CFR Part 124.15.

(i) Any person may petition for a contested case hearing for the director's failure to take final action on an application for a covered source permit, covered source permit renewal, or covered source permit amendment within the time required by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft permit or denies the application for a covered source permit, covered source permit renewal, or covered source permit amendment.

(j) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§11-60.1-101 Covered source permit renewal applications. (a) Every application and issuance of a covered source permit renewal is subject to the same requirements for an initial application of a covered source permit including requirements of section 11-60.1-83. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

(1) Name, address, and phone number of:

(A) The company;
(B) The facility, if different from the company;
(C) The owner and owner's agent; and
(D) The plant site manager or other contact;

(2) Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent covered source permit applications. If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements;

(3) A compliance plan in accordance with section 11-60.1-85;

(4) A source compliance certification in accordance with section 11-60.1-86; and

(5) Other information:
(A) As required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application; and
(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) Each permit renewal application shall be submitted to the director no fewer than twelve months and no more than eighteen months prior to the permit expiration date. The director may allow a permit renewal application to be submitted no fewer than six months prior to the permit expiration date, if the director determines that there is reasonable justification.

(c) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(d) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete.

(e) During the processing of an application that has been determined or deemed complete, if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response. As set forth in section 11-60.1-82, the covered source ability to operate and the validity of the covered source permit shall continue beyond the permit expiration date until the final permit is issued or denied, provided the applicant submits all additional information within the reasonable deadline specified by the director.

(f) Except for applications for renewal for coverage under a covered source general permit, the director, in writing, shall approve, conditionally approve, or deny an application for renewal of a covered source permit within twelve months after receipt of a complete application. If the application for renewal has not been approved or denied within twelve months after a complete application is received, the covered source permit and all its terms and conditions shall remain in effect and not expire

until the application for renewal has been approved or denied and provided the applicant has submitted any additional information within the reasonable deadline specified by the director.

(g) For applications for renewal requesting coverage under a covered source general permit, the director shall approve or deny an application for renewal within six months after receipt of a complete application. If the application for renewal has not been approved or denied within six months after a complete application is received, the coverage under the covered source general permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied and provided the applicant has submitted any additional information within the reasonable deadline specified by the director.

(h) A covered source permit renewal application shall be approved only if the director determines that the operation of the covered source will be in compliance with all applicable requirements.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft covered source permit renewal in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application for renewal and proposed covered source permit shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-13, 342B-22, 342B-23, 342B-24, 342B-25, 342B-26, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-13, 342B-22, 342B-23, 342B-24, 342B-25, 342B-26,

342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661d; 40 C.F.R. Part 70)

§11-60.1-102 Administrative permit amendment. (a) The director, at the director's sole discretion or upon written request from the owner or operator of a covered source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more covered source permits into one or to change ownership or operational control, an owner or operator requesting an administrative permit amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the director shall take final action on the request and may amend the permit without providing notice to the public provided the director designates any such permit amendments as having been made pursuant to this section.

(d) The department shall submit a copy of the amended covered source permit to the Administrator. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-27; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-27; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§11-60.1-103 Applications for minor modifications. (a) Every application for a minor modification to a covered source shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

(1) A clear description of all changes;
(2) A statement of why the modification is determined to be minor, and a request that minor modification procedures be used;
(3) Maximum emission rates, including fugitive emissions, of all regulated and hazardous air pollutants resulting from the change. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO_2e tons per year. All supporting emission calculations and assumptions shall also be provided;
(4) The identification of any new applicable requirements that will apply if the minor modification occurs;
(5) The suggested changes to permit terms or conditions;
(6) Certification by a responsible official that the proposed modification meets the criteria for minor modification;
(7) All information submitted with the application for the initial covered source permit or any subsequent application for a covered source permit. The owner or operator may reference information contained in a previous application submittal, provided such referenced information has been certified as being current and still applicable; and
(8) Other information, as required by any applicable requirement or as requested and deemed necessary by the director to make a decision on the application.

(b) The director shall not continue to act upon or consider an incomplete application. An application

shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4; and

(3) All applicable fees have been submitted.

(c) The director shall notify the applicant in writing whether the application is complete. Unless the director requests additional information or notifies the applicant of incompleteness within thirty days of receipt of an application, the application shall be deemed complete.

(d) During the processing of an application, if the director determines that additional information is necessary to evaluate or take final action on the application, the director may request such information in writing and set a reasonable deadline for a response.

(e) Within ninety days of receipt of a complete application for a minor modification, or upon program approval, within fifteen days after the end of the Administrator's forty-five-day review period, whichever is later, the director in writing shall:

(1) Amend the permit to reflect the minor modification as proposed;

(2) Deny the minor modification;

(3) Determine that the requested modification does not meet the minor modification criteria, and should be reviewed under the significant modification procedures; or

(4) Upon program approval, amend the proposed permit and resubmit the amendment to EPA for reevaluation.

(f) An application for a minor modification to a covered source shall be approved only if the director determines that the minor modification will be in compliance with all applicable requirements.

(g) The director shall provide a statement that sets forth the legal and factual bases for the

proposed permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(h) Each application and proposed permit reflecting the minor modification to a covered source shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-23, 342B-24, 342B-25; 42 U.S.C. §§7407, 7416, 7661a, 7661d; 40 C.F.R. Part 70)

§11-60.1-104 Applications for significant modifications. (a) Every application for a significant modification to a covered source is subject to the same requirements as for an initial covered source permit application pursuant to §11-60.1-83 as it pertains to the proposed significant modification. Applications shall be submitted to the director on forms furnished by the director. The applicant shall submit sufficient information to enable the director to make a decision on the application and to determine the fee requirements specified in subchapter 6. Information submitted shall include:

(1) The name, address, and phone number of:
    (A) The company;
    (B) The facility, if different from the company;
    (C) The owner and owner's agent; and
    (D) The plant site manager or other contact;

(2) A description of the significant modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions, or any monitoring, recordkeeping, and reporting procedures;

(3) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules and capacities to the extent needed to determine or regulate emissions of any proposed addition or modification of any source of emissions; specifications and drawings showing the design of the source and plant layout; a detailed description of all processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) affected by the proposed modification; reasonably anticipated alternative operating scenarios, and processes and products by Standard Industrial Classification Code and source category or categories (as defined in section 11-60.1-171) associated with each alternative operating scenario affected by the proposed modification;

(4) Information to define permit terms and conditions for any proposed emissions trading within the facility pursuant to section 11-60.1-96;

(5) Maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit related to the modification. If applicable, biogenic CO_2 emissions shall be identified and quantified separately from other biogenic and non-biogenic greenhouse gas emissions. Emission rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. For GHGs, emission rates shall also be reported in CO_2e tons per

year. All supporting emission calculations and assumptions shall also be provided;

(6) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of this chapter and the Act. Information on stack parameters and any stack height limitations developed pursuant to Section 123 of the Act shall also be provided;

(7) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source or modification, and to the extent of available information, an estimate of maximum and expected emissions before and after controls, technical information on the design, operation, size, estimated control efficiency, manufacturer's name, address, telephone number, and relevant specifications and drawings;

(8) Citation and description of all applicable requirements, and a description of or reference to any method and/or applicable test method for determining compliance with each applicable requirement;

(9) Operational limitations or work practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source. For sources subject to an Equivalent Maximum Achievable Control Technology limitation pursuant to section 11-60.1-175, a proposed emission limitation consistent with the requirements set forth in section 11-60.1-175;

(10) All calculations and assumptions on which the information in paragraphs (3), (5), (6), (7), and (9) is based;

(11) A detailed schedule for construction or reconstruction of the source or modification;
(12) For significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the covered source with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS and state ambient air quality standards;
(13) For new covered sources or significant modifications subject to the requirements of subchapter 7, all analyses, assessments, monitoring, and other application requirements of subchapter 7;
(14) If requested by the director, a risk assessment of the air quality related impacts caused by the covered source or significant modification to the surrounding environment;
(15) If requested by the director, results of source emission testing, ambient air quality monitoring, or both;
(16) If requested by the director, information on other available control technologies and associated analysis;
(17) An explanation of all proposed exemptions from any applicable requirement;
(18) A list of any new insignificant activities pursuant to section 11-60.1-82(e) to (g);
(19) A compliance plan in accordance with section 11-60.1-85;
(20) A source compliance certification in accordance with section 11-60.1-86; and
(21) Other information:
    (A) As required by any applicable requirement or as requested and deemed

necessary by the director to make a decision on the application; and

(B) As may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of such requirements.

(b) The director shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required and requested pursuant to subsection (a) has been submitted;

(2) All documents requiring certification have been certified pursuant to section 11-60.1-4;

(3) All applicable fees have been submitted; and

(4) The director has certified that the application is complete.

(c) The director shall notify the applicant in writing whether the application is complete:

(1) For the requirements of subchapter 7, thirty days after receipt of the application; and

(2) For the requirements of subchapter 5, sixty days after receipt of the application. For purposes of this paragraph, the date of receipt of an application for a new covered source or significant modification subject to the requirements of subchapter 7 shall be the date the application is determined to be complete for the requirements of subchapter 7.

Unless the director requests additional information or notifies the applicant of incompleteness within sixty days after receipt of an application pursuant to paragraph (c)(2), the application shall be deemed complete for the requirements of subchapter 5.

(d) During the processing of an application that has been determined or deemed complete if the director determines that additional information is necessary to evaluate or take final action on the application, the

director may request such information in writing and set a reasonable deadline for a response.

(e) Except as provided in section 11-60.1-88 and subsections (f) and (g), the director, in writing, shall approve, conditionally approve, or deny an application for a significant modification within eighteen months after receipt of a complete application.

(f) The director, in writing, shall approve, conditionally approve, or deny an application containing an early reduction demonstration pursuant to Section 112(i)(5) of the Act, and upon program approval, within nine months after receipt of a complete application.

(g) The director, in writing, shall approve, conditionally approve, or deny an application for a new covered source or significant modification subject to the requirements of subchapter 7 within twelve months after receipt of a complete application.

(h) The director shall provide reasonable procedures and resources to complete the review of the majority of the applications for a significant modification within nine months after receipt of a complete application. An application for significant modification shall be approved only if the director determines that the significant modification will be in compliance with all applicable requirements.

(i) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on the draft significant modification to the covered source in accordance with section 11-60.1-99.

(j) The director shall provide a statement that sets forth the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions) to EPA and any other person requesting it.

(k) Each application for a significant modification, and the proposed covered source permit reflecting the significant modification shall be subject to EPA oversight in accordance with section 11-60.1-95. [Eff 11/26/93; comp 10/26/98; am and comp

9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-13, 342B-23, 342B-24, 342B-25, 342B-29, 342B-33, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-13, 342B-23, 342B-24, 342B-25, 342B-29, 342B-33; 42 U.S.C. §§7407, 7416, 7661a, 7661b, 7661c, 7661d; 40 C.F.R. Part 70)

SUBCHAPTER 6

FEES FOR COVERED SOURCES, NONCOVERED SOURCES, AND AGRICULTURAL BURNING

§11-60.1-111 Definitions. As used in this subchapter:

"Actual emissions" means the actual rate of emissions of a regulated or hazardous air pollutant from a stationary source. Actual emissions for a time period as specified by the director shall equal the average rate in pounds per hour at which the stationary source actually emitted the pollutant during the specified time period, and which is representative of the source's actual operation. The director shall allow the use of a different time period upon a determination that it is more representative of the actual operation of a source. Actual emissions shall be calculated using the source's actual operating hours, production rates, and amounts of materials processed, stored, or combusted during the selected time period. Other parameters may be used in the calculation of actual emissions if approved by the director.

"Air permit application" means a noncovered or covered source permit application.

"Air permit program" means the program established pursuant to part III of chapter 342B, HRS, and this chapter.

"Allowable emission rate" means the quantity of regulated or hazardous air pollutant that may be emitted (per unit of time, tons of production, or other parameter) as established by an air permit limitation or an applicable requirement that establishes an emission limit.

"Annual fee" means the fee imposed on each owner or operator of a stationary source on an annual basis.

"AP-42" means EPA's compilation of air pollutant emission factors, Volume 1: Stationary Point and Area Sources, Fifth Edition, and its associated supplements and appendices.

"Application fee" means the fee imposed on an owner or operator of:

(1) A stationary source upon the filing of any air permit application; or

(2) An agricultural operation upon the filing of any agricultural burning permit application.

"Closure fee" means the annual fee that an owner or operator of a stationary source is assessed for the last year a source is in operation before permanent discontinuance.

"Covered source permit application" means an application for an initial covered source permit, a renewal of a covered source permit, a permit amendment for any modification to a covered source, or the written request filed for a change in location of a temporary covered source, or an administrative permit amendment to a covered source permit.

"Dollar per ton charge" means the dollar fee charge per ton of regulated air pollutant emitted, and the dollar fee charge per CO_2e ton of greenhouse gas emitted.

"Fee worksheets" means the forms provided by the director to aid the owner or operator of a stationary source in the calculation of annual fees.

"Major modification" has the same meaning as in section 11-60.1-131.

"Minor modification" has the same meaning as in section 11-60.1-81.

"Non-toxic pollutant" means any pollutant that is not a toxic pollutant.

"Non-toxic source" means a stationary source that is not a toxic source.

"Noncovered source permit application" means an application for an initial noncovered source permit, a renewal of a noncovered source permit, a permit amendment for any modification to a noncovered source, or the written request for a change in location of a temporary noncovered source, or an administrative permit amendment to a noncovered source permit.

[~~"Nonmajor modification" means any physical change in or change in method of operation of a major stationary source that is not classified as a major modification.~~]

"PSD source" means a source subject to the requirements of subchapter 7.

"Significant modification" has the same meaning as in section 11-60.1-81.

"Toxic pollutant" means any hazardous air pollutant listed pursuant to Section 112(b) of the Act, and any other hazardous air pollutant designated by this chapter.

"Toxic source" means:

(1) A major covered source that emits or has the potential to emit any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more, or twenty-five tons per year or more of any combination;

(2) A covered source that is subject to an emission standard or other requirement for hazardous air pollutants approved pursuant to Section 112 of the Act, with the exception of those sources solely subject to regulations or requirements approved pursuant to Section 112(r) of the Act; or

(3) A noncovered source that emits or has the potential to emit two tons per year or more

of any hazardous air pollutant or five tons per year or more of any combination.

"Verifiable documentation" means a record, certified pursuant to section 11-60.1-4, that best substantiates the operating characteristic or parameters of a stationary source. Records identified as verifiable documentation may include fuel usage records, production records, or other records that can be substantiated through the use of non-resetting fuel or hour meters, appropriate testing, and other methods or devices, as required or deemed acceptable by the director. Records may be deemed unacceptable by the director if found to be erroneous, incomplete, inaccurate, or inconsistent. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

§11-60.1-112 General fee provisions for covered sources. (a) Every applicant for a covered source permit shall pay an application fee as set forth in section 11-60.1-113.

(b) Except as provided in subsection (h) below, every owner or operator of a covered source shall pay an annual fee as set forth in section 11-60.1-114.

(c) All application and annual fees collected pursuant to this chapter shall be used to cover the direct and indirect costs to develop, support, and administer the air permit program.

(d) All application fees for covered sources shall be submitted by check or money order made payable to the Clean Air Special Fund-COV, and are not refundable, except as otherwise provided in this subchapter.

(e) All annual fees for covered sources required by this chapter shall be submitted by check or money order, made payable to:

(1) The Clean Air Special Fund-COV, for fees determined by the dollar per ton charge

pursuant to sections 11-60.1-114(i)(1), (3) and (4), and (j); and

(2) The Clean Air Special Fund-NON, for fees determined by the dollar per ton charge pursuant to section 11-60.1-114(i)(2), (3) and (5), and (j);

and are not refundable, except for any amount that constitutes an overpayment, as determined by the director.

(f) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional $25 handling charge. If a returned check results in a late payment, the owner or operator shall also be assessed a late payment penalty in accordance with section 11-60.1-114(m).

(g) The department shall reevaluate the provisions of this subchapter at least every three years to ensure that adequate fees are being generated to cover the direct and indirect costs to develop, support, and administer the air permit program. [~~Notwithstanding the~~]If fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS. Any fee adjustments pursuant to section 11-60.1-114(j), and fee waivers allowed in subsection (h) below, [~~if fee adjustments are required based on the director's reevaluation, the director shall afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS~~]shall not require that the director afford the opportunity for public comment in accordance with chapters 91 and 342B, HRS.

(h) With EPA's approval, the director may waive annual fees due from owners or operators of covered sources for the following calendar year, provided that funds in excess of $6 million will exist in the Clean Air Special Fund-COV account as of the end of the current calendar year. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements,

such as annual emissions reporting. The owner or operator of a covered source shall continue to report the source's actual emissions of regulated air pollutants, including toxic pollutants, in tons per year. For greenhouse gases, biogenic CO_2 emissions shall be identified separately; and actual emissions shall be reported in both mass tons and CO2e tons of each greenhouse gas emitted (e.g., carbon dioxide, nitrous oxide, methane, hydroflurocarbons, perflurocarbons, and sulfur hexafluoride), and the resulting total mass tons and CO_2e tons emitted. The emissions report shall show the method, assumptions, emissions factors, and calculations used to obtain the tons per year emissions of each regulated air pollutant, including the CO_2e tons of GHGs. The reporting of annual emissions shall be submitted within the time frame specified in the applicable permit. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-113 Application fees for covered sources. (a) An application fee shall be submitted with the covered source permit application and shall not be refunded or applied to any subsequent application, except for any amount that constitutes an overpayment, as determined by the director. No covered source permit application shall be deemed complete unless the application fee is paid in full.

(b) The fee schedule for filing a covered source permit application shall be as follows:

(1)	PSD sources:	
	(A) Initial permit	$10,000
	(B) Major modification	$10,000
(2)	Major non-toxic sources:	
	(A) Initial permit	$ 4,000
	(B) Renewal	$ 3,000

(C) Administrative permit amendment	$	100
(D) Minor modification	$	200
(E) Significant modification resulting in an increase of emissions less than:		
(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
(ii) one tpy of any hazardous air pollutant, or		
(iii) 40,000 tpy CO_2e of GHGs	$	1,000
(F) Significant modification resulting in an increase of emissions greater than or equal to:		
(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
(ii) one tpy of any hazardous air pollutant, or		
(iii) 40,000 tpy CO_2e of GHGs	$	2,000
(3) Nonmajor non-toxic sources:		
(A) Initial permit	$	1,000
(B) Renewal	$	500
(C) Administrative permit amendment	$	100
(D) Minor modification	$	100
(E) Significant modification resulting in an increase of emissions less than:		
(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
(ii) one tpy of any hazardous air pollutant, or		
(iii) 40,000 tpy CO_2e of GHGs	$	500
(F) Significant modification		

		resulting in an increase of emissions greater than or equal to:	
		(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,	
		(ii) one tpy of any hazardous air pollutant, or	
		(iii) 40,000 tpy CO_2e of GHGs	$ 1,000
(4)	Temporary covered sources:		
	(A)	Initial permit for a non-toxic source	$ 1,000
	(B)	Initial permit for a toxic source	$ 2,000
	(C)	Renewal of a non-toxic source	$ 500
	(D)	Renewal of a toxic source	$ 1,000
	(E)	Change in location for a non-toxic source	$ 100
	(F)	Change in location for a toxic source	$ 300
	(G)	Administrative permit amendment	$ 100
	(H)	Minor modification for a non-toxic source	$ 100
	(I)	Minor modification for a toxic source	$ 200
	(J)	Significant modification for a non-toxic source resulting in an increase of emissions less than:	
		(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,	
		(ii) one tpy of any hazardous air pollutant, or	
		(iii) 40,000 tpy CO_2e of GHGs	$ 500
	(K)	Significant modification for a non-toxic source resulting	

	in an increase of emissions greater than or equal to: (i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs, (ii) one tpy of any hazardous air pollutant, or (iii) 40,000 tpy CO_2e of GHGs	$ 1,000
(L)	Significant modification for a toxic source resulting in an increase of emissions less than: (i) one tpy of any hazardous air pollutant, (ii) 40,000 tpy CO_2e of GHGs, or (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 1,000
(M)	Significant modification for a toxic source resulting in an increase of emissions greater than or equal to: (i) one tpy of any hazardous air pollutant, (ii) 40,000 tpy CO_2e of GHGs, or (iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 2,000
(5)	Sources seeking coverage under a general covered source permit:	
(A)	Initial permit	$40 for each remaining year before expiration of a general permit at the time of application submittal. Any fraction of a remaining year shall be rounded up to the next full year.

(B)	Renewal	$ 100
(C)	Administrative permit amendment	$ 50
(6)	Major toxic sources:	
(A)	Initial permit	$ 5,000
(B)	Renewal	$ 3,000
(C)	Administrative permit amendment	$ 100
(D)	Minor modification	$ 200
(E)	Significant modification resulting in an increase of emissions less than:	
(i)	one tpy of any hazardous air pollutant,	
(ii)	40,000 tpy CO_2e of GHGs, or	
(iii)	forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 1,000
(F)	Significant modification resulting in an increase of emissions greater than or equal to:	
(i)	one tpy of any hazardous air pollutant,	
(ii)	40,000 tpy CO_2e of GHGs, or	
(iii)	forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 3,000
(7)	Nonmajor toxic sources:	
(A)	Initial permit	$ 2,000
(B)	Renewal	$ 1,000
(C)	Administrative permit amendment	$ 100
(D)	Minor modification	$ 200
(E)	Significant modification resulting in an increase of emissions less than:	
(i)	one tpy of any hazardous air pollutant,	
(ii)	40,000 tpy CO_2e of GHGs, or	

(iii)	forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 1,000
(F)	Significant modification resulting in an increase of emissions greater than or equal to:	
(i)	one tpy of any hazardous air pollutant,	
(ii)	40,000 tpy CO_2e of GHGs, or	
(iii)	forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 2,000

(c) Except for individual sources having or seeking coverage under a general covered source permit, if a covered source can be categorized under two or more types of sources listed in the fee schedule, the owner or operator of that source shall pay the highest application fee that is applicable to the source.

(d) If a modification changes the classification of a source, the modification fee shall no longer apply. The fee associated with the initial permit for the new source category shall apply. For example, a modification to a nonmajor covered source which triggers a major covered source review shall be subject to the fee associated with the initial permit for a major covered source and not to the fee associated with a nonmajor covered source modification.

(e) An application fee for an administrative permit amendment shall be assessed only if the administrative change is requested by the owner or operator of the covered source. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3,

342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-114 Annual fees for covered sources. (a) Except as specified in subsection 11-60.1-112(h), subsection (b), and below, an annual fee shall be paid in full within the first one-hundred twenty days of each calendar year and a closure fee shall be paid within thirty days after the permanent discontinuance of the covered source.

(b) The director, at the director's sole discretion, or upon written request from the owner or operator of a covered source, may extend the annual fee submittal deadline if the director determines that reasonable justification exists for the extension. The owner or operator's written request for an extension shall be submitted at least fifteen days prior to the required submission due date, unless the director with reasonable justification approves a lesser period, and shall include the following information:

(1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the calculation of annual emissions and the corresponding annual fee as calculated pursuant to this section;
(2) Description of the problems being encountered and reasons for any delays in meeting the annual fee deadline;
(3) The current status of emission calculations; and
(4) The projected date of submitting the annual fee.

If the director disapproves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee within thirty days of receipt of the disapproval notice or by the original submittal deadline, whichever is later. If the director approves an extension for submitting the

annual fee, the owner or operator shall pay the required annual fee by the extended approved date. Any part of the annual fee that is not paid within the required time shall at once be assessed the late penalty fee pursuant to subsection (m).

(c) An annual fee due within the first one-hundred twenty days of each calendar year shall be based upon the tons of regulated air pollutants emitted during the prior calendar year, except that GHGs shall be based on the total CO_2e tons emitted.

(d) A closure fee due within thirty days after the permanent discontinuance of the covered source shall be based upon the tons of regulated air pollutants emitted during the year of permanent discontinuance, except that GHGs shall be based on the total CO_2e tons emitted.

(e) An annual fee due within the first one-hundred twenty days of a particular calendar year shall be referred to as the annual fee for that particular year. For example, the 2001 annual fee shall be due within the first one-hundred twenty days of calendar year 2001 and shall be based on regulated air pollutants emitted in 2000.

(f) An annual fee shall be assessed for each ton or CO_2e ton of regulated air pollutant emitted by a covered source except for:

(1) Carbon monoxide emissions;

(2) Fugitive emissions if fugitive emissions are not included in the applicable requirements or AP-42; and

(3) Emissions from insignificant activities listed in subsections 11-60.1-82(f) and (g).

(g) The annual fee assessed for each regulated air pollutant shall be determined by multiplying the appropriate dollar per ton charge pursuant to subsections (i) and (j) by the covered source emissions in tons or CO_2e tons per year pursuant to section 11-60.1-115. The dollar per ton charge assessed for all regulated air pollutants (both toxic and non-toxic) shall be determined pursuant to the following subsections:

Annual Fees Due	Subsection(s)
Prior to 2002	As provided for in subchapter 6, amended October 26, 1998
2002, except GHGs	(i)(1) and (2)
2003 and thereafter, except GHGs	(i)(1) and (2), and (j)
2015 for GHGs	(i)(4) and (5)
2016 and thereafter for GHGs	(i)(4) and (5), and (j)

(h) The submittal of an additional annual fee determined by the dollar per ton charge pursuant to paragraph(i)(3) and subsection (j) for toxic pollutants shall begin as established by rulemaking.

(i) The dollar per ton charge for each regulated air pollutant emitted by a covered source shall be as follows:

(1) All regulated pollutants, except GHGs (toxic and non-toxic)- $39.00 per ton (made payable to the Clean Air Special Fund-COV);

(2) All regulated pollutants, except GHGs (toxic and non-toxic) - $9.50 per ton (made payable to the Clean Air Special Fund-NON);

(3) Toxic pollutant emissions - additional charge to be set by rulemaking specifically for regulated toxic pollutants;

(4) GHGs, including biogenic CO_2, nitrous oxide, and methane emissions - $ 0.07 per CO_2e ton (made payable to the Clean Air Special Fund-COV); and

(5) GHGs, including biogenic CO_2, nitrous oxide, and methane emissions - $ 0.05 per CO_2e ton (made payable to the Clean Air Special Fund-NON).

(j) On January 1, 2002 and at the beginning of each subsequent year, the previous dollar per ton charge shall be adjusted by the percentage, if any, by which the consumer price index for the last calendar year exceeds the consumer price index for the calendar year before. The consumer price index for any

calendar year is the average of the consumer price index for all urban consumers published by the United States Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year. The adjusted annual fee rate shall be applied to those air pollutants emitted during the same calendar year.

(k) When submitting the annual fee, the owner or operator of a covered source shall submit a written report of emissions of all regulated air pollutants (toxic and non-toxic).

(l) The minimum annual fee shall be $500 for each covered source facility in operation or each valid covered source permit held during the prior calendar year, or $42 per month for any fraction of the year the covered source facility was in operation or the covered source permit was valid. For purposes of this subsection, "covered source facility" means a covered source under common control of the same person or persons that is located on one or more contiguous or adjacent properties.

(m) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.

(n) If any annual fee, including the late payment penalty required by this chapter is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's covered source permits, after affording the opportunity for a hearing in accordance with chapters 91 and 342B, HRS.

(o) The owner or operator of a covered source may at any time request a meeting with the department to discuss the annual fee assessment or the computational methods used to determine the annual fee. If the owner or operator still feels that the

annual fee is being miscalculated after meeting with the department, the owner or operator may request a contested case hearing in accordance with chapters 91 and 342B, HRS. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-115 Basis of annual fees for covered sources. (a) For purposes of calculating annual fees for covered sources under section 11-60.1-114, the covered source actual emissions in tons and CO_2e tons per year shall be determined by using the following parameters:

(1) Data from continuous emission monitoring (CEMS) or predictive emission monitoring (PEM) that shall always be used if available. The PEM data shall not be used if CEMS data is available;

[~~(1)~~] (2) An emission factor derived from the actual rate of emissions as substantiated through stack test reports, continuous emissions monitoring data, or any other certified record as deemed acceptable by the director;

[~~(2)~~] (3) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the covered source during the prior calendar year the annual fee is due. Other operating parameters of the covered source may be used in the fee calculation if approved by the director; and

[~~(3)~~] (4) If not already included in the emission factor identified in paragraph (1), a percentage reduction factor based upon the efficiency of the air pollution control equipment, as provided by AP-42 or any verifiable documentation demonstrating the

actual performance of the air pollution control equipment.

(b) If an actual rate of emissions referenced in paragraph (a)(1) cannot be substantiated, the allowable emission rate shall be used to calculate the total annual tonnage of pollutants emitted. If an allowable emission rate is not specified in an air permit or an applicable requirement, the appropriate permit application or AP-42 air pollutant emission factor; 40 CFR Part 98, Mandatory GHG Reporting methodology or emission factor shall be used. If the owner or operator of a covered source cannot provide verifiable documentation on the parameters referenced in paragraph (a)(2), the maximum allowable production, operating hours, amount of material processed or stored, or fuel usage shall be used in calculating the total annual tonnage or CO_2e tonnage of regulated air pollutants emitted from the covered source. For GHG emissions, results, methodologies, and emission factors used in complying with 40 CFR Part 98, Mandatory GHG Reporting, are acceptable for reporting actual emissions for the individual emission units, provided appropriate unit conversions are made, and verifiable documentation is provided for any on-site measured parameter used in the calculation. Any fraction of a ton or CO_2e ton calculated shall be disregarded for fee purposes. Only the annual tonnage in whole tons of each regulated air pollutant or whole CO_2e ton for GHGs shall constitute the basis of annual fees.

(c) The annual fee shall be calculated on fee worksheets furnished by the director. If a fee worksheet is not available for a particular covered source, the owner or operator of a covered source shall provide their own worksheet showing the method, assumptions, emission factors, and calculations used to obtain the total annual emissions in tons and CO2e tons per year, for each regulated air pollutant emitted, as applicable. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp

] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

§11-60.1-116 REPEALED. [R 9/15/01]

§11-60.1-117 General fee provisions for noncovered sources. (a) Every applicant for a noncovered source permit shall pay an application fee pursuant to section 11-60.1-118.

(b) Except as specified in subsection (e) below, every owner or operator of a noncovered source for which a permit is required under section 11-60.1-62 shall pay an annual fee as set forth in section 11-60.1-119.

(c) All application and annual fees for noncovered sources required by this chapter shall be submitted by check or money order made payable to the Clean Air Special Fund-NON, and are not refundable, except for any amount that constitutes an overpayment, as determined by the director.

(d) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional $25 handling charge. If a returned check results in a late payment, the owner or operator shall also be assessed a late payment penalty in accordance with section 11-60.1-119(g).

((e) Upon the approval of a waiver for covered source annual fees pursuant to section 11-60.1-112(h), the director may waive the annual fees due from owners or operators of noncovered sources. The waiver shall be for the same calendar year as the annual fee waiver for the covered sources. Nothing in this subsection shall be construed to allow a waiver of any application fee, or a waiver of any other requirements under this chapter, including reporting requirements, such as annual emissions reporting as required by

permit. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

§11-60.1-118 Application fees for noncovered sources. (a) An application fee shall be submitted with the noncovered source permit application and shall not be applied to any subsequent application, except for any amount that constitutes an overpayment, as determined by the director. No noncovered source permit application shall be deemed complete unless the application fee is paid in full.

(b) The fee schedule for filing a noncovered source permit application shall be as follows:

(1) Non-toxic sources:		
(A) Initial permit	$	150
(B) Renewal	$	100
(C) Administrative permit amendment	$	50
(D) Modification resulting in an increase of emissions less than:		
(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
(ii) one tpy of any hazardous air pollutant, or		
(iii) 40,000 tpy CO_2e of GHGs	$	100
(E) Modification resulting in an increase of emissions greater than or equal to:		
(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
(ii) one tpy of any hazardous air pollutant, or		

	(iii) 40,000 tpy CO_2e of GHGs	$	150
(2)	Temporary noncovered sources:		
	(A) Initial permit for a non-toxic source	$	150
	(B) Initial permit for a toxic source	$	200
	(C) Renewal of a non-toxic source	$	100
	(D) Renewal of a toxic source	$	150
	(E) Change in location for a non-toxic source	$	50
	(F) Change in location for a toxic source	$	100
	(G) Administrative permit amendment	$	50
	(H) Modification to a non-toxic source resulting in an increase of emissions less than:		
	(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
	(ii) one tpy of any hazardous air pollutant, or		
	(iii) 40,000 tpy CO_2e of GHGs	$	100
	(I) Modification to a non-toxic source resulting in an increase of emissions greater than or equal to:		
	(i) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs,		
	(ii) one tpy of any hazardous air pollutant, or		
	(iii) 40,000 tpy CO_2e of GHGs	$	150
	(J) Modification to a toxic source resulting in an increase of emissions less than:		
	(i) one tpy of any hazardous air pollutant,		

(ii) 40,000 tpy CO_2e of GHGs, or
(iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs $ 150

(K) Modification to a toxic source resulting in an increase of emissions greater than or equal to:
(i) one tpy of any hazardous air pollutant,
(ii) 40,000 tpy CO_2e of GHGs, or
(iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs $ 200

(3) Sources seeking coverage under a general noncovered source permit:

(A) Initial permit $20 for each remaining year before expiration of a general permit at the time of application submittal. Any fraction of a remaining year shall be rounded up to the next full year.

(B) Renewal $ 50

(C) Administrative permit amendment $ 25

(4) Toxic sources:

(A) Initial permit $ 200

(B) Renewal $ 150

(C) Administrative permit amendment $ 50

(D) Modification resulting in an increase of emissions less than:
(i) one tpy of any hazardous air pollutant,
(ii) 40,000 tpy CO_2e of GHGs, or
(iii) forty tpy of any regulated air pollutant other than hazardous air

	pollutants and GHGs	$ 150
(E)	Modification resulting in an increase of emissions greater than or equal to:	
	(i) one tpy of any hazardous air pollutant,	
	(ii) 40,000 tpy CO_2e of GHGs, or	
	(iii) forty tpy of any regulated air pollutant other than hazardous air pollutants and GHGs	$ 200

(c) Except for individual sources seeking coverage under a general noncovered source permit, if a noncovered source can be categorized under two or more types of sources listed in the fee schedule, the owner or operator of that source shall pay the highest application fee that is applicable to the source.

(d) If a modification changes the classification of a source, the modification fee shall no longer apply. The fee associated with the initial permit for the new source category shall apply. For example, a modification triggering a covered source review will be subject to the fee associated with the initial permit for a covered source and not to the fee associated with a noncovered source modification.

(e) An application fee for an administrative permit amendment shall be assessed only if the administrative permit amendment is requested by the owner or operator of the noncovered source. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

§11-60.1-119 Annual fees for noncovered sources. (a) Except as specified in section 11-60.1-117(e), an annual fee shall be paid in full within the first sixty days of each calendar year and a closure fee

shall be paid within thirty days after the permanent discontinuance of the noncovered source.

(b) The director, at the director's sole discretion, or upon written request from the owner or operator of a noncovered source, may extend the annual fee submittal deadline if the director determines that reasonable justification exists for the extension. The owner or operator's written request for an extension shall be submitted at least fifteen days prior to the required submission due date, unless the director with reasonable justification approves a lesser period, and shall include the following information:

(1) Justification for the extension;

(2) Description of the problems being encountered and reasons for any delays in meeting the annual fee deadline; and

(3) The projected date of submitting the annual fee.

If the director disapproves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee within thirty days of receipt of the disapproval notice or by the original submittal deadline, whichever is later. If the director approves an extension for submitting the annual fee, the owner or operator shall pay the required annual fee by the extended approved date.

(c) An annual fee, due within the first sixty days of each calendar year, shall be imposed on an owner or operator who has a valid noncovered source permit or permit to operate during the prior calendar year.

(d) A closure fee due within thirty days after permanent discontinuance of the noncovered source shall be based upon the months the noncovered source permit or permit to operate was valid during the year of permanent discontinuance. Any fraction of a month shall be deemed a full month.

(e) An annual fee due within sixty days of a particular calendar year shall be referred to as the annual fee for that particular year. For example, the 2001 annual fee shall be due within the first sixty

days of calendar year 2001 and shall be imposed on an owner or operator of a noncovered source having a valid noncovered source permit or permit to operate in 2000.

(f) The owner or operator of a noncovered source shall be assessed an annual fee of $500 for each valid permit to operate (issued pursuant to repealed chapter 11-60) or each noncovered source permit held during the prior calendar year, or $42 per month for any fraction of the year the permit to operate or noncovered source permit is valid.

(g) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.

(h) If any annual fee, including the late payment penalty required by this chapter, is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's noncovered source permits, after affording the opportunity for a hearing in accordance with chapters 91 and 342B, HRS. [Eff 11/26/93; am and comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp] (Auth: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416) (Imp: HRS §§342B-3, 342B-12, 342B-29; 42 U.S.C. §§7407, 7416)

§11-60.1-120 REPEALED. [R 9/15/01]

§11-60.1-121 Application fees for agricultural burning permits. (a) Every applicant for an agricultural burning permit shall pay an application fee pursuant to this section. The application fee

shall be made payable to the Clean Air Special Fund-NON.

(b) An application fee shall be submitted with the application for an agricultural burning permit and shall not be refunded nor applied to any subsequent application. No application for an agricultural burning permit shall be acted upon or considered unless the application fee is paid in full.

(c) Checks returned for any reason (e.g., insufficient funds, closed account, etc.) shall be considered a failure to pay. Returned checks are subject to an additional $15 handling charge.

(d) From the effective date of this chapter, the fee schedule for filing an agricultural burning permit shall be as follows:

(1)	Less than ten acres	$ 50
(2)	Ten to less than one hundred acres	$ 150
(3)	One hundred to less than one thousand acres	$ 750
(4)	One thousand or more acres	$ 1,500

(e) The acreage shall be the total acreage designated to be burned or cleared for burning as specified in the permit. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14; comp]
(Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)
(Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416)

SUBCHAPTER 7

PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§11-60.1-131 Definitions. All of the definitions in 40 CFR 52.21(b) as they existed on [~~November 19, 2013~~] January 1, 2021 are hereby incorporated by reference. This section incorporates these definitions to support the implementation of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality. Selected definitions

are included here for convenience. If a conflict is found, the definition in 40 CFR Section 52.21 shall apply.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase as defined in 40 CFR 52.21(b)(40) of a regulated NSR pollutant, and a significant net emissions increase as defined in 40 CFR 52.21(b)(3) of that pollutant from the major stationary source. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order pursuant to Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or any superseding legislation or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited pursuant to any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or to regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166; or

(B) The source is approved to use under any permit issued pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Section 51.166;

(6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR Section 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR Section 51.166;

(7) Any change in ownership at a stationary source;

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project as defined in 40 CFR 52.21(b)(36), provided the project complies with:

(A) Hawaii state implementation plan; and

(B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

(9) The installation or operation of a permanent clean coal technology demonstration project as defined in 40 CFR 52.21(b)(34-35) that constitutes repowering as defined in 40 CFR 52.21(b)(37), provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(10) The reactivation of a very clean coal-fired electric utility steam generating unit as defined in 40 CFR 52.21(b)(38);

This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 40 CFR Paragraph 52.21[~~(a)(a)~~](aa) for a Plant Applicability Limitation (PAL) for that pollutant.

Instead, the definition at 40 CFR Paragraph 52.21[~~(a)(a)~~](aa)(2)(viii) shall apply.

"Major stationary source" means:

(1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant other than the pollutant greenhouse gases:

(A) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input;

(B) Coal cleaning plants (with thermal dryers);

(C) Kraft pulp mills;

(D) Portland cement plants;

(E) Primary zinc smelters;

(F) Iron and steel mills;

(G) Primary aluminum ore reduction plants (with thermal dryers);

(H) Primary copper smelters;

(I) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;

(J) Hydrofluoric, sulfuric, and nitric acid plants;

(K) Petroleum refineries;

(L) Lime plants;

(M) Phosphate rock processing plants;

(N) Coke oven batteries;

(O) Sulfur recovery plants;

(P) Carbon black plants (furnace process);

(Q) Primary lead smelters;

(R) Fuel conversion plants;

(S) Sintering plants;

(T) Secondary metal production plants;

(U) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);

(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million BTU per hour heat input;
(W) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
(X) Taconite ore processing plants;
(Y) Glass fiber processing plants; and
(Z) Charcoal production plants;

(2) Notwithstanding the stationary source size specified in this definition, any stationary source which emits, or has the potential to emit two hundred fifty tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source, if the changes would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining whether the source is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers);
(2) Kraft pulp mills;
(3) Portland cement plants;
(4) Primary zinc smelters;
(5) Iron and steel mills;
(6) Primary aluminum ore reduction plants;
(7) Primary copper smelters;
(8) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
(9) Hydrofluoric, sulfuric, or nitric acid plants;
(10) Petroleum refineries;
(11) Lime plants;
(12) Phosphate rock processing plants;
(13) Coke oven batteries;

(14) Sulfur recovery plants;
(15) Carbon black plants (furnace process);
(16) Primary lead smelters;
(17) Fuel conversion plants;
(18) Sintering plants;
(19) Secondary metal production plants;
(20) Chemical process plants – the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
(21) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million BTU per hour heat input;
(22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
(23) Taconite ore processing plants;
(24) Glass fiber processing plants;
(25) Charcoal production plants;
(26) Fossil fuel fired steam electric plants of more than two hundred fifty million BTU per hour heat input; and
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"NSR" means New Source Review and is synonymous to PSD Review.

"Regulated NSR pollutant" means the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:
(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;
(B) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas; and

(C) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas.

(2) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;

(4) Any pollutant that otherwise is subject to regulation under the Act as defined in this subchapter.

(5) Notwithstanding paragraphs (1) through (4) of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, and which have not been delisted pursuant to section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

(6) $PM_{2.5}$ and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to January 1, 2011 shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the Hawaii state implementation plan. Applicability determinations made prior to January 1, 2011 without accounting for condensable particular matter shall not be considered in violation of this subchapter.

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants:

(1) A rate of emissions that would equal or exceed any of the following pollutant emission rates:
   (A) Carbon monoxide: one hundred tpy;
   (B) Nitrogen oxides: forty tpy;
   (C) Sulfur dioxide: forty tpy;
   (D) Particulate matter: twenty-five tpy of particulate matter emissions;
   (E) PM_{10}: fifteen tpy
   (F) $PM_{2.5}$: ten tpy of direct $PM_{2.5}$emissions; forty tpy of sulfur dioxide emissions; forty tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$precursor under 40 CFR 52.21(b)(50);
   (G) Ozone: forty tpy of volatile organic compounds or nitrogen oxides
   (H) Lead: 0.6 tpy
   (I) Fluorides: three tpy
   (J) Sulfuric acid mist: seven tpy
   (K) Hydrogen sulfide (H_2S): ten tpy
   (L) Total reduced sulfur (including H_2S): ten tpy
   (M) Reduced sulfur compounds (including H_2S): ten tpy
   (N) Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tpy)
   (O) Municipal waste combustor metals (measured as particulate matter): fourteen megagrams per year (fifteen tpy)
   (P) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): thirty-six megagrams per year (forty tpy)
   (Q) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): forty-five megagrams per year (50 tpy)

(R) Greenhouse gases: 75,000 tpy CO_2e, as specified in section (3) under the definition of "Subject to Regulation" of this subchapter.

(2) *Any* net emissions increase or the potential of a major stationary source to emit a regulated NSR pollutant that is not listed in paragraph (1), any emissions rate.

(3) Notwithstanding paragraph (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m^3 , (twenty-four-hour average).

"Subject to Regulation" means for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in Title 40 CFR Chapter I, Subchapter C, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR Subsection 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (4) to (5) of this definition and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of paragraphs 40 CFR 52.21(aa)(1) through(15), and complies with the PAL permit containing the GHG PAL.

(2) For purposes of paragraphs (3) ~~[through]~~to

[~~(5)~~] (4) of this definition, the term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (2)(A) above for each gas to compute a tpy CO_2e.

(3) The term "emissions increase" as used in ~~[paragraphs]~~paragraph (4)~~[and (5)]~~ of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

~~[(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:~~

~~(A) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or~~

~~(B) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,]~~

~~(5) Beginning July 1, 2011, in addition to the provisions in paragraph (4) of this definition, the pollutant GHGs shall also be subject to regulation at:~~

~~(A) A new stationary source that will emit or have the potential to emit 100,000 tpy or more CO_2e; or~~

~~(B) An existing stationary source that emits or has the potential to emit 100,000 tpy or more CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.~~]

(4) GHGs are subject to regulation for major stationary source prevention of significant deterioration permits as follows:

(A) For existing stationary sources, GHGs are subject to regulation (GHG BACT analysis) only if:

(i) the stationary source is major due to the potential to emit of a non-GHG pollutant;

(ii) the project would cause both a significant increase and significant net increase for a non-GHG pollutant; and

(iii) the project would cause both CO_2e increase and CO_2e net increase equal to or greater than 75,000 tpy.

(B) For new stationary sources, GHGs are subject to regulation (BACT analysis for GHGs) only if the stationary source:

(i) is major due to the potential to emit another pollutant; and

(ii) would have the potential to emit equal to or greater than 75,000 tpy of CO_2e emissions.

(5) If there is a change in federal law or EPA

guidance that supersedes how GHGs are to be regulated in accordance with the federal definition of "subject to regulation," the regulation of GHG emissions under this section shall be in accordance with that specified in the revised law and/or guidance. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52)

§11-60.1-132 Source applicability. (a) This subchapter incorporates by reference, provisions of 40 CFR Section 52.21, Prevention of Significant Deterioration of Air Quality, as it existed on [~~November 19, 2013~~]January 1, 2021 and applies to owners or operators planning to construct a major stationary source or to make a major modification to such a stationary source. Provisions of 40 CFR Section 52.21 are additional requirements for considering an application for a covered source permit required by subchapter 5.

(b) No stationary source or modification to which the requirements of this subchapter apply shall begin actual construction without a covered source permit which states that the stationary source or modification would meet the requirements of 40 CFR Section 52.21. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14; am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7475; 40 C.F.R. Part 52)

§11-60.1-133 REPEALED. [R 6/30/14]

§11-60.1-134 REPEALED. [R 6/30/14]

§11-60.1-135 REPEALED. [R 6/30/14]

§11-60.1-136 REPEALED. [R 6/30/14]

§11-60.1-137 REPEALED. [R 6/30/14]

§11-60.1-138 REPEALED. [R 6/30/14]

§11-60.1-139 REPEALED. [R 6/30/14]

§11-60.1-140 REPEALED. [R 6/30/14]

§11-60.1-141 REPEALED. [R 6/30/14]

§11-60.1-142 REPEALED. [R 6/30/14]

§11-60.1-143 REPEALED. [R 6/30/14]

§11-60.1-144 REPEALED. [R 6/30/14]

§11-60.1-145 REPEALED. [R 6/30/14]

§11-60.1-146 REPEALED. [R 6/30/14]

§11-60.1-147 REPEALED. [R 6/30/14]

§11-60.1-148 REPEALED. [R 6/30/14]

§11-60.1-149 REPEALED. [R 6/30/14]

§11-60.1-150 REPEALED. [R 6/30/14]

SUBCHAPTER 8

STANDARDS OF PERFORMANCE FOR STATIONARY SOURCES

§11-60.1-161 New source performance standards. (a) This section applies to an owner or operator subject to a promulgated federal standard of performance for new stationary sources. An owner or operator of an affected facility shall comply with all applicable provisions of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources," as adopted and incorporated into these rules, including the following subparts:

(1) Subpart A, General Provisions;

(2) Subpart D, Standards of Performance for Fossil Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971;

(3) Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978;

(4) Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units;

(5) Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units;

(6) Subpart E, Standards of Performance for Incinerators;

(7) Subpart Ea, Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994;

(8) Subpart Eb, Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996;

(9) Subpart Ec, Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996;

(10) Subpart F, Standards of Performance for Portland Cement Plants;

(11) Subpart I, Standards of Performance for Hot Mix Asphalt Facilities;

(12) Subpart J, Standards of Performance for Petroleum Refineries;

(13) Subpart Ja, Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007;

[~~(13)~~] (14) Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978;

[~~(14)~~] (15) Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984;

[~~(15)~~] (16) Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984;

[~~(16)~~] (17) Subpart O, Standards of Performance for Sewage Treatment Plants;

[~~(17)~~] (18) Subpart Y, Standards of Performance for Coal Preparation Plants;

[~~(18)~~] (19) Subpart AA, Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983;

[~~(19)~~] (20) Subpart AAa, Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;

[~~(20)~~] (21) Subpart GG, Standards of Performance for Stationary Gas Turbines;

(22) Subpart UU, Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture;

[~~(21)~~] (23) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006;

(24) Subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;

[~~(22)~~] (25) Subpart WW, Standards of Performance for the Beverage Can Surface Coating Industry;

[~~(23)~~] (26) Subpart XX, Standards of Performance for Bulk Gasoline Terminals;

[~~(24)~~] (27) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006;

(28) Subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006;

[~~(25)~~] (29) Subpart JJJ, Standards of Performance for Petroleum Dry Cleaners;

[~~(26)~~] (30) Subpart NNN, Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations;

[~~(27)~~] (31) Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;

[~~(28)~~] (32) Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems;

[~~(29)~~] (33) Subpart VVV, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities;

[~~(30)~~] (34) Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills;

(35) Subpart XXX - Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014;

[~~(31)~~] (36) Subpart AAAA, Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction Commenced After June 6, 2001; [~~and~~]

[~~(32)~~] (37) Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units [~~for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.~~];

(38) Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006;

(39) Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;

(40) Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines;

(41) Subpart KKKK, Standards of Performance for Stationary Combustion Turbines;

(42) Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units; and

(43) Subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units.

(b) [~~Each federal standard of performance for new stationary sources (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from Title V permitting requirements by an applicable federal standard, any~~]Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to an applicable federal standard which requires the affected facility to obtain a Title V permit is subject to the application and permitting requirements of subchapter 5. If there is a conflict between the application deadlines in subchapter 5 and the applicable federal standard, the earlier deadline shall apply. If there is a conflict between an applicable requirement of subchapter 5, or any other subchapter of these rules, and the applicable federal standard, the most stringent requirement shall apply. "Affected facility" as used in this section shall have the same meaning as in 40 CFR §60.2.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 60) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 60)

§11-60.1-162 REPEALED. [R 9/15/01]

§11-60.1-163 Federal plans. (a) This section applies to an owner or operator subject to a promulgated federal plan for designated or affected facilities, where the facility is not covered by an EPA approved state plan. "State plan" as used in this subsection means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR Part 60, subpart B that implements and enforces 40 CFR Part 60, subpart C.

(b) An owner or operator of a designated or affected facility, as defined in the applicable federal plan, shall comply with all applicable requirements of the federal plan, including the following:

(1) 40 CFR Part 62, Subpart FFF, Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994;

(2) 40 CFR Part 62, Subpart GGG, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991;

(3) 40 CFR Part 62, Subpart HHH, Federal Plan Requirements for Hospital/Medical/Infectious

Waste Incinerators Constructed on or Before June 20, 1996; and

(4) 40 CFR Part 62, Subpart JJJ, Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999.

(c) [~~Each federal plan for designated or affected facilities (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Unless specifically exempted from~~]Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Title V permitting [~~by~~]as specified in an applicable federal plan[~~, any owner or operator of a designated or affected facility~~] is subject to the application and permitting requirements of subchapter 5.

(d) Any owner or operator who constructs, reconstructs, modifies, or operates an affected facility subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4. [Eff and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416, 7661a; 40 C.F.R. Part 70)

SUBCHAPTER 9

HAZARDOUS AIR POLLUTANT SOURCES

§11-60.1-171 Definitions. As used in this subchapter:

"Accidental release" means an unanticipated emission of a regulated substance or other extremely

hazardous substance into the ambient air from a stationary source.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.

"Area source" means any stationary source of hazardous air pollutants that is not a major source but shall not include motor vehicles or nonroad vehicles subject to regulation approved pursuant to Title II of the Act.

"Carcinogenic hazardous air pollutant" means any hazardous air pollutant recognized as known, probable, or potential human carcinogen by the EPA's Integrated Risk Information System (IRIS), or other documented studies or information by recognized authorities and approved by the director.

"Category" means any category of major sources and area sources of hazardous air pollutants listed pursuant to Section 112(c) of the Act.

"Commenced" as used in this subchapter means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Construction" means the on-site fabrication, erection, or installation of an affected source as defined in 40 CFR §63.2.

"EPA risk assessment guidelines" means the U.S. Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment, 51 FR 33992 (September 24, 1986).

"Emission standard" means a national standard, limitation, prohibition, or other regulation promulgated in 40 CFR Part 63 pursuant to Sections 112(d), 112(h), or 112(f) of the Act.

"Equivalent MACT" means the MACT emission limitation or requirements which are applicable to

major sources of hazardous air pollutants and are approved by the director on a case-by-case basis, pursuant to Sections 112(g) or 112(j) of the Act.

"Existing source" means any affected source that is not a new source as defined in this subchapter.

"MACT" means maximum achievable control technology.

"New source", unless otherwise defined in an applicable Section 112 standard, means any affected source which is:

(1) Major, or located within a major source of hazardous air pollutants, and in a category or subcategory for which construction or reconstruction is commenced after the Section 112(j) deadline, or after the Administrator proposes a relevant emission standard pursuant to Sections 112(d) or (h) of the Act, whichever comes first;

(2) Major, subject to 112(g) of the Act, and for which construction or reconstruction commenced after January 27, 1997; or

(3) Nonmajor, in a category or subcategory, and for which construction or reconstruction is commenced after the Administrator first proposes a relevant emission standard pursuant to Section 112(d) or (h) of the Act.

"Reconstruction", unless otherwise defined in an applicable Section 112 standard, means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

(1) The fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the applicable MACT or equivalent MACT standard(s). Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to the applicable standards for new sources,

including compliance dates, irrespective of any change in emissions of hazardous air pollutants from the source.

"Regulated substance" means a substance listed pursuant to Section 112(r)(3) of the Act.

"Risk management plan" means a plan to detect and prevent or minimize accidental releases of regulated substances from a stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

"Section 112(j)" means Section 112(j) of the Act.

"Section 112(j) deadline" means the date 18 months after the date by which a relevant standard is scheduled to be promulgated by the Administrator pursuant to Section 112(e) of the Act; except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the Section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the Section 112(j) deadline is December 15, 1999.

"Stationary regulated substance source" means buildings, structures, equipment, installations, or substance-emitting stationary activities:

(1) Which belong to the same industrial group;

(2) Which are located on one or more contiguous properties;

(3) Which are under the control of the same person or persons under common control; and

(4) From which an accidental release may occur.

"Subcategory" means any subcategory of major sources and area sources of hazardous air pollutants listed pursuant to Section 112(c) of the Act.

"Threshold limit value" means the airborne concentration of a substance that, according to the American Conference of Governmental Industrial Hygienists, represents conditions under which nearly all workers may be repeatedly exposed day after day without adverse effects.

"Threshold limit value-time weighted average" means the threshold limit value for a normal eight-hour workday and a forty-hour workweek as specified in the TLV book.

"TLV-TWA" means threshold limit value-time weighted average.

"TLV book" means the "Documentation of the Threshold Limit Value and Biological Exposure Indices," [~~sixth~~] seventh edition, published by the American Conference of Governmental Industrial Hygienists, Inc. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-172 List of hazardous air pollutants. The following are hazardous air pollutants:

	CAS number	Chemical name
(1)	75070	Acetaldehyde
(2)	60355	Acetamide
(3)	75058	Acetonitrile
(4)	98862	Acetophenone
(5)	53963	2-Acetylaminofluorene
(6)	107028	Acrolein
(7)	79061	Acrylamide
(8)	79107	Acrylic acid
(9)	107131	Acrylonitrile
(10)	107051	Allyl chloride
(11)	92671	4-Aminobiphenyl
(12)	62533	Aniline
(13)	90040	o-Anisidine
(14)	1332214	Asbestos
(15)	71432	Benzene (including benzene from gasoline)
(16)	92875	Benzidine
(17)	98077	Benzotrichloride
(18)	100447	Benzyl chloride
(19)	92524	Biphenyl

(20)	117817	Bis(2-ethylhexyl)phtha-late (DEHP)
(21)	542881	Bis(chloromethyl)ether
(22)	75252	Bromoform
(23)	106990	1,3-Butadiene
(24)	156627	Calcium cyanamide
(25)	133062	Captan
(26)	63252	Carbaryl
(27)	75150	Carbon disulfide
(28)	56235	Carbon tetrachloride
(29)	463581	Carbonyl sulfide
(30)	120809	Catechol
(31)	133904	Chloramben
(32)	57749	Chlordane
(33)	7782505	Chlorine
(34)	79118	Chloroacetic acid
(35)	532274	2-Chloroacetophenone
(36)	108907	Chlorobenzene
(37)	510156	Chlorobenzilate
(38)	67663	Chloroform
(39)	107302	Chloromethyl methyl ether
(40)	126998	Chloroprene
(41)	1319773	Cresols/Cresylic acid (isomers and mixture)
(42)	95487	o-Cresol
(43)	108394	m-Cresol
(44)	106445	p-Cresol
(45)	98828	Cumene
(46)	94757	2,4-D, salts and esters
(47)	3547044	DDE
(48)	334883	Diazomethane
(49)	132649	Dibenzofurans
(50)	96128	1,2-Dibromo-3-chloro-propane
(51)	84742	Dibutylphthalate
(52)	106467	1,4-Dichlorobenzene(p)
(53)	91941	3,3-Dichlorobenzidene
(54)	111444	Dichloroethyl ether (Bis(2-chloroethyl)-ether)
(55)	542756	1,3-Dichloropropene
(56)	62737	Dichlorvos
(57)	111422	Diethanolamine

(58)	121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
(59)	64675	Diethyl sulfate
(60)	119904	3,3-Dimethoxybenzidine
(61)	60117	Dimethyl aminoazobenzene
(62)	119937	3,3-Dimethyl benzidine
(63)	79447	Dimethyl carbamoyl chloride
(64)	68122	Dimethyl formamide
(65)	57147	1,1-Dimethyl hydrazine
(66)	131113	Dimethyl phthalate
(67)	77781	Dimethyl sulfate
(68)	534521	4,6-Dinitro-o-cresol, and salts
(69)	51285	2,4-Dinitrophenol
(70)	121142	2,4-Dinitrotoluene
(71)	123911	1,4-Dioxane (1,4-Diethyleneoxide)
(72)	122667	1,2-Diphenylhydrazine
(73)	106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
(74)	106887	1,2-Epoxybutane
(75)	140885	Ethyl acrylate
(76)	100414	Ethyl benzene
(77)	51796	Ethyl carbamate (Urethane)
(78)	75003	Ethyl chloride (Chloroethane)
(79)	106934	Ethylene dibromide (Dib-romoethane)
(80)	107062	Ethylene dichloride (1,2-Dichloroethane)
(81)	107211	Ethylene glycol
(82)	151564	Ethyleneimine (Aziridine)
(83)	75218	Ethylene oxide
(84)	96457	Ethylene thiourea
(85)	75343	Ethylidene dichloride (1,1-Dichloroethane)
(86)	50000	Formaldehyde
(87)	76448	Heptachlor
(88)	11874	Hexachlorobenzene
(89)	87683	Hexachlorobutadiene
(90)	77474	Hexachlorocyclo-pentadiene
(91)	67721	Hexachloroethane
(92)	82206	Hexamethylene-1,6-diisocyanate
(93)	680319	Hexamethylphosphoramide
(94)	110543	Hexane

(95)	302012	Hydrazine
(96)	7647010	Hydrochloric acid
(97)	7664393	Hydrogen fluoride (Hydrofluoric acid)
(98)	123319	Hydroquinone
(99)	78591	Isophorone
(100)	58899	Lindane (all isomers)
(101)	108316	Maleic anhydride
(102)	67561	Methanol
(103)	72435	Methoxychlor
(104)	74839	Methyl bromide (Bromomethane)
(105)	74873	Methyl chloride(Chloromethane)
(106)	71556	Methyl chloroform (1,1,1-Trichloroethane)
(107)	78933	Methyl ethyl ketone (2-Butanone)
(108)	60344	Methyl hydrazine
(109)	74884	Methyl iodide (Iodomethane)
(110)	108101	Methyl isobutyl ketone (Hexone)
(111)	624839	Methyl isocyanate
(112)	80626	Methyl methacrylate
(113)	1634044	Methyl tert butyl ether
(114)	101144	4,4-Methylene bis(2-chloroaniline)
(115)	75092	Methylene chloride (Dichloromethane)
(116)	101688	Methylene diphenyl diisocyanate (MDI)
(117)	101779	4,4-Methylenedianiline
(118)	91203	Naphthalene
(119)	98953	Nitrobenzene
(120)	92933	4-Nitrobiphenyl
(121)	100027	4-Nitrophenol
(122)	79469	2-Nitropropane
(123)	684935	N-Nitroso-N-methylurea
(124)	62759	N-Nitrosodimethylamine
(125)	59892	N-Nitrosomorpholine
(126)	56382	Parathion
(127)	82688	Pentachloronitrobenzene Quintobenzene)
(128)	87865	Pentachlorophenol
(129)	108952	Phenol
(130)	106503	p-Phenylenediamine

(131)	75445	Phosgene
(132)	7803512	Phosphine
(133)	7723140	Phosphorus
(134)	85449	Phthalic anhydride
(135)	1336363	Polychlorinated biphenyls-(Aroclors)
(136)	1120714	1,3-Propane sultone
(137)	57578	beta-Propiolactone
(138)	123386	Propionaldehyde
(139)	114261	Propoxur (Baygon)
(140)	78875	Propylene dichloride (1,2-Dichloropropane)
(141)	75569	Propylene oxide
(142)	75558	1,2-Propylenimine (2-Methylaziridine)
(143)	91225	Quinoline
(144)	106514	Quinone
(145)	100425	Styrene
(146)	96093	Styrene oxide
(147)	1746016	2,3,7,8-Tetrachlorodiben-zo-p-dioxin
(148)	79345	1,1,2,2-Tetrachloroethane
(149)	127184	Tetrachloroethylene (Perchloroethylene)
(150)	7550450	Titanium tetrachloride
(151)	108883	Toluene
(152)	95807	2,4-Toluene diamine
(153)	584849	2,4-Toluene diisocyanate
(154)	95534	o-Toluidine
(155)	8001352	Toxaphene (chlorinated camphene)
(156)	120821	1,2,4-Trichlorobenzene
(157)	79005	1,1,2-Trichloroethane
(158)	79016	Trichloroethylene
(159)	95954	2,4,5-Trichlorophenol
(160)	88062	2,4,6-Trichlorophenol
(161)	121448	Triethylamine
(162)	1582098	Trifluralin
(163)	540841	2,2,4-Trimethylpentane
(164)	108054	Vinyl acetate
(165)	593602	Vinyl bromide
(166)	75014	Vinyl

(167)	75354	Vinylidene chloride (1,1-Dichloroethylene)
(168)	1330207	Xylenes (isomers and mixture)
(169)	95476	o-Xylenes
(170)	108383	m-Xylenes
(171)	106423	p-Xylenes
(172)	0	Antimony Compounds
(173)	0	Arsenic Compounds (inorganic including arsine)
(174)	0	Beryllium Compounds
(175)	0	Cadmium Compounds
(176)	0	Chromium Compounds
(177)	0	Cobalt Compounds
(178)	0	Coke Oven Emissions
(179)	0	Cyanide Compounds [1]
(180)	0	Glycol ethers [2]
(181)	0	Lead Compounds
(182)	0	Manganese Compounds
(183)	0	Mercury Compounds
(184)	0	Fine mineral fibers [3]
(185)	0	Nickel Compounds
(186)	0	Polycylic Organic Matter [4]
(187)	0	Radionuclides (including radon) [5]
(188)	0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] X'CN where X = H' or any other group where a formal dissociation may occur. For example, KCN or Ca(CN)2.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where:

n = 1, 2, or 3
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yield glycol ethers with the

structure: R-(OCH2CH)n-OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter one micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100EC.

[5] A type of atom which spontaneously undergoes radioactive decay. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-173 Applicability. The provisions of this subchapter are applicable to any stationary source which emits or has the potential to emit any hazardous air pollutant. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-174 Maximum achievable control technology (MACT) emission standards. (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have affected source(s) in a category or subcategory subject to a promulgated MACT emission standard. An owner or operator of an affected source shall comply with all applicable provisions of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories," including the following subparts:

(1) Subpart A, General Provisions;

(2) Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants;
(3) Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks;
(4) Subpart M, National [~~Perchloroethlylene~~] Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;
(5) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Anodizing Tanks;
(6) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities;
(7) Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers;
(8) Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);
(9) Subpart T, National Emission Standards for Halogenated Solvent Cleaning;
(10) Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins;
(11) Subpart W, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production;
(12) Subpart Y, National Emission Standards for Marine Tank Vessel Loading Operations;
(13) Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries;
(14) Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations;
(15) Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities;

(16) Subpart II, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating);
(17) Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations;
(18) Subpart KK, National Emission Standards for the Printing and Publishing Industry;
(19) Subpart OO, National Emission Standards for Tanks-Level 1;
(20) Subpart PP, National Emission Standards for Containers;
(21) Subpart QQ, National Emission Standards for Surface Impoundments;
(22) Subpart RR, National Emission Standards for Individual Drain Systems;
(23) Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
[~~(23)~~] (24) Subpart VV, National Emission Standards for Oil-Water Separators and Organic Water Separators;
(25) Subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2;
[~~(24)~~] (26) Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins;
[~~(25)~~] (27) Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
[~~(26)~~] (28) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;
(29) Subpart AAAA, National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills;
[~~(27)~~] (30) Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production;[~~and~~]

[~~(28)~~] (31) Subpart VVVV, National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing[~~.~~];

(32) Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines;

(33) Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines;

(34) Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters;

(35) Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

(36) Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units;

(37) Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(38) Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities;

(39) Subpart HHHHHH, National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and

(40) Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(b) [~~Each MACT emission standard (including emission limits, control, operational, and maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.~~]Any owner or

operator who constructs, reconstructs, modifies, or operates an affected source subject to Title V permitting by an applicable MACT emission standard is subject to the application and permitting requirements of subchapter 5.

(c) Any owner or operator who constructs, reconstructs, modifies, or operates an affected source subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4.

[~~(c)~~] (d) The deadlines for submitting the required initial notification, and applying for or obtaining a noncovered or covered source permit to address the MACT emission standard are as follows:

(1) The owner or operator of a new affected source subject to noncovered or covered source permitting shall submit a complete noncovered or covered source permit application for and obtain a noncovered or covered source permit prior to commencing construction or reconstruction of an affected source, except as provided below.

(2) The owner or operator of a new major affected source for which construction or reconstruction had commenced, and initial startup had not occurred before the standard's effective date, shall submit a complete and timely covered source permit application within sixty calendar days after the standard's effective date. The covered source permit application may be used to fulfill the initial notification requirements of 40 CFR §63.9(b).

(3) The owner or operator of:

(A) an existing affected source;

(B) a new nonmajor affected source for which construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date; or

(C) a new affected source for which construction or reconstruction had

commenced and initial startup had occurred before the standard's effective date;

shall submit written notification to the director of being subject to the MACT emission standard within 120 calendar days after the effective date of the applicable standard or within 120 calendar days after the source becomes subject to the applicable standard. The owner or operator may submit an initial notification later than the deadline required above, if the applicable MACT standard sets a later deadline. Notification shall be provided pursuant to 40 CFR §63.9(b)(2). The owner or operator shall also submit a complete and timely noncovered or covered source permit application, as applicable, within twelve months after the effective date of the standard, or within twelve months after the source becomes subject to the standard.

[~~(d)~~] (e) In addressing the MACT emission standard, the owner or operator of an affected source shall provide as part of the noncovered or covered source permit application, any other additional information listed in 40 CFR 63.5(d)(1)(ii), (2), and (3). [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-175 Equivalent maximum achievable control technology (MACT) limitation. (a) This section applies to:

(1) an owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources that are within a source category or subcategory for which the Administrator has failed to promulgate an

applicable emission standard under 40 CFR Part 63 by the section 112(j) deadline; and

(2) an owner or operator who constructs or reconstructs a major source (as defined in 40 CFR §63.41) of hazardous air pollutants after January 27, 1997, and an owner or operator of an area source that converts to a major source of hazardous air pollutants after January 27, 1997, unless the major source has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), 112(h), or 112(j) of the Act.

(b) An owner or operator subject to this section is subject to an equivalent MACT limitation and shall comply with the applicable provisions of 40 CFR Part 63, entitled National Emission Standards for Hazardous Air Pollutants for Source Categories:

(1) Subpart A, General Provisions; and

(2) Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j) (40 CFR §63.40 to §63.44 and §63.50 to §63.56).

(c) The director shall determine, on a case-by-case basis, the equivalent MACT emission limitation in accordance with applicable provisions of 40 CFR Part 63, Subpart B, and impose any other requirements necessary to ensure the enforceability of the equivalent MACT emission limitation.

(d) Each equivalent MACT limitation (including emission limits, control, operational, and maintenance requirements, compliance dates, and any associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources. Any owner or operator who constructs, reconstructs, modifies, or operates an affected source is subject to the application and permitting requirements of subchapter 5.

(e) An owner or operator subject to paragraph (a)(1) shall comply with the following deadlines for

applying for and obtaining a covered source permit to address the equivalent MACT limitation:

(1) For existing sources:

(A) The owner or operator of a major source or an affected source within a major source shall submit a complete and timely covered source permit application by the Section 112(j) deadline.

(B) The owner or operator who reconstructs a major source or an affected source within a major source, and the owner or operator of an area source that becomes a major source by the addition or reconstruction of an affected source or by the increase in the source's potential to emit (e.g., increased hours of operation or fuel usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to reconstruction or conversion to a major source.

(C) The owner or operator of an area source that becomes major and subject to paragraph (a)(1) due to the Administrator establishing a lesser quantity emission rate for a "major source" under Section 112(a)(1) of the Act shall submit a complete and timely covered source permit application within six months from the date that the source becomes major.

(2) For new sources:

(A) The owner or operator who constructs or reconstructs a major source or an affected source within a major source, and the owner or operator of an area source that becomes a major source by the addition or reconstruction of an affected source or by the increase in the source's potential to emit (e.g., increased hours of operation or fuel

usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to construction, reconstruction, or conversion to a major source.

(B) The owner or operator of an area source that becomes major and subject to paragraph (a)(1) due to the Administrator establishing a lesser quantity emission rate for a "major source" under Section 112(a)(1) of the Act shall submit a complete and timely covered source permit application within six months from the date that the source becomes major.

In addressing equivalent MACT, the owner or operator of the source shall provide, as part of the covered source permit application, any additional information required by 40 CFR §63.53.

(f) An owner or operator subject to paragraph (a)(2) who constructs or reconstructs a major source, and the owner or operator of an area source that becomes a major source by the increase in the source's potential to emit (e.g., increased hours of operation or fuel usage, etc.) shall submit a complete covered source permit application and obtain a covered source permit prior to construction, reconstruction, or conversion to a major source. In addressing equivalent MACT, the owner or operator of the affected major source shall provide, as part of the covered source permit application, any additional information required by 40 CFR §63.43(e). [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; am and comp 11/14/03; comp 1/13/12; am and comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-176 REPEALED. [R 9/15/01]

§11-60.1-177 Early reduction. (a) Upon program approval and notwithstanding sections 11-60.1-174 and 11-60.1-175, the director may allow an existing source, for which the owner or operator demonstrates that the source has achieved a reduction pursuant to 40 CFR Part 63, Subpart D, to meet an alternative emission limitation reflecting that reduction in lieu of an emission limitation promulgated pursuant to Section 112(d) of the Act.

(b) The alternative emission limitation specified in subsection (a) shall be considered an applicable requirement pursuant to subchapter 5. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Parts 63 and 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Parts 63 and 70)

§11-60.1-178 Accidental releases. The owner or operator of a stationary regulated substance source shall comply with any standard or other requirement concerning accidental releases, including the preparation, submittal, and implementation of a risk management plan pursuant to Section 112(r) of the Act. [Eff 11/26/93; comp 10/26/98; comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-179 Ambient air concentrations of hazardous air pollutants. (a) No person shall emit or cause to emit from any stationary source, hazardous air pollutants in such quantities that result in, or contribute to, an ambient air concentration which endangers human health.

(b) The director shall not approve any application for a permit required by this chapter, for a new major source of hazardous air pollutants, or for the modification or reconstruction of any major source of hazardous air pollutants, or for any stationary source that the director has reason to believe that the emissions of hazardous air pollutants from the source may result in an unacceptable ambient air concentration, unless the owner or operator of the source, and except as provided in subsection (d), complies with one or more of the following:

(1) Demonstrate that the emissions of hazardous air pollutants from the source will not result in, or contribute to, any significant ambient air concentrations as defined in subsection (c); or

(2) Demonstrate that the applicable significant ambient air concentration in subsection (c) is inappropriate for the hazardous air pollutant in question and that the emissions of hazardous air pollutants from the source will not result in, or contribute to, any ambient air concentration which endangers human health. The demonstration shall include documented studies or information by recognized authorities on the specific health effects of such hazardous air pollutants and a detailed analysis, including a risk assessment, that demonstrates that the emissions from the sources will not endanger human health.

(c) For purposes of this subchapter, "significant ambient air concentration of any hazardous air pollutant" shall be defined as follows:

(1) For any non-carcinogenic hazardous air pollutant with a TLV-TWA, and except as provided in subsection (e), any eight-hour average ambient air concentration in excess of 1/100 of the TLV-TWA, and any annual average ambient air concentration in excess of 1/420 of the TLV-TWA;

(2) For any non-carcinogenic hazardous air pollutant not having a TLV-TWA, any ambient air concentration greater than the concentration which the director determines to cause, to have the potential to cause, or to contribute to, the unreasonable endangerment of human health. The determination shall be made on a case-by-case basis, consider documented studies or information by recognized authorities on the specific health effects of such hazardous air pollutants, and include a reasonable margin of safety for the protection of the general public; or

(3) For any carcinogenic hazardous air pollutant, any ambient air concentration that may result in an excess individual lifetime cancer risk of more than ten in one million assuming continuous exposure for seventy years. The ambient air concentration of a carcinogenic hazardous air pollutant shall be determined by performing a risk assessment based on procedures consistent with EPA's risk assessment guidelines or other alternative risk assessment procedures approved by the director.

(d) The emission of any hazardous air pollutants from a stationary source shall be exempt from the provisions of subsection (b) if:

(1) The total allowable emissions of the hazardous air pollutant from the stationary source are below 0.1 pounds per hour; and

(2) The significant ambient air concentration for the hazardous air pollutant as determined in accordance with subsection (c) is greater than two hundred $\mu g/m^3$ for all applicable averaging periods.

(e) Notwithstanding paragraph (c)(1), the director may at any time establish a lower concentration than the significant ambient air concentration specified in paragraph (c)(1) if the

director determines that such lower concentration is required for the protection of the public health or welfare. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; am and comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 70)

§11-60.1-180 National emission standards for hazardous air pollutants. (a) This section applies to an owner or operator of a major or area source of hazardous air pollutants that has or will have source(s) that emit designated hazardous air pollutants listed in 40 CFR Part 61. An owner or operator of a stationary source shall comply with all applicable provisions of 40 CFR Part 61, entitled National Emission Standards for Hazardous Air Pollutants, including the following subparts:

(1) Subpart A, General Provisions;
(2) Subpart C, National Emission Standard for Beryllium;
(3) Subpart D, National Emission Standard for Beryllium Rocket Motor Firing;
(4) Subpart E, National Emission Standard for Mercury;
(5) Subpart J, National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene;
(6) Subpart V, National Emission Standard for Equipment Leaks (Fugitive Emission Sources);
(7) Subpart Y, National Emission Standard for Benzene Emissions from Benzene Storage Vessels;
(8) Subpart BB, National Emission Standard for Benzene Emissions from Benzene Transfer Operations; and
(9) Subpart FF, National Emission Standard for Benzene Waste Operations.

(b) [~~Each emission standard in 40 CFR Part 61 (including emission limits, control, operational, and~~

~~maintenance requirements, compliance dates, and associated recordkeeping, monitoring, testing, notification, and reporting requirements) is an applicable requirement of subchapter 5, Covered Sources.~~]Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to Title V permitting by an applicable emission standard is subject to the application and permitting requirements of subchapter 5.

c) Any owner or operator who constructs, reconstructs, modifies, or operates an applicable source subject to Noncovered Source permitting requirements is subject to the application and permitting requirements of subchapter 4. [Eff 11/26/93; comp 10/26/98; am and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, am and comp] (Auth: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7412, 7416; 40 C.F.R. Part 61) (Imp: HRS §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416; 40 C.F.R. Part 61)

SUBCHAPTER 10

FIELD CITATIONS

§11-60.1-191 Purpose. The purpose of this subchapter is to create a field citation program that facilitates the effective and expeditious settlement of easily verifiable violations of chapter 342B, HRS, and this chapter, as listed in §11-60.1-192(a). The field citation program creates an expedited administrative settlement process that is an alternative to the often costly and lengthy traditional administrative enforcement process. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §342B-42)

§11-60.1-192 Offer to settle; penalties. (a) A field citation is an offer to settle an administrative case. In lieu of issuing a formal notice and finding of violation and order, the director may, at the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to a person who:

(1) Causes or permits visible fugitive dust to become airborne without taking reasonable precautions, in violation of subsection 11-60.1-33(a);

(2) Causes or permits the discharge of visible fugitive dust beyond the property lot line on which the fugitive dust originates, in violation of subsection 11-60.1-33(b);

(3) Cause or permit visible fugitive dust emissions equal to or in excess of twenty percent opacity for more than twenty-four individual readings recorded during any one hour period, as determined by using EPA 40 CFR 51 Appendix M, Method 203B, in violation of subsection 11-60.1-33(c);

[~~(3)~~] (4) Causes or allows open burning in violation of subsection 11-60.1-52(a);

[~~(4) Fails to submit timely location change information for the permittee's temporary noncovered or covered source permit, in violation of subsection 11-60.1-69(c) or 11-60.1-91(f), respectively;~~]

(5) Fails to comply with the notification requirement for fires found in subsection 11-60.1-52(c);

(6) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(d);

(7) Fails to comply with any approved condition or requirement for fires described in subsection 11-60.1-52(e) and allowed under subsections 11-60.1-52(f) and 11-60.1-55;

(8) Fails to comply with any condition found in a permittee's agricultural burning permit, in violation of the specific condition found

in the permittee's applicable agricultural burning permit;

(9) Fails to comply with any condition or requirement found in a permittee's noncovered source permit, in violation of the specific condition or requirement found in the permittee's applicable noncovered source permit;

(10) Fails to comply with any condition or requirement found in a permittee's covered source permit, in violation of the specific condition or requirement found in the permittee's applicable covered source permit;

[~~(5)~~] (11) Fails to obtain a noncovered source permit, in violation of subsection 11-60.1-62(a); or

[~~(6)~~] (12) Fails to obtain a covered source permit, in violation of subsection 11-60.1-82(a).

(b) The notice of citation shall assess the following penalties for the violations in subsection (a):

(1) Any person who violates paragraph (a)(1) shall be fined $300 for a first violation, and $500 for a subsequent violation.

(2) Any person who violates paragraph (a)(2) shall be fined $500 for a first violation, and $1000 for a subsequent violation.

(3) Any person who violates paragraph (a)(3) shall be fined $200 for a first violation, and $400 for a subsequent violation.

[~~(3)~~] (4) Any person who violates paragraph (a)[~~(3)~~](4) shall be fined $100 for a first violation, and $300 for a subsequent violation.

[~~(4) Any person who violates paragraph (a)(4) shall be fined $500 for a first violation, and $1000 for a subsequent violation.~~]

(5) Any person who violates paragraph (a)(5) shall be fined $250 for a first violation, and $500 for a subsequent violation.

(6) Any person who violates paragraph (a)(6) shall be fined $250 for a first violation, and $500 for a subsequent violation.
(7) Any person who violates paragraph (a)(7) shall be fined $250 for a first violation, and $500 for a subsequent violation.
(8) Any person who violates paragraph (a)(8) shall be fined $250 for a first violation, and $500 for a subsequent violation.
(9) Any person who violates paragraph (a)(9) shall be fined $500 for a first violation, and $1,000 for a subsequent violation.
(10) Any person who violates paragraph (a)(10) shall be fined $750 for a first violation, and $1,500 for a subsequent violation.
[~~(5)~~] (11) Any person who violates paragraph (a)[~~(5)~~](11) shall be fined $750 for a first violation, and $1500 for a subsequent violation.
[~~(6)~~] (12) Any person who violates paragraph (a)[~~(6)~~](12) shall be fined $1000 for a first violation, and $2000 for a subsequent violation. [Eff and comp 9/15/01; comp 11/14/03; am and comp 1/13/12; am and comp 6/30/14, am and comp] (Auth: HRS §342B-42)

§11-60.1-193 Acceptance or withdrawal of citation. (a) To accept the director's offer to settle, the person to whom a field citation was issued must, within twenty days of its issuance, correct the violations, sign the settlement agreement, and deliver the signed agreement with payment of the penalty by check or money order to the State of Hawaii. The director, on the director's own initiative, or upon request from the person to whom a field citation was issued, may extend the deadline to accept the offer to settle if the director determines that reasonable justification exists for the extension.

(b) By signing the settlement agreement, the person to whom a field citation was issued agrees to:

(1) waive the person's right to a contested case hearing pursuant to chapter 91, HRS;
(2) waive any challenge to the field citation;
(3) pay the penalty assessed;
(4) correct the violation; and
(5) enter into the settlement agreement.

(c) The settlement agreement is not effective until it is signed by both the person to whom the field citation was issued and by the director. Approval by the director shall be at the director's sole discretion.

(d) The director may withdraw the field citation if the person to whom it is issued:

(1) declines to accept the director's offer to settle;
(2) fails to satisfactorily meet any of the conditions set forth in subsection 11-60.1-193(a); or
(3) fails to satisfactorily meet any of the conditions set forth in §11-60.1-193(b), in which case the director may bring a formal administrative action under HRS, §342B-42 and pursue any remedies available under this chapter, HRS, chapter 342B, or any other law. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, am and comp] (Auth: HRS §342B-42)

§11-60.1-194 Form of citation. A field citation issued pursuant to this section shall be in the form prescribed by the department. [Eff and comp 9/15/01; comp 11/14/03; comp 1/13/12; comp 6/30/14, comp] (Auth: HRS §342B-42)

SUBCHAPTER 11

GREENHOUSE GAS EMISSIONS

§11-60.1-201 Purpose. The purpose of this subchapter is to further implement the goals of Act 234, 2007 Hawaii Session Laws. A statewide greenhouse gas emission (GHG) limit, to be achieved by 2020, is set to equal or below the 1990 statewide greenhouse gas emission levels. Greenhouse gas emissions from airplanes shall not be included. [Eff and comp 6/30/14, comp] (Auth: HRS §§342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

§11-60.1-202 Definitions. As used in this subchapter:

"Carbon sink or carbon dioxide sink" means a carbon reservoir that removes a greenhouse gas or a precursor of a greenhouse gas or aerosol from the atmosphere, and is the opposite of a carbon source. The main sinks are the oceans and growing vegetation that absorb CO_2.

"Facility-wide GHG emissions cap" means a permit emissions limitation, applicable to a covered source, limiting the entire source's annual non-biogenic greenhouse gas, and biogenic nitrous oxide and methane emissions. A facility-wide GHG emissions cap may also be defined in multiple covered source permits to identify partnering facilities with an approved combined GHG emissions cap as described in subparagraph 11-60.1-204(d)(6)(A).

"Municipal waste combustion operations" means a permitted covered source that combusts solid, liquid, or gasified household, commercial/retail, and/or institutional waste.

"On-the-Book" means control measures or operational practices affecting GHG emissions that the owner or operator of a facility plans, or is undertaking to implement because of regulatory or legal obligations; or as demonstrated through financial and resource commitments. Examples include required controls or practices mandated by a state or

federal law; or budgeted and contracted/funded projects or resources.

"Permitted covered source" means a stationary source or facility issued or required to hold a covered source permit pursuant to this chapter, and has begun construction or operation by the effective date of this subchapter. [Eff and comp 6/30/14, comp] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

§11-60.1-203 Greenhouse gas emission limit. The statewide GHG emission limit to be achieved by 2020, is equal to or below 13.66 million metric tons (or 15.06 million tons) per year of CO_2e, based on Hawaii's 1990 GHG emission estimates prepared under Act 234, 2007 Hawaii Session Laws. The GHG limit excludes aviation and international bunker fuel emissions, and includes carbon sinks. The director may update the numerical GHG emission limit should improved methodologies and data become available for estimating emissions. The limit serves as an indicator to measure progress of the state's GHG reduction measures and to determine the achievement and maintenance of the state's GHG limit by 2020. [Eff and comp 6/30/14, comp] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

§11-60.1-204 Greenhouse gas emission reduction plan. (a) This section applies to an owner or operator of a permitted covered source, except for municipal waste combustion operations, with the potential to emit GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 tons per year CO_2e. Each owner or operator of an affected source shall submit a GHG emission reduction plan for the

director's approval within twelve (12) months of the effective date of this section. An owner or operator may submit a written request for an extension 30 days prior to the deadline.

(b) The GHG emission reduction plan will be used to evaluate and establish an annual facility-wide GHG emissions cap for the affected source in support of achieving and maintaining the statewide GHG limit. The approved facility-wide GHG emissions cap and the associated provisions will be made a part of the covered source permit, and may be revised through the permit process to respond to new rules, updated technology, GHG reduction initiatives, and any other circumstances deemed necessary by the director to facilitate the state's GHG limit.

(c) Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable pursuant to the GHG control assessment described in subsection 11-60.1-204(d), each GHG emission reduction plan shall establish a minimum facility-wide GHG emissions cap in tons per year CO_2e, to be achieved by 2020 and maintained thereafter. The minimum facility-wide GHG emissions cap shall be sixteen percent (16%) below the facility's total baseline GHG emission levels less biogenic CO_2 emissions, as follows:

$$\text{Facility-wide cap (tpy } CO_2e) = (1-0.16) \times \left| \text{Facility Total Baseline Emissions} - \text{Facility Baseline Biogenic } CO_2 \text{ Emissions} \right| \text{ (tpy } CO_2e)$$

Where:

Facility Total Baseline Emissions (tpy CO_2e) = Baseline[Biogenic[~~$-CO_2$~~] + Non-Biogenic GHG Emissions]

Calendar year 2010 shall be used as the baseline year, unless the owner or operator can provide records for the director's approval demonstrating another year or

an average of other years to be more representative of normal operations. Newly permitted sources without an operating history, shall estimate normal operations for the director's approval in establishing the facility-wide GHG emissions cap.

(d) The GHG emission reduction plan required of affected sources shall at a minimum include:

(1) The facility-wide baseline annual emission rate (tpy CO_2e). Calendar year 2010 annual emissions shall be used as the baseline emissions to calculate the required facility-wide GHG emissions cap, unless another baseline year or period is approved by the director. Baseline emissions shall be determined in accordance with section 11-60.1-115, separated between biogenic and non-biogenic emissions, and exclude all emissions of noncompliance with an applicable requirement or permit limit. The owner or operator shall include the data and calculations used to determine the baseline emissions. If calendar year 2010 is deemed unrepresentative of normal operations, then the owner or operator may propose an alternate baseline annual emission rate for the director's approval, as follows:

(A) The owner or operator shall clearly document why calendar year 2010 is not representative of normal operations and why the proposed alternate year or period is more suitable based on trends, existing equipment and controls, scheduled maintenance, operational practices, and any other relevant information. Acceptable methods for determining alternate facility-wide baseline annual emissions include:

(i) the facility-wide GHG emissions (less biogenic CO_2) based on the most recent representative year

during the five-year period ending 2010;

(ii) average facility-wide GHG emissions(less biogenic CO_2) over any consecutive two-year period during the five-year period ending in 2010;

(iii) average facility-wide GHG emissions (less biogenic CO_2) for the five-year period ending in 2010; or

(iv) comparable methods as approved by the director. The director will not consider the use of periods greater than five years from 2010, except for extreme cases such as where an affected source may not have been fully operational for an extended period of time.

(B) For newly permitted covered sources without a 2010 operating history, the owner or operator shall make the best estimate of normal operations based on contract agreements, available operational records, required scheduled maintenance, market forecast, or any other information for projecting the affected source emissions. Potential emissions shall not be used, unless the owner or operator can clearly demonstrate that the facility will be continually operating at the maximum capacity for each and every year.

The owner or operator shall provide all supporting documentation for the proposed alternate baseline emission rate. The director, based on available information, may reject and modify the baseline emission rate in establishing the final facility-wide GHG emissions cap.

(2) The 2020 facility-wide GHG emissions cap. Determine the facility-wide GHG emissions cap in accordance with subsection(c), using calendar year 2010 or the proposed GHG baseline emission rate determined by paragraph (1) above. If the required emissions cap requiring a sixteen percent (16%) emission reduction from baseline year emissions is deemed unattainable, the owner or operator shall provide, as part of the reduction plan:
   (A) The justification and supporting documentation of why the required emissions cap cannot be met; and
   (B) A proposal, for the director's approval, of an alternate emissions cap resulting in the maximum achievable GHG reductions.

   In determining whether or not the required GHG emissions cap is attainable, the owner or operator of an affected source shall first conduct the GHG control assessment described in paragraphs (3) to (5). Available EPA guidelines for GHG Best Available Control Technology analysis, and GHG control measures by source type shall be used as applicable for this assessment.

(3) Available Control Measures. Identify all available control measures with potential application for each source type, and all on-the-book control measures the facility is committed or will be required to implement affecting GHG emissions. At a minimum, the following shall be considered as applicable:
   (A) Available technologies for direct GHG capture and control;
   (B) Fuel switching or co-fired fuels;
   (C) Energy efficiency upgrades;
   (D) Combustion or operational improvements;
   (E) Restrictive operations;
   (F) Planned upgrades, overhaul, or retirement of equipment;

(G) Outstanding regulatory mandates, emission standards, and binding agreements; and

(H) Other GHG reduction initiatives that may affect the facility's GHG emissions. Unless the owner or operator of the source has direct ownership or legal control over a GHG reduction initiative, that initiative cannot be relied upon as a proposed control strategy. Identification of GHG reduction initiatives, whether or not the owner or operator has ownership or legal control, will serve to highlight their potential importance for reducing GHG emissions in the state. The owner or operator of an affected source will only benefit from a GHG initiative, if the initiative reduces or helps to reduce and maintain the source's GHG emissions below its permitted facility-wide GHG emissions cap.

(4) The Technically Feasible Measures. For any new control measure identified for the facility, eliminate all technically infeasible options based on physical, chemical, or engineering principles that would preclude the successful operation of the control with the applicable emission unit or source. Document the basis of elimination, and generate the list of technically feasible control options for further evaluation. All committed and required on-the-book measures shall remain on the list.

(5) Control Effectiveness and Cost Evaluation. List the technically feasible control options and identify the following for each control measure as applicable. All cost data shall be provided in present dollars.

(A) Control effectiveness (percent pollutant removed);
(B) Expected emission rate (tons per year CO_2e, pounds CO_2e/kilowatt-hour);
(C) Expected emission reduction (tons per year CO_2e);
(D) Energy impacts (BTU, kilowatt-hour);
(E) Environmental impacts (other media and the emissions of other regulated air pollutants);
(F) Any secondary emissions or impacts resulting from the production or acquisition of the control measure; and
(G) Economic impact (cost effectiveness: annualized control cost, dollar/megawatt-hr, dollar/ton CO_2e removed, and incremental cost effectiveness between the control and status quo).

For committed or required on-the-books control measures and any other GHG control initiatives, identify at a minimum, items (A) through (C) above. Considering the energy, environmental, and economic impact, determine the GHG control or suite of controls found to be feasible in achieving the maximum degree of GHG reductions for the facility. Determine whether the required GHG emissions cap, pursuant to subsection (c) will be met. If an alternate cap must be proposed for approval, declare the proposed percentage GHG reduction and the alternate GHG reduction cap. Provide the justification and associated support information (e.g., references, assumptions, vendor quotes, sample calculations, etc.) to substantiate the control analysis and alternate GHG emissions cap.

(6) The proposed Control Strategy. Present the listing of control measures to be used for implementation in meeting the required or proposed alternate 2020 facility-wide GHG

emissions cap. Include discussion of the control effectiveness, control implementation schedule, and the overall expected GHG CO_2e emission reductions (tpy) for the entire facility. Owners or operators shall also consider the following:

(A) Affected sources may propose to combine their facility-wide GHG emissions caps to leverage emission reductions among partnering facilities in meeting the combined GHG emissions caps. If approved by the director, each partnering facility will be responsible for complying with its own adjusted GHG facility-wide emissions cap.

(B) Except for fee assessments and determining applicability to this section, biogenic CO_2 emissions will not be included when determining compliance with the facility-wide emissions cap until further guidance can be provided by EPA, or the director, through rulemaking.

(C) The approved facility-wide GHG emissions cap and the associated monitoring, recordkeeping, and reporting provisions will be made a part of the covered source permit, enforceable by the director.

(e) Failure to submit an adequate GHG emission reduction plan, or failure to submit relevant facts or correct information upon becoming aware of such failure, constitutes a violation of this chapter. The owner or operator of an affected source has the same duty to certify the GHG emission reduction plan in accordance with section 11-60.1-4, and supplement or correct the GHG emission reduction plan, similar to the provisions in section 11-60.1-84 for covered source permit applications. During the processing of a GHG emission reduction plan, if the director determines that a re-submittal of the plan is required, or submittal of additional information is

necessary to evaluate or take final action on the plan, the director may make the request in writing and set a reasonable deadline for the response.

(f) If the owner or operator of an affected source fails to submit an adequate GHG emission reduction plan, or if a facility-wide GHG emissions cap cannot be mutually agreed upon, the director reserves the right to establish, and incorporate into the applicable covered source permit, a facility-wide GHG emissions cap as required or the lowest cap deemed achievable by the affected source based on the intent of this subchapter.

(g) Once a facility-wide GHG emissions cap is established and placed into the covered source permit, the GHG emission reduction plan shall become a part of the covered source permit application process for renewals and any required modifications pursuant to subchapter 5. With each subsequent GHG emission reduction plan submittal, the owner or operator of the affected source shall report:

(1) The GHG emission reduction status;
(2) Factors contributing to the emission changes;
(3) Any control measure updates; and
(4) Any new developments or changes that would affect the basis of the facility-wide GHG emissions cap.

(h) The facility-wide GHG emissions cap may be re-evaluated and revised by the director if any of the following events or circumstances exists:

(1) Consideration for new rules, updated technology, implementation of GHG reduction initiatives, significant changes with renewable energy cost and supply, and any other measures deemed necessary by the director to facilitate the state’s GHG limit;
(2) The basis for establishing the facility-wide GHG emissions cap is found to be incorrect;
(3) The methodology for calculating GHG emissions is updated or modified;

(4) Renewable energy producers cease operations or fail to meet contractual obligations with the affected source, and there are no other reasonable alternatives; or

(5) Reasonably unforeseen events beyond the control of the owner or operator of an affected source, resulting in long-term or temporary emission changes, whereby the maintenance of the GHG emissions cap would be detrimental to the health and welfare of the public.

Any revision to a facility-wide GHG emissions cap is considered a significant modification subject to the application and review requirements of section 11-60.1-104. The owner or operator of an affected source seeking a GHG emissions cap change has the burden of proof to substantiate any requested change for the director's approval. Upon approving any GHG emissions cap revision, the director may impose additional emission limits or requirements on the affected source, or limit the time-frame allowed for the revised GHG emissions cap.

(i) Municipal solid waste landfills required by 40 CFR Part 60, Subpart Cc or 40 CFR Part 60, Subpart WWW to use gas collection and control systems are conditionally exempt from the GHG emission reduction requirements of Subsection 11-60.1-204(c).

(j) Should the permitted facility-wide GHG emissions cap not be met by January 1, 2020 and annually maintained thereafter, the owner or operator of the covered source shall be subject to enforcement action for each year after 2019 that the facility-wide cap is not met. Compliance with the facility-wide cap shall be determined at the end of each calendar year, or January 1 of the following year, starting with the end of 2019 or January 1, 2020. Each CO_2e ton over the cap shall constitute a separate offense and violation.

(k) The director shall conduct an evaluation in 2016, and annually thereafter, to determine the progress of achieving and if applicable, ongoing maintenance of the statewide GHG emissions limit specified in HRS, Chapter 342B-71 and section 11-60.1-

203. The evaluation of the statewide GHG emission limit shall be conducted in a manner consistent with the procedures used to prepare the 1990 emission estimates under Act 234, 2007 Hawaii Session Laws. The director shall produce and make public annual progress reports listing GHG emissions levels for each affected facility and the statewide progress relative to the statewide GHG emission limit. If the director determines that statewide GHG emission limit is met prior to 2020 and GHG emission projections indicate ongoing maintenance of the limit, the requirements of this section shall no longer be applicable to the affected facilities. Prior to finalizing any determination that the statewide GHG emission limit has been met, the director shall provide for public notice and an opportunity for public comment in accordance with the requirements specified in section 11-60.1-205. Upon achieving the statewide GHG emission limit, the director may revise or adopt additional rules to ensure the ongoing maintenance of the statewide GHG emission limit.
[Eff and comp 6/30/14, am and comp] (Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

§11-60.1-205 Public participation. (a) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft GHG emission reduction plans from §11-60.1-204. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The director shall make available for public inspection in at least one location in the

county affected by the proposed action, or in which the source is or would be located:
(A) Information on the subject matter;
(B) Information submitted by the proposing party, except for that determined to be confidential pursuant to section 11-60.1-14;
(C) The department's analysis and proposed action; and
(D) Other information and documents determined to be appropriate by the department;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
(A) The subject matter;
(B) The greenhouse gas emission reduction plan;
(C) The department's analysis;
(D) The proposed actions; and
(E) Other considerations as determined to be appropriate by the department;

(4) Notification of a public comment period or a public hearing shall be made:
(A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
(B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and
(C) If necessary by other means to assure adequate notice to the affected public;

(5) Notice of public comment and public hearing shall identify:

(A) The affected facility;
(B) The name and address of the proposing party;
(C) The name and address of the agency of the department reviewing the plan;
(D) The activity or activities involved in the plan, including, but not limited to, whether the proposing party proposes:
(i) an alternate baseline year;
(ii) an alternate facility-wide GHG emissions cap;
(iii) a control strategy involving partnering with one or more facilities.
(E) The emissions change involved in the plan;
(F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft plan, all relevant supporting materials, and all other materials available to the department that are relevant to the decision, except for information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;
(G) A brief description of the comment procedures;
(H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
(I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and

(6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall

provide this information to the Administrator upon request." [Eff and comp 6/30/14, comp] Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

§11-60.1-206 Public petitions. (a) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a draft GHG emission reduction plan, may petition the department for a contested case hearing by submitting a written request to the director.

(b) The petition shall be based solely upon objections to the draft GHG emission reduction plan, that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(c) Any petitioner shall file a petition for a contested case hearing within ninety days of the date of the department's approval or disapproval of the proposed draft GHG emission reduction plan.

(d) Notwithstanding the provisions of subsection (b), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(e) Except as provided in subsection (f), any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing. If a draft GHG emission reduction plan is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

(f) The effective date of draft GHG emission reduction plan shall be as specified for permits in 40 CFR Part 124.15 as it existed on [~~November 19, 2013~~]January 1, 2021.

(g) Any person may petition for a contested case hearing for the director's failure to take final action on an application for draft GHG emission reduction plan, within the time required for permits by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft GHG emission reduction.

(h) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order." [Eff and comp 6/30/14, am and comp] Auth: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416) (Imp: HRS §§ 342B-3, 342B-12, 342B-71, 342B-72, 342B-73; 42 U.S.C. §§7407, 7416)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 11-60.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on and filed with the Office of the Lieutenant Governor.

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

~~BRUCE S. ANDERSON, Ph.D.~~
ELIZABETH A. CHAR, M.D.
Director of Health

APPROVED AS TO FORM:

~~WILLIAM F. COOPER~~
DALE K. SAKATA
Deputy Attorney General

IV. Administrative Matters

A. Discussion and Action on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

Any handouts will be distributed at the Meeting